



WEB COPY



W.A.No. 765 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:29.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

W.A.No.765 of 2023
C.M.P.No.7430 of 2023

The Commissioner,
Gobichettipalayam Municipality,
Gopichettipalayam,
Erode District.

..

Appellant

-VS-

1. The Assistant Provident Commissioner,
Employees Provident Fund Organization,
Sub Regional Office, Anna Salai,
Swarnapuri, Salem 636 004.
2. Union of India,
Rep. by the Joint Secretary to Government,
Labour and Employment Department,
Shram Shakti Bhawan, Rafi Marg,
New Delhi 110 001.
3. The Commissioner of Municipal Administration,
Ezhilagam, Annexe VI Floor,
Chepauk, Chennai 600 006.
4. State of Tamil Nadu,



W.A.No. 7 of 2022

Rep. by the Additional Chief Secretary to Government,
Municipal Administration and Water Supply Department,
Secretariat, Fort St. George,
Chennai 600 009.

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Respondents

Writ Appeal filed under Clause 15 of the Letters Patent Act, to set aside the order passed by this Court in W.P.No.34555 of 2012 dated 07.10.2021.

For Appellant : Mr.G.Sankaran

For Respondents : Ms.R.Meenakshi (R1)
Mrs.S.Sangamithirai (R4)
No appearance (R2 and R3)

J U D G M E N T

This Writ Appeal has been preferred to set aside the order dated 07.10.2021 passed by this Court in W.P.No.34555 of 2012, in dismissing the Writ Petition filed by the Appellant.

2. The Appellant herein is a Municipal Council in terms of Article 243-Q(1)(b) of the Constitution of India. The Central Government, by Notification No.S.O. 30 (E) dated 08.01.2011, in exercise of the powers conferred by Section 1 (3)(b) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (in short 'EPF Act') specified the Municipal Councils and Municipal Corporations constituted under Article 243-Q(1)(b) and (c) of the Constitution of India, employing 20 or more persons as a class of



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establishments to which the EPF Act shall apply with effect from the date of its publication in the official Gazette.

3.The 1st Respondent Authority, vide order dated 31.01.2012, determined the liability of the Appellant towards provident fund contribution to Rs.2,31,992/- in respect of its establishment for the period from March 2011 to December 2011, under Section 7-A of the EPF Act. Being aggrieved over the same, the Appellant preferred a Review Petition, under Section 7B of the E.P.F.Act before the 1st Respondent on 21.03.2012, which came to be dismissed on 20.06.2012. Challenging the aforesaid orders dated 31.01.2012 and 21.03.2012, the Appellant preferred the Writ Petition in W.P.No.34555 of 2012. A learned Single Judge of this Court, by order dated 07.10.2021, dismissed the Writ Petition.

4. Feeling aggrieved, the Appellant is before this Court by way of this Intra Court Appeal.

5. Heard both sides. Perused the records.

6. From the records, it is seen that the aforesaid Writ Petition was filed without



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exhausting the appellate remedy. The Hon'ble Supreme Court, in a catena of judgments, held that appellate remedy provided under the EPF Act cannot be bypassed. The Appellant ought to have preferred an Appeal under Section 7-I of the EPF Act, r/w Rule 2 of the Employees' Provident Fund Appellate Tribunal (Procedure) Rules, 1997, before the Authority, within a period of 60 days from the date of receipt of the order. Once the Act is made applicable to the Appellant, a duty is cast upon the Appellant to pay the Employer's Contribution and after deducting the Employees' Contribution, remit the same to the EPF authorities.

7. In the case on hand, the Employees have been engaged as contract Labourers. Even assuming that such contention is correct, it is a mandatory duty on the part of the Employer to recover the same from the Contractors. Section 21 of the Contract Labour (Regulation and Abolition) Act, 1970, makes it very clear that it is the duty of the principal employer to pay the contribution, if the contractor fails to make payment and thereafter, it is open to him to recover the same from the Contractor. Even as per Sections 30 and Section 32 of The Employees' Provident Funds Scheme, 1952, the Employer shall pay the contribution payable both by him and the member employed by him directly or by or through a Contractor and thereafter, recover the same from the wages payable to the Employees.



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8. The learned Single Judge, while dismissing the Writ Petition, found that it is the statutory obligation on the part of the Employer to pay and later, recover the amount from the Contractors.

9. We are not inclined to entertain this Writ Appeal on the two grounds. Firstly, the Appellant has circumvented the Appellate remedy and secondly, when the Act is made applicable to the Appellant as stated supra, it is the duty of the Appellant to pay the contribution and if the employees are employed through contractors, he can recover the same from the contractors.

10. In view of the above reasons, we find no perversity or illegality in the order passed by the learned Single Judge warranting interference.

11. In the result, this Writ Appeal stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

[S.V.N., J.] [R.K.M., J]
29.03.2023

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**S.VAIDYANATHAN, J
and
R.KALAIMATHI, J**

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