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W.P.No.16941 of 2020 &
W.M.P.No.21039 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.06.2023

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.16941 of 2020 &
W.M.P.No.21039 of 2020

Thiagi Ramasamy Memorial Higher
Secondary School,
rep. By its Head Master,
Varadarajapuram, Coimbatore – 641 015

... Petitioner

Vs.

Employees Provident Fund Organisation,
rep. By the Assistant Provident Fund Commissioner,
Post Box No.3875,
Dr.Balasundaram Road,
Coimbatore – 641 018

...Respondent

Writ Petition is filed under Article 226 of Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records of the respondent relating to the impugned order dated 18.09.2020 bearing nos.TN/R.O/CBE/PDC/CC17/72602/Interest/2020 and TN/R.O/CBE/PDC/CC17/72602/14B Proceeding/Diary No.1815/2019 and



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quash the same and consequently direct the respondent to refund the sum of Rs.8,18,445/- [Rupees eight lakhs eighteen thousand four hundred and forty five only] to the petitioner school.

For Petitioner : Ms.M.Meenatchi for
Mr.P.Anbarasan

For Respondent : Mrs.R.Meenakshi

ORDER

The present Writ Petition has been filed for issuance of a Writ of Certiorarified Mandamus to call for the records of the respondent relating to the impugned order dated 18.09.2020 bearing nos.TN/R.O/CBE/PDC/CC17/72602/Interest/2020 and TN/R.O/CBE/PDC/CC17/72602/14B Proceeding/Diary No.1815/2019 and quash the same and consequently direct the respondent to refund the sum of Rs.8,18,445/- [Rupees eight lakhs eighteen thousand four hundred and forty five only] to the petitioner school.

2. The brief facts of the case are as follows:-

(i) Earlier, the petitioner – School was functioned as a self-financed Institution and the school had duly discharged all its liabilities towards the respondent / organisation, after government took over the administration,



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due to non-availability of technical team and since the payment had to be made through online mediums, the petitioner could not make payments in time, though the contributions have been duly retained in the bank account of the petitioner-school. While so, summons have been issued by the respondent herein on 02.01.2020 by calling the petitioner either to pay the penalty or to appear and be heard on 20.01.2020. However, the petitioner could not appear on 20.01.2020 and on the adjourned hearing, the authorised representative appeared before the respondent and sought for time to verify the records and the matter was adjourned to 20.03.2020.

(ii) Subsequently, due to spread of covid, the matter was adjourned to 20.04.2020 and thereafter, due to administrative reasons, the petitioner could not appear on 04.09.2020 and sought for an opportunity vide communication dated 07.09.2020, however, without taking into consideration, the respondent passed an order dated 18.09.2020 directing the petitioner to pay a sum of Rs.8,18,445/- towards liability under Section 7Q of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 and on the same day the respondent passed an order imposing damages for a sum of Rs.16,74,056/-. Though a representation has been addressed by the petitioner on 29.09.2020 explaining the reasons for the



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delay, the same was not considered and therefore, the petitioner paid the interest levied upon for the delay, i.e., Rs.8,18,445/- on 5 parts.

(iii) That apart, the petitioner has been diligent in the payment of dues. However, due to the change in management and various follow-ups difficulties, there have been minimal delays and the petitioner school has been under the control of the special officer appointed by the Government since 2018, therefore seeking to set aside the order passed by the respondent, the petitioner has filed the present writ petition.

3. The learned counsel for the petitioner would submit that the impugned orders dated 18.09.2020 of the respondent is arbitrary, violative of the legal provisions and is not sustainable in law. The respondent ought to have taken into consideration the rates chargeable as per the schemes and ought not to have levied damages and interest in violation of such rates.

4. The learned counsel for the petitioner also submits that the respondent ought to have considered the request of the petitioner – School to grant more time to be heard, especially during the covid situation and the lack of manpower, therefore, pleaded to set aside the same.



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5. Per contra, the learned counsel for the respondent submitted that the plea of the petitioner is not a valid justification for not remitting the PF dues on time and non-availability of technical team is a filmsy reason for not making payments through online medium in this digital era. The EPF and MP Act, 1953 r/w the EPF Scheme, 1952 does not provide any exception in making belated payments for such filmsy reasons. If the contention of the petitioner is accepted, then everyone would cite such 'technical' reason to evade the payment of PF dues, which would defeat the very object and purpose of the EPF and MP Act, 1952. The petitioner was not at all regular in payment of PF dues and he is a habitual defaulter and failed to remit the provident fund.

6. The learned counsel for the respondent also submits that no relaxation was given to the establishments covered under EPF & MP Act during the Covid lockdown and the same cannot be cited as a justification because the petitioner agreed that the amount was available in the bank account of the petitioner and non remittance of the same is gross negligence and ignorance towards the statutory duty cast upon the establishment under the EPF and MP Act. Further, sufficient opportunities were given to the petitioner to present their case before passing the



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impugned order, but the representative of the petitioner attended the hearing only once.

7. Lastly, the learned counsel for the respondent by relying upon the Judgment of the Hon'ble Supreme Court submitted that the penal damages under Section 14B were introduced as an element of deterrence and most of the honest and law abiding employers are paying PF Contributions in time. Further, if the contentions of the petitioner is accepted, the employees will be put into irreparable loss and hardship and the establishment would divert the hard earned money of the employees to third parties by putting hurdles and legal dogmas, which will permanently seal the fate of poor workers, thereby pleaded to dismiss the present Writ Petition.

8. In reply, the learned counsel for the petitioner submits that the petitioner may be granted liberty to approach the appellate authority, viz., Central Government Industrial Tribunal, for which the learned counsel appearing for the respondent has no objection.

9. Heard the learned counsel on either side and perused the documents placed on record carefully.



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10. On going through the documents placed on record, it is seen that the petitioner – School at the earlier point of time functioned as a self-financed Institution and thereafter, the government took over the administration. According to the petitioner, due to non-availability of technical team and that the payment had to be made through online medium, the petitioner could not make payment in time, whereas, it is the contention of the learned counsel for the respondent that the said submission is not a valid justification for not remitting the PF dues on time and non-availability of technical team is a flimsy reason for not making payments through online medium in this digital era and the petitioner was not at all regular in payment of PF dues and he is a habitual defaulter and failed to remit the provident fund.

11. Considering the facts and circumstances of the case and taking note of the submission made by the learned counsel appearing for the petitioner and the respondent as well, this Court is inclined to dispose of the Writ Petition by directing the petitioner to approach the Central Government Industrial Tribunal and inturn, the said Tribunal shall entertain the petition / application to be filed by the petitioner without reference to



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limitation and conclude the proceedings on merits and in accordance with law within a period of three months from the date of receipt of the application / petition to be filed by the petitioner. Consequently, connected miscellaneous petition is closed. No costs.

21.06.2023

Index : Yes/No
Internet : Yes/No
Speaking order / non speaking order
ssd

To

Employees Provident Fund Organisation,
rep. By the Assistant Provident Fund Commissioner,
Post Box No.3875,
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V.BHAVANI SUBBAROYAN, J.,

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