IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.07.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.5993 of 2017 and 35476 of 2019

W.P.No.5993 of 2017:

1. G.Easuraj
2. G.Nandagopal
3. K.Rajamanickkam
4. P.Arputham
5. G.Muniraj
6. K.Vasudevan
7. V.Pachiappan
8. M.Chinnasamy
9. K.Saroja
10. V.Meenakshi .. Petitioners

Vs.

1. The Regional Provident Fund Commissioner/
Recovery Officer, Sub Regional Officer,
SJ Plaza, Swarnapuri, Salem.

2. The Management of
Devi Spinning Mills Limited,
Rep. By its Managing Director,
Vennampatti,
Thokkampatti (post)
Dharmapuri District.

..Respondents

Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Mandamus directing the first respondent to recover the arrears of contribution due from the second respondent from April 1994 to November 2004 and settle the P.F. Dues to the petitioners.

For Petitioners : Mr.V.Shanmuganathan

For Respondents : Mrs.R.Meenakshi, SC for EPP

W.P.No.35476 of 2019:

M/s.Devi Spinning Mills Limited,
Rep. By its Managing Director,
Vennampatti,
Thokkampatti (post)
Dharmapuri District.

.. Petitioner

Vs.

1. The Regional Provident Fund Commissioner/
Employees Provident Fund Corporation,
Sub Regional Officer, EPFO,
SJ Plaza,
Swarnapuri,
Salem.

2. The Assistant PF Commissioner &
Recovery Officer,
Employees Provident Fund Corporation,
Sub Regional Office EPFO,
SJ Plaza, 1st and 2nd Floor,
Anna Salai, Swarnapuri,
Salem-4.

3. The Recovery Officer,
Employees Provident Fund Organisation,
Sub Regional Office EPFO,
Jayalakshmi Plaza, 1st & 2nd Floor,
Anna Salai, Swarnapuri,
Salem.

4. K.Elangovan
5. M/s.MSTC,
Leelavathi Building, 2nd Floor,
No.69, Armenian Street,
Chennai-1. ..Respondents

Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari calling for the records of the proceedings in No.CB/SLM/25640/RECY/CP-13/KNG/2019, dated 03.12.2019 and 06.12.2019 passed by the second respondent and quash the same.

For Petitioner : Mr.S.T.S.Murthy, Sr.C.
For Mr.Naveen Kumar Murthi

For Respondents : Mr.P.K.Paneer Selvam, RR1 & 2

COMMON ORDER

Since the issue involved in both the cases are one and the same, both the matters are disposed of by way of this common order.

2. W.P.No.5993 of 2017 has been filed seeking a direction to the first respondent to recover arrears of contribution due from the second respondent from April 1994 to November 2004 and settle the P.F. dues to the petitioners.

3. W.P.No.35476 of 2019 has been filed seeking to quash the proceedings in No.CB/SLM/25640/RECY/CP-13/KNG/2019 dated 03.12.2019 and 06.12.2019 passed by the second respondent.

4. For the sake of convenience, the petitioners in W.P.No.5993 of 2017 are referred to as "workmen" and the petitioner in W.P.Nos.35476 of 2019 is referred to as ' the Management".

5. The case of the management is that the Company was engaged in spinning of cotton and other synthetic fibres. The management was deducting Provident Fund from the employees and the same was remitted to the Fund along with contribution of the employer regularly. The apprentices cannot be considered as employees. The first Respondent passed an order dated 26.05.2000 under section 7A of the EPFM Provision Act, 1952 determining the dues for a period from April 1994 to March 2000 in respect of employees which also included apprentices of the management to a sum

of Rs.18,52,133.53 (Eighteen Lakhs Fifty two thousand one hundred and thirty three and fifty three paise only). Aggrieved by the above said order, the management filed an appeal in ATA No.371(13)2002 before the Employees Provident Fund Appellate Tribunal (EPFAT). The same was decided on 01.10.2009 in favour of the management. Before this issue was decided, the 1st Respondent passed an order dated 22.04.2003 assessing PF dues for the period between April 2000 and November 2002 and subsequently had initiated recovery proceedings against the management under section 8B to 8G of the EPPM Act. Both these were challenged by the management by filing an appeal No.700(13)2012 and stay was granted to not initiate coercive measures against the management. The appeal No.700(13)2012 was dismissed on 2014 observing that the order of the respondents is in consonance with law. Despite this, the 3rd Respondent initiated recovery proceedings by order dated 04.04.2013 and again the workmen challenged this order by filing an appeal No.253(13)2013 and the same was dismissed for the reasons that the recovery order was not appealable. Further, the recovery order dated 04.04.2013 was enforced by proceeding with police assistance on 12.10.2016. The PF dues were settled through two post-dated cheques dated 20.02.2007 and 20.8.2007 and the same was accepted by the employees before the Krishnagiri Labour Commissioner. Writ Petition was filed by the management in W.P.No.8544 of 2016 challenging the order No.253(13)2013 of the Appellate tribunal and final orders in ATA 700(13)2012 dated 17.11.2014 on the ground that order in ATA No.371(13)2002 was not considered. Based on the orders issued by the 1st to 3rd Respondents, the 4th and 5th respondents made necessary arrangements to conduct E-auction on 27.12.2019. The Respondents arbitrarily passed the impugned orders to conduct E-auction through the certificate RRC No.2001057 dated 15.04.2004, No.2004473 dated 15.04.2004, No.20095 dated 08.04.2009 for recovery of Rs.71,07,157/- and the Recovery charges of Rs.2,78,500/-. The present writ is filed to quash the E-auction order dated 03.12.2019 and 06.12.2019 issued by the 1st and 3rd Respondent and to stay the E-auction sale proceedings initiated by the 4th and 5th Respondents to be conducted on 27.12.2019.

6.The case of the workmen is that the workmen were working in the 2nd respondent mill for nearly 20 years. The 2nd respondent mill was illegally closed on 19.11.2004 without getting prior permission from the Government of Tamilnadu as per Section 25 (O) of the I.D.Act 1947. The

2nd respondent had failed to remit the provident fund, family pension fund and deposit linked insurance fund and contributions and administrative charges since April 1994. After several rounds of discussions, the management of the 2nd respondent mill entered into a settlement u/s.12 (3) of the I.D.Act, with the workmen on 05.02.2007 and agreed to settle their P.F. dues. However, the management of the 2nd respondent mill had failed to settle the P.F.dues as per the settlement. Aggrieved by non-payment of P.F. dues to the workmen, the workmen made a representation dated 05.01.2016 to the 1st respondent. The 1st respondent failed to initiate any action against the erring management. Hence this writ petition.

7. The learned counsel for the workmen submitted that this Court may issue a direction to the first respondent to recover the arrears of contribution due from the second respondent from April 1994 to November 2004 and settle the P.F. Dues to the workmen.

8. The learned counsel for the Management submitted that the order of the Appellate Tribunal in ATA.700(13) 2012 dated 17.11.2014 is erroneous as the appellate tribunal has not considered its earlier order dated

01.10.2009 with respect to PF dues wherein it had ordered in favour of the workmen by setting aside the order of the respondents order dated 26.05.2000. The workmen had agreed for settlement arrived at under Section 12(3) of the ID Act between the management and the employees dated 05.02.2007 and hence, they are not liable to pay any remaining dues. The impugned orders passed by the second respondent failed to consider the fact that only casual employees were engaged in the operation of the management between the period 1998 and 2002. That being the factual situation, the entire portion of the property is slated for auction, despite the value of the property are much more than the demand. This itself shows that the order of the first and second respondents is squarely arbitrary and reflects total non-application of mind on the part of respondents. Therefore, this Court may quash the impugned order passed by the second respondent and allow this petition.

9. Heard the learned counsel for the workmen and the learned counsel for the management and perused the materials available on record.

10. The management was engaged in spinning of cotton and other

synthetic fibres and the management was deducting the provident fund from the employees and the same was remitted to the fund along with contribution of the workmen regularly. In such view of the matter, the management was closed its operation on 19.11.2004. The management failed to remit the provident fund, family pension fund and other contribution to the employees. After making several requests, the management and the workmen had entered into a settlement under Section 12(3) of the ID Act on 05.02.2007 and the management had failed to settle the dues. The workmen filed a complaint before the first respondent. After enquiry, the first respondent passed an order dated 22.04.2003 assessing the PF dues with regard to the workmen and directed to pay a sum of Rs.18,52,113.05/- towards provident fund up to the year 2000. However, the management has filed an appeal before the Employment Provident Fund Appellate Tribunal, which was allowed on 01.10.2009 in favour of the management by setting aside the order of the original authority for the apprentices alone. Subsequently, the original authority, under Section 7A of EPF and MP Act, reassessed the dues at Rs.15,31,871/- . The management failed to pay the aforesaid amount. Hence, the revenue recovery proceedings were initiated by the first respondent by following attachment order, proclamation of sale of immovable properties issued as per Section 8B to 8G of the EPF and MP Act. The management has made an appeal before the appellate authority as against the recovery proceedings and the same was dismissed on 30.12.2023. As on date, the total due of the management is 7A:Rs.21.27 lakhs, 7Q :Rs24.92 lakhs, 14B :Rs.24.87 Lakhs, total sum of Rs.71.06 lakhs towards contribution under different heads. Challenging the proclamation order, the management has filed a writ petition before this Court in W.P.No.8544/2016. This Court, vide its order dated 28.04.2016, dismissed the writ petition and directed the management to deposit 25% of the dues and the same has been complied with by the management. However, the management has to pay the remaining contribution to the respective workmen.

11. Admittedly, the total balance amount due is at Rs.52,60,742/- upto the year 2002 by the management. If the amount of gratuity payable under this Act is not paid by the employer, within the prescribed time, to the person entitled thereto, the controlling authority shall, on an application made to it in this behalf by the aggrieved person, issue a certificate for that amount to the Collector, who shall recover the same, together with

compound interest. In the present case, the management has failed to pay the remaining dues to the respective workmen. Therefore, the second respondent has passed the revenue recovery proceedings against the management, which cannot be interfered with. The Management is directed to pay the entire due without any interest within a period of six weeks from the date of receipt a copy of this order, failing which, the second respondent is directed to proceed with the matter under the Recovery proceedings.

12. On the basis of the discussion made herein above, the writ petition in W.P.No.35476 of 2019 is dismissed. W.P.No.5993 of 2017 is disposed of. No costs.

28.07.2023

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

M.DHANDAPANI,J.

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To

1. The Appellate Authority
(As per the Payment of Gratuity Act 1972)
Joint Commissioner of Labour,
DMS Compound, Chennai.

2. The Controlling Authority
(As per the Payment of Gratuity Act 1972)
I-Assistant Commissioner of Labour,
DMS Compound, Chennai.

3. The Regional Manager,
Tamil Nadu Civil Supplies Corporation,
No.9, Conron Smith Road,
Gopalapuram, Chennai-600 086.

W.P.No.5993 of 2017 and 35476 of 2019

28.07.2023