WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.07.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.Nos.21035 to 21045 of 2017
And
W.M.P.Nos.21928 to 21938 of 2017

M/s.Prospect Tea Estate,
Unit of M/s.Mahavir Plantations Pvt. Ltd.,
Represented by its Director
Lalu T.Bhansali ... Petitioner in W.P.21035/2017

Vs.

1.The Regional Provident Fund Commissioner II,
Assessing Officer
Employees' Provident Fund Organisation,
Regional Office, Bhavishyanidhi Bhavan,
Dr.Balasundaram Road,
Coimbatore,
Pin – 641 018, Tamil Nadu.

2.The Recovery Officer,
Employees Provident Fund Organisation
Regional Office,
Bhavishyanidhi Bhavan,
Dr.Balasundaram Road,
Coimbatore,
Pin – 641 018, Tamil Nadu. ... Respondents in W.P.21035/2017

Prayer in W.P.No.21035 of 2017:

Petitions filed under Article 226 of the Constitution of India to

https://www.mhc.tn.gov.in/judis

WEB COPY

issue a Writ of Certiorarified Mandamus calling for the records relating

to the order of the first respondent in Order No.TN/CB/694-A/Proceedings/ CC-6(18)/2016 dated 12.05.2016 and consequential order passed in RRC.No.CBCBE 12499/0000694/11/04/2017/502/35 dated 11.04.2017, quash the same and consequently forbearing the respondents from initiating any further action for recovery of the provident fund dues for the periods from 11/2001 to 08/2007 from the petitioner.

For Petitioner : Mr.C.Vigneswaran
Assisted by
Mr.P.Vasantha Kumar
For Respondents : Mrs.R.Meenakshi

C O M M O N O R D E R

Since the issue involved in these writ petitions are one and the same, they are heard together and disposed of by way of a common order.

2.The case of the petitioner is that on 21.11.2007, eleven separate assessment orders under Section 7A of the Employees

https://www.mhc.tn.gov.in/judis

WEB COPY

Provident Fund and Miscellaneous Provisions Act, 1952 were passed by the first respondent for assessing dues from 2001 – 2007, pursuant to

which, recovery certificates were issued and proclamation of sale was also issued in respect of the properties of the petitioner and the properties were sold by the respondents in favour of the third party by auction. In the meanwhile the petitioner paid the dues demanded in the eleven orders and filed ATA Nos.251(13)2012 to 262(13)2012 before the Employees' Provident Fund Appellate Tribunal and the Tribunal set aside the eleven orders by way of a common order on 24.10.2013, however, the first respondent without recourse to the order of the Tribunal, issued fresh summons in respect of the same period and passed eleven fresh orders and also issued recovery certificates in respect of the same. Challenging the same, the petitioner has filed these writ petitions.

3.The learned counsel appearing for the petitioner submitted that the Tribunal set aside the orders impugned in ATA Nos.251(13)2012 to 262(13)2012 and the matter was not remanded back, however, the first respondent once again took up the issue as if

https://www.mhc.tn.gov.in/judis

WEB COPY

the Tribunal issued direction to pass re-assessment order and passed the impugned orders which is not sustainable one.

4.The learned counsel appearing for the respondents submitted that the prayer of the petitioner in the appeals before the Tribunal is to set aside the orders impugned therein and to remand back the matter and the appeals were allowed by the Tribunal and hence, the first respondent passed the present impugned orders and the same warrants no interference.

5.Heard the arguments advanced on either side and perused the materials available on record.

6.The facts in the present case is not in dispute. Admittedly, eleven separate assessment orders under Section 7A of the Employees Provident Fund and Miscellaneous Provisions Act, 1952, dated 21.11.2007, were passed by the first respondent as against the petitioner and the petitioner preferred ATA Nos.251(13)2012 to 262(13)2012 before the Employees' Provident Fund Appellate Tribunal and the Tribunal set aside the eleven orders by way of a common

https://www.mhc.tn.gov.in/judis

WEB COPY

order on 24.10.2013.

7.The relevant portion of the order dated 24.10.2013 made in ATA Nos.251(13)2012 to 262(13)2012 by the Employees' Provident Fund Appellate Tribunal reads as follows:

> *"4. Heard the Ld. Counsels for both the parties. In these cases, the impugned assessments have been made ex-parte. It is also not disputed by the respondent that during the period of assessment the defaults were made by the appellant in remitting the PF dues but the facts leading to the default in remittance by the appellants were that the employees have taken the law from their hands. The employees did not allowed the management to carry on the business but the employees resorted to unlawful unrest in the Estates and themselves plucked and sold the tea leaf in the market and appropriated the sales proceeds. After restoration of peace in the Estates, the workers Union again created unrest in the Estate which led to lockout by the appellant. This ruckus continued till the management of the appellant could get the peaceful possession of the Estates only on 02-*

https://www.mhc.tn.gov.in/judis

WEB COPY

03-2011. In fact during this entire period, the workers had not earned any lawful wages. For the disputed period the appellant could not paid wages to the workers. Under the Act and Scheme framed there under, the employer is liable to remit the PF dues for continuous employment of workers for wages. Wages are paid, as price of labour put in by the workers for the business of the employer. In the instant case, the workers have resorted to unlawful activities of taking over the control of the appellant management, stealing the tea leaves and appropriating the sale proceeds themselves. The issue cropped up is whether in such a situation whether the employees have unlawfully taken over the estates, plucked the leaves and sell it for their own use, can retain their status as an employee under the employer. In my view, such persons cannot be said to be an employee. Also, they have not been paid any wages for the said period owing to their misconduct and the employer has no occasion to deduct the share of their part of contribution. Therefore, the fixation of PF liability on the employer shall not be considered correct in law.

5. It may also be noted that the Employees

https://www.mhc.tn.gov.in/judis

WEB COPY

Provident Fund and Misc. Provisions Act, 1952 has been enacted for the purpose of developing habit of saving in employees. Habit of saving cannot be developed unless and until the wages are earned continuously and consistently. Further, the employee is eligible for pension for his good conduct. If at any stage of employment, his conduct is not good or there is serious misconduct on his part, he can be denied the benefit of pension. In this case, it is an admitted fact that the employees resorted to the serious unlawful activities prejudicial to the interest of the appellant as well as to the society as a whole, should not be given statutory protection under the Act. The following observations of Hon Apex Court in case between The Provident Fund Inspector v. T.S.Hariharan, [1971 (1) LLJ 416], assume importance here;

> *"4. The Act was brought on the statute book for providing for the institution of provident fund for the employees in factories and other establishments. The basic purpose of providing for provident funds appears to be to make provision for the future of the industrial worker after his retirement or for his*

https://www.mhc.tn.gov.in/judis

WEB COPY

dependents in case of his early death. To achieve this ultimate object the Act is designed to cultivate among the workers a spirit of saving something regularly, and also to encourage stabilisation of a steady labour force in the industrial centres. This Act has since its initial enactment been amended several times to extend its scope for the benefit of industrial workers. We are, however,....

6. In view of the above discussion, it is seen that the impugned Order have been passed in total deviation to the correct facts. The employer cannot be held responsible for PF liability where employees have resorted to unlawful activities which were very much in the knowledge of the respondent. Accordingly, the impugned Orders are set aside being contrary to the facts and the law. The appeals are allowed. Copy of the Order be sent to respective parties. Files be consigned to the record room."

8.Perusal of the order dated 24.10.2013 made in ATA Nos.251(13)2012 to 262(13)2012 makes it clear that the employer cannot be held responsible for PF liability where employees have

https://www.mhc.tn.gov.in/judis

WEB COPY

resorted to unlawful activities which were very much in the knowledge of the respondent and the orders impugned therein were set aside and not even a word is there stating to remand the matter back, however,

the first respondent mistakenly considered that the matter was remanded back for fresh consideration and passed the present impugned orders without any jurisdiction.

9.In view of the above, the orders impugned in these writ petitions are set aside. However, the first respondent is at liberty to challenge the order dated 24.10.2013 made in ATA Nos.251(13)2012 to 262(13)2012 by the Employees' Provident Fund Appellate Tribunal in the manner known to law. The period during which these writ petitions were pending before this Court is excluded for the purpose of limitation.

10.These writ petitions are allowed on the above terms. No costs. Consequently, the connected miscellaneous petitions are closed.

https://www.mhc.tn.gov.in/judis

WEB COPY

31.07.2023

pri

Speaking Order/ Non Speaking Order
Index: Yes/ No
Internet: Yes/ No

To

1.The Regional Provident Fund Commissioner II,
Assessing Officer
Employees' Provident Fund Organisation,
Regional Office, Bhavishyanidhi Bhavan,
Dr.Balasundaram Road,
Coimbatore,
Pin – 641 018, Tamil Nadu.

2.The Recovery Officer,
Employees Provident Fund Organisation
Regional Office,
Bhavishyanidhi Bhavan,
Dr.Balasundaram Road,
Coimbatore,
Pin – 641 018, Tamil Nadu.

https://www.mhc.tn.gov.in/judis

WEB COPY

M.DHANDAPANI,J.
pri

W.P.Nos.21035 to 21045 of 2017
And
W.M.P.Nos.21928 to 21938 of 2017

https://www.mhc.tn.gov.in/judis

WEB COPY

31.07.2023

https://www.mhc.tn.gov.in/judis