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W.P.Nos.21828, 21829 & 32361 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 27.07.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

WP.Nos.21828, 21829 & 32361 of 2014 and
MP.Nos.1 & 2 of 2014 (3 nos.)

WP.No.21828 of 2014

M/s.Hotel Saravana Bhavan
19, Vadapalani Andavar Koil Street,
Vadapalani, Chennai 600 026
Rep. by its partner

... petitioner

Vs.

1.The Assistant Provident Fund Commissioner,
Employees Provident Fund Organisation
37, Royapettah High Road,
Chennai 600 014
2.HDFC Bank Ltd.,
G.N.Chetty Road,
T.Nagar,
Chennai-17

... Respondents

PRAYER:

Writ Petition filed under Article 226 of the Constitution of India to
issue a writ of certiorari calling for the records and quash the order
bearing No.CC/III/TN/26280/PDC/Comp./Reg/2014 dated 07.08.2014
passed by the first respondent, Assistant Provident Fund Commissioner



W.P.Nos.21828, 21829 & 32361 of 2014

(C&R), Employees Provident Fund Organisation, 37, Royapettah High Road, Chennai 600 014 under Sec.8F of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 issued to the second respondent.

For Petitioner : Mr.A.Venkatesh Kumar
for Mr.Ravi

For Respondents
For R1 : Mr.T.R.Sundaram

WP.No.21829 of 2014

M/s.Hotel Saravana Bhavan
19, Vadapalani Andavar Koil Street,
Vadapalani, Chennai 600 026
Rep. by its partner

... petitioner

Vs.

1.The Assistant Provident Fund Commissioner,
Employees Provident Fund Organisation
37, Royapettah High Road,
Chennai 600 014

2.Bank of India,
R.K.Shanmugam Salai,
K.K.Nagar, Chennai-78

... Respondents

PRAYER:

Writ Petition filed under Article 226 of the Constitution of India to issue a writ of certiorari calling for the records and quash the order bearing No.CC/III/TN/26280/PDC/Comp./Regl./2014 dated 07.08.2014 passed by the first respondent, Assistant Provident Fund Commissioner (C&R), Employees Provident Fund Organisation, 37, Royapettah High



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Road, Chennai 600 014 under Sec.8F of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 issued to the second respondent.

For Petitioner : Mr.A.Venkatesh Kumar
for M/s.Gupta and Ravi

For Respondents
For R1 : Mr.T.R.Sundaram

For R2 : Ms.Pallavi Bhaskaran
for Mr.S.Sathiyarayanan

WP.No.32361 of 2014

Central Board of Trustees,
Employees' Provident Fund Organisation
Through the Regional Provident Fund Commissioner,
Employees' Provident Fund Organisation,
Regional Office,
No.37, Royapettah High Road,
Chennai 600 014

... petitioner

Vs.

1.Hotel Saravana Bhavan
Rep. by its Partner,
19, Vadapalani Andavar Koil Street,
Vadapalani, Chennai 600 026
2.The Presiding Officer,
Employees Provident Funds Appellate Tribunal
7th Floor, No.60, Skylark Buildings,
Nehru Palace, New Delhi 110 019

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a writ of certiorari calling for the records relating to the proceedings of the second respondent tribunal in ATA.No.655(13)2014 dated 04.08.2014 and quash the same.



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For Petitioner : Mr.T.R.Sundaram

For Respondents

For R1 : Mr.A.Venkatesh Kumar
for M/s.Gupta and Ravi

COMMON ORDER

The writ petition in WP.No.21828 of 2014 has been filed challenging the order bearing No.CC/III/TN/26280/PDC/Comp./Reg/2014 dated 07.08.2014 passed by the first respondent, Assistant Provident Fund Commissioner (C&R), Employees Provident Fund Organisation, 37, Royapettah High Road, Chennai 600 014 under Sec.8F of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 issued to the second respondent; the writ petition in WP.No.21829 of 2014 has been filed challenging the order bearing No.CC/III/TN/26280/PDC/Comp./Regl./2014 dated 07.08.2014 passed by the first respondent, Assistant Provident Fund Commissioner (C&R), Employees Provident Fund Organisation, 37, Royapettah High Road, Chennai 600 014 under Sec.8F of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 issued to the second respondent; and the writ petition in WP.No.32361 of 2014 has been filed challenging the



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proceedings of the second respondent tribunal in ATA.No.655(13)2014 dated 04.08.2014 and quash the same.

2. The writ petition in WP.No.21828 of 2014 has been filed challenging the order passed by the first respondent thereby ordered to recover a sum of Rs.9,74,362/- through the second respondent in which the petitioner is having account. WP.No.21829 of 2014 has been filed challenging the order of the first respondent thereby ordered to recover a sum of Rs.9,74,362/- through the second respondent in which the petitioner is having account. WP.No.32361 of 2014 has been filed challenging the proceedings initiated in ATA No.655(13) 2014 on the file of the second respondent and the interim order passed in ATA.No.655(13) 2014 thereby ordered to stay and directed the petitioner authority not to take any coercive measures till the disposal of the said appeal.

3. Heard, the learned counsel appearing on either side.



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4. The learned counsel for the petitioner in WP.No.32361 of 2014 and the first respondent in other two writ petitions submitted that the first respondent in WP.No.32361 of 2014 (hereinafter called as 'establishment') was defaulter in payment of contribution under Employees' Provident Funds and Miscellaneous Provisions Act (hereinafter called as 'EPF and MP Act'). The establishment failed to remit the statutory dues under Employees' Provident Fund, Family Pension Fund, Employees' Deposit Linked Insurance and Administrative Charges for the period July 2009 to September 2013. In order to quantify the said amount of interest to be recovered for default, a notice dated 30.05.2014 was issued to the establishment. After notice to the establishment quantified the amount of interest payable by the establishment, an order was passed by the petitioner under Section 7Q of the EPF and MP Act levying interest to the tune of Rs.9,74,362/-. However, without complying with the same, the establishment challenged the said order by way of appeal before the second respondent/ Tribunal in ATA.No.655(13) 2014. In fact, the establishment filed appeal



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as against the order passed under Section 14B as well as 7Q of EPF and MP Act jointly and obtained order of stay by an order dated 04.08.2014. He also pointed out that under Section 7I of EPF and MP Act, an appeal would lie only as against the order passed Sections 7-A, 7-B, 7-C and 14-B of EPF and MP Act. Thus, the second respondent has no jurisdiction to entertain the appeal filed as against the order passed under Section 7Q of EPF and MP Act.

5. The learned counsel for the first respondent in WP.No.32361 of 2014 i.e. establishment would submit that the appeal was entertained by the second respondent and an order of interim stay was granted by an order dated 04.08.2014 and the interim order is still in force.

6. While pending the interim order, the first respondent in WP.Nos.21828 & 21829 of 2014 had passed order under Section 8F of EPF and MP Act to recover the said amounts through the second respondent bank. Now arguments have been completed before the second



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respondent / Tribunal and it is reserved for orders. At any time, the order will be passed. However, the Tribunal has no jurisdiction to entertain the appeal as against the order passed under Section 7Q of EPF and MP Act.

7. Therefore, the second respondent in WP.No.32361 of 2014 is directed to restrict the appeal only insofar as the order passed under Section 14-B of EPF and MP Act filed by the establishment and insofar as other part of the appeal against the order passed under Section 7Q of EPF and MP Act, the appeal is hereby rejected as not maintainable. The interim order passed against the order passed under Section 7Q of EPF and MP Act is also liable to be vacated. The second respondent in WP.No.32361 of 2014 is directed to pass order on the appeal as against the order passed under Section 14-B of EPF and MP Act alone.

8. The learned counsel for the first respondent in WP.No.32361 of 2014 submitted that the establishment is ready and willing to pay interest as ordered under Section 7Q of EPF and MP Act by instalments. The learned counsel for the petitioner in WP.No.32361 of



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2014 also submitted that the establishment may be permitted to remit the interest by instalments.

9. Considering the above submissions, insofar as WP.Nos.21828 and 21829 of 2014, the appeal is still pending in ATA.No.665(13) 2014 on the file of the Employees Provident Fund Appellate Authority and the interim order dated 04.08.2014 also is still in force. Therefore, the orders passed by the first respondent under Section 8F of EPF and MP Act cannot be sustained and both the orders are liable to be set aside. Accordingly, the impugned orders dated 07.08.2014 are set aside and the writ petitions in WP.Nos.21828 & 21829 of 2014 are allowed. However, the first respondent in WP.Nos.21828 & 21829 of 2014 is at liberty to pass order under Section 8F of EPF and MP Act subject to the result of the appeal in ATA.No.655(13) 2014 on the file of the Employees Provident Fund Appellate Tribunal. Now the appeal in ATA.No.655(13) 2014 has been transferred to the file of the Central Government Industrial Tribunal, Chennai and renumbered as EPFA.No.346 of 2017 and it is pending. Central Government Industrial



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Tribunal, Chennai is directed to dispose of the above appeal within a period of three months from the date of receipt of copy of this order.

10. Insofar as WP.No.32361 of 2014 is concerned, the first respondent passed order under Section 8-F of EPF and MP Act in order to recover a sum of Rs.9,74,362/- on the basis of order passed under Section 7Q of EPF and MP Act. Since the Tribunal has no jurisdiction to entertain the appeal as against the order passed under Section 7Q of EPF and MP Act, the interim order passed by the Tribunal / second respondent in WP.No.32361 of 2014 cannot be sustained and it is liable to be quashed. Accordingly, the interim order dated 04.08.2014 is quashed and the writ petition in WP.No.32361 of 2014 is allowed.

11. Insofar as interest levied under Section 7Q of EPF and MP Act is concerned, establishment is permitted to remit the interest by way of three instalments and all the three instalments shall be completed within a period of three months from today and the first instalment shall be paid on or before 05.08.2023, second instalment on or before



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05.09.2023 and the third instalment on or before 05.10.2023.

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Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

27.07.2023

Speaking/non-speaking
Index : Yes/No
Internet : Yes
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G.K.ILANTHIRAIYAN, J.

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To

- 1.The Assistant Provident Fund Commissioner,
Employees Provident Fund Organisation
37, Royapettah High Road,
Chennai 600 014
- 2.HDFC Bank Ltd.,
G.N.Chetty Road,
T.Nagar,
Chennai-17
- 3.Bank of India,
R.K.Shanmugam Salai,
K.K.Nagar, Chennai-78
- 4.Hotel Saravana Bhavan
Rep. by its Partner,
19, Vadapalani Andavar Koil Street,
Vadapalani, Chennai 600 026
- 5.The Presiding Officer,
Employees Provident Funds Appellate Tribunal
7th Floor, No.60, Skylark Buildings,
Nehru Palace, New Delhi 110 019

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27.07.2023