IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.08.2023

CORAM :

THE HONOURABLE MR. JUSTICE **M. DHANDAPANI**

W.P.No.22860 of 2023
and
W.M.P.No.22333 of 2023

M/s.Madhuranthagam Agricultural Producers
Co-Operative Marketing Society Ltd.,
Rep. by its Managing Director, Mr.S.Manigandan,
29, Mandapam Road,
Madhuranthagam – 603 306. ... Petitioner

Vs.

Regional Provident Fund Commissioner,
Employees Provident Fund Organisation,
Regional Office, Tambaram,
No.3, Rajaji Salai, West Tambaram,
Chennai – 600 045. ...
Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records of the impugned order dated 06.06.2023 passed by the Central Government Industrial Tribunal, Chennai in EPFA No.71 of 2023 to quash the same and direct the Central Government Industrial Tribunal, Chennai to stay the Recovery proceedings initiated by the respondent, without any payment of conditional pre-deposit, until disposal of the Appeal No.71 of 2023.

For Petitioner : Mr.P.Thangaraj

For Respondent : Mr.R.Thirunavukarasu
Standing Counsel

ORDER

This Writ Petition has been filed seeking for a Writ of Certiorarified Mandamus, to call for the records of the impugned order dated 06.06.2023 passed by the Central Government Industrial Tribunal, Chennai in EPFA No.71 of 2023 to quash the same and direct the Central Government Industrial Tribunal, Chennai to stay the Recovery proceedings initiated by the respondent, without any payment of conditional pre-deposit, until disposal of the Appeal No.71 of 2023.

2. Mr.R.Thirunavukarasu, learned Standing Counsel accepts notice for the respondent. In view of the consent expressed by the learned counsel appearing for the parties, this petition is taken up for final disposal.

3. The case of the petitioner is that, the respondent issued summons under Section 14B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (in short 'the Act') for determining damages for delayed payment of EPF contributions on 25.04.2017. Thereafter, the respondent passed an order directing the petitioner to pay a sum of Rs.25,57,557/- as damages

under Section 14B of the Act vide order dated 29.03.2023. As against which, the petitioner preferred an appeal in EPFA No.71 of 2023 under Section 7-I of the Act before the Central Government Industrial Tribunal (in short 'CGIT') on 17.04.2023, in which, the CGIT passed an order on 06.07.2023 directing the petitioner to deposit a sum of Rs.7,00,000/- as a conditional pre-deposit to stay the recovery proceedings. Challenging the same, the above writ petition has been filed.

4. The learned counsel for the petitioner submits that, already, the petitioner has complied with the 7A order, however, for damages, 14B order was passed. Though there is no indication for pre-deposit while filing an appeal, however, the CGIT instead of entertaining the appeal filed by the petitioner, directed the petitioner to deposit a sum of Rs.7,00,000/- as conditional amount, which is not sustainable and the same has to be considered as per the judgment of the Apex Court passed in the case of ***Shiv Harbal Research Laboratory Vs. Assistant Provident Fund Commissioner*** reported in ***MANU/SC/1324/2010***, in which, the Apex Court has held that, there is no indication that any part of the amount awarded under Section 14B was required to be deposited at the time of filing of the appeal. In view of the categorical findings rendered by the Apex Court, he prays for appropriate orders.

5. The learned counsel appearing for the respondent submits that, as against the 14B order, though there is no need for pre-deposit, however, the Tribunal while entertaining the appeal filed by the petitioner, had exercised its discretionary jurisdiction and imposed a condition of pre-deposit, which should not be interfered with by this Court. Accordingly, he prays for dismissal of the writ petition.

6. Heard the learned counsel for the parties and perused the materials available on record.

7. Admittedly, as against the 14B damages order, the petitioner preferred an appeal before the CGIT under Section 7-I of the Act. However, the CGIT passed a conditional order directing the petitioner to pay a sum of Rs.7 lakhs while entertaining the said appeal. When a similar matter was came up before the Apex Court for consideration, the Apex Court has passed the following judgment :-

> "1. Leave granted.
> This appeal is directed against the judgment and order dated 21st February, 2008, passed by the Nagpur Bench of the Bombay High Court in LPA No. 252 of 2007, choosing not to interfere with the discretion exercised by the Learned Single Judge directing the Petitioner therein to deposit 50% of the

damages imposed Under Section 14B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. The Appellant herein challenged the said order on the ground that there was no provision in the aforesaid Act by which such a direction could have been given by the High Court. While issuing notice on 7th July, 2008 on the special leave petition we had directed the Appellant to deposit 25% of the amount instead of 50% as directed by the Tribunal as well as by the High Court. It may be Indicated that the appeal filed by the Appellant is still pending before the Appellate Tribunal.

On behalf of the Respondent, the Assistant Provident Fund Commissioner, it has been contended that since the Tribunal as well as the High Court had exercised a discretionary jurisdiction, the same should not be interfered with by this Court. Learned Counsel for the Respondent contended that although there was no statutory provision similar to Section 7-O of the Act in respect of a challenge to an order Under Section 148, the intention of the Legislature would have to be taken into consideration and since, provident fund was a first charge, the principles of Section 7-O should also be read into the provision of Section 14B of the above Act. In support of his submissions learned Counsel referred to decision of this Court in the case of Organo Chemical Industries and Anr. v. Union of India and Ors. MANU/SC/0582/1979: AIR 1979 SC 1803, and a decision of the Andhra Pradesh High Court in the case of M/s. Sarvaraya Textiles Ltd. v. The Commissioner, Employees' Provident Fund Commission, Hyderabad and Ors. MANU/AP/0577/2001: 2002 Lab IC 1212: MANU/AP/0577/2001: 2002 LLR (SN) 97. Learned Counsel urged that in both the cases what had been sought to be emphasized was the fact that the imposition of damages is indicated to be a warning to the employees not to commit a breach of statutory requirements of Section 6, but at the same time it is meant to provide compensation or redress to the beneficiaries. It was also observed that there is nothing in the Section to show that the damages Imposed must bear relationship to the loss which is caused to the beneficiaries under the Scheme. Learned Counsel urged that having regard to the above, the order of the learned Appellate Tribunal directing deposit of 50% of the damages imposed as a condition for stay, as upheld by the High Court, did not warrant any interference.

2. Having heard learned Counsel for the respective parties, we are unable to accept the submissions made on behalf of the Respondent, having regard to the fact that had it been the intention of the legislature to also include the principles incorporated in Section 7-O of the above Act, the same would have been indicated in the provision relating to filing of appeals against such orders. Section 7-O makes specific reference to orders passed in terms of Section 7A where it has been laid down that no appeal by the employer shall be entertained unless he has deposited 75% of the amount due from him as determined by an officer referred to in Section 7A. The proviso to Section 7-O, however, grants the Tribunal discretion for reasons to be recorded in writing, to waive or reduce the amount to be deposited under the said section. There is no such provision as far as Section 14B is concerned.

3. Apart from the above, the provision for preferring an appeal in respect of an order Under Section 14B is contained in Section 7-I of the above Act which provides for appeals to the Tribunal, inter alia against orders passed Under Section 14-B. Sub- section (2) of Section 7-I Indicates that every appeal Under Sub-section (1) shall be filed in such form and manner, within such time and be accompanied by such fees, as may be prescribed. There is nothing to indicate that any part of the amount awarded Under Section 14B was required to be deposited at the time of filing of the appeal.

4. When specific provision has been made with regard to appeals Under Section 7A and Under Section 7-O, a definite provision has been indicated for deposit of 75% of the awarded amount and there is no such provision in Section 7-I, we cannot read the principles of Section 7-O into the provisions of Section 7-I in relation to appeals Under Section 14B of the above Act.

5. The decisions cited by learned Counsel appearing for the Respondent are not of any help to the case of the Respondent, Assistant Provident Fund Commissioner in the context of this case. We, therefore, allow the appeal and confirm our order dated 7th July, 2008. We are informed that the said amount of 25% has been duly deposited in the Tribunal. As directed in our order of 7th July, 2008, the amount deposited is to be kept in a short term fixed deposit, which is to be renewed until the disposal of the pending appeal. The said order shall continue till the disposal of the appeal by the Tribunal."

8. From the above, it is clear that the issue involved in this writ petition is squarely covered by the above judgment passed by the Apex Court. Therefore, the impugned order passed by the Central Government Industrial Tribunal (CGIT) in EPFA No.71 of 2023, dated 06.06.2023 is set aside and the CGIT is directed to dispose of the appeal filed by the petitioner within a period of four (4) weeks from the date of receipt of a copy of this order.

M.DHANDAPANI, J.

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9. Accordingly, the writ petition is disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

03.08.2023

Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation Case : Yes / No
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To

The Regional Provident Fund Commissioner,
Employees Provident Fund Organisation,
Regional Office, Tambaram,
No.3, Rajaji Salai, West Tambaram,
Chennai – 600 045.

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