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W.P.Nos. 16117 and 24220 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.08.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.Nos.16117 and 24220 of 2017

and

W.M.P.Nos.17407 and 25598 of 2017

The Assistant Provident Fund Commissioner,
Office of the Regional Provident Fund Commissioner,
Bhavishyanidhi Bhavan, Dr.Balasundaram Road,
Coimbatore – 641 018. ... Petitioner in both
W.P.s

Vs.

1. The Presiding Officer,
Employees Provident Fund Appellate Tribunal,
Scope Minar Core – II,
4th Floor, Lakshmi Nagar,
New Delhi – 110 092. ...Respondent in both W.P.s
2. M/s.Sree Meenakshi Spinners (p) Ltd,
Opp. Sugarcane Breeding Institute,
Veerakerlam,
Coimbatore – 641 007. ... 2nd Respondent in W.P.No.16117 of
2017
3. M/s.Tradeways Garments (P) Ltd.,
4/283, Sudanadu Palladam Road,
Veerpandi Post,



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Tirupur – 641 605.

... 2nd Respondent in W.P.No.24220 of 2017

Prayer in W.P.No.16117 of 2017: Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari calling for the records relating to the proceedings of 1st respondent dated 26.09.2014 in ATA No.13(13)2014 and quash the order passed therein.

Prayer in W.P.No.24220 of 2017: Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari calling for the records relating to the proceedings of 1st respondent dated 16.10.2014 in ATA No.835(13)2014 and quash the order passed therein.

For Petitioner in
W.P. No.16117 of 2017 : Mr.C.Kulanthaivel

For Petitioner in
W.P. No.24220 of 2017 : Mr.R.Meenakshi

For Respondents : Tribunal [R1]
: No Appearance [R2]

COMMON ORDER

Assailing the order of the 1st respondent, in and by which the order passed by the petitioner has been set aside, wherein the petitioner had directed the respective 2nd respondents to pay the contribution towards PF in respect of the allowances for which PF was not deducted and deposited, the present writ petitions have been filed.



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2. Though the petitions were listed separately in the cause list, however, in view of the fact that these writ petitions raises a common issue for determination, they are grouped together and disposed of by this common order.

3. When these matters are taken up for hearing today, the learned counsel appearing for the petitioner submitted that the issue involved in these writ petitions is no longer res integra and further submitted that already this Court has dealt with similar issues, one of which has been decided by this Court in ***W.P. Nos.24631 to 24633 of 2017***.

4. This Court in ***W.P. Nos.24631 to 24633 of 2017*** in the case of The ***Asst. Provident Fund Commissioner Vs. The Presiding Officer and Anr.***, in paragraph Nos.28, 29 and 30, has held as follows :

“28. It is to be pointed out that when an authority performs quasi-judicial function, by passing orders in a matter, it neither acts in favour of the Government nor the individual, but is performing a duty endowed on it by the



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statute. The authority is immune from all attachments and realisations for and on behalf of the Government and is in no way attached with the order, as it is only the statutory prescription that is sought to be enforced by the authority and it has no personal afflictions to the said issue. In case, the order passed by the authority is not in favour of the department, at best the department, upon proper authorisation from the Government could seek further judicial recourse but it is not open to the original authority, who passed the order, without any authorisation, to challenge the order passed by the Tribunal.

29. The above view expressed by this Court finds favour in the decision of the Apex Court in Mohtesham Mohd. Ismail case (supra), which clearly portrays the position in which the original authority is positioned when it comes to questioning the appellate order as has happened in the present case. For better appreciation, the relevant portion of the decision is quoted hereunder :-

“15. From the notification dated 22.09.1989, whereupon reliance has been placed by Mr. Bhan, it would appear that the officer authorized by the Central Government for the purpose of enforcing the provisions of the Act was specifically empowered to adjudicate upon the dispute. The



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said notification itself is a pointer to the fact that for the purpose of exercising the functions of the Central Government under one provision or the other, the officer concerned must be specifically empowered in that behalf. A general empowerment would, however, be permissible. Before the High Court, no notification was filed to show that the authority concerned was empowered to prefer an appeal on behalf of the Central Government. The Central Government was not even impleaded as a party to the appeal. First Respondent did not file the appeal on behalf of or representing the Central Government. It was filed in its official capacity as the adjudicating authority and not as a delegatee of the Central Government.

16. An adjudicating authority exercises a quasi-judicial power and discharges judicial functions. When its order had been set aside by the Board, ordinarily in absence of any power to prefer an appeal, it could not do so. The reasonings of the High Court that he had general power, in our opinion, is fallacious. For the purpose of exercising the functions of the Central Government, the officer concerned must be specifically authorized. Only when an officer is so specifically authorized, he can act on behalf of the Central Government and not otherwise. Only because an officer has been appointed for the purpose of acting in terms of the provisions of the Act, the same would not by itself entitle to an officer to discharge all or any of the functions of the Central Government. Even ordinarily a quasi-



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judicial authority can not prefer an appeal being aggrieved by and dissatisfied with the judgment of the appellate authority whereby and whereunder its judgment has been set aside. An adjudicating authority, although an officer of the Central Government, should act as an impartial Tribunal. An adjudicating authority, therefore, in absence of any power conferred upon it in this behalf by the Central Government, could not prefer any appeal against the order passed by the Appellate Board.

17. The Madras High Court in Rama Arangannal (supra) opined :

“4. On the question as to the maintainability of the appeal, it is seen that the Explanation to Section 54 of the Foreign Exchange Regulation Act 1973 treats only the Central Government as an aggrieved party for the purpose of filing an appeal to the High Court in respect of orders passed by the Foreign Exchange Regulation Appellate Board under that section. Therefore, only the Central Government can file and prosecute an appeal against the order of the Appellate Board, and not any other authority, In this case, the appeal has been filed by the Director of Enforcement, who is the initial authority who passed the adjudication order against the respondents and whose order has been set aside by the Appellate Board on an appeal filed by them. Therefore, the Director of Enforcement cannot be said to be aggrieved by the order of the Appellate Board merely because



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its order of adjudication has been set aside by the Appellate Board.”

(Emphasis Supplied)

30. The decision of the Apex Court in Mohtesham Mohd. Ismaili case (supra) clearly sets at naught the order passed by the learned single Judge in W.P. Nos.17518/2010, etc. Batch, dated 21.06.2011, which has been referred to by the petitioner and also adverted to by this Court in the earlier portion of this order. In the absence of any explicit authorisation granted to the petitioner by the Central Government to file appeal/writ petition against the order passed by the appellate authority/Industrial Tribunal, the act of the petitioner in filing the present petitions is not only beyond its jurisdiction, but is also against the statute, which cannot be permitted to be continued.”

5. In view of the issue having been settled already and the present case falls squarely within the four corners of the said decision, this Court is inclined to dismiss these Writ Petitions in the same line by following the above order confirming the respective impugned orders passed by the Tribunal.

6. Accordingly, these Writ Petitions are dismissed. No costs.



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Consequently, the connected miscellaneous petitions are closed.

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NCC: Yes / No

Index : Yes / No

Speaking Order : Yes / No

M.DHANDAPANI,J.

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To

The Presiding Officer,
Employees Provident Fund Appellate Tribunal,
Scope Minar Core – II,
4th Floor, Lakshmi Nagar,
New Delhi – 110 092.

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W.M.P.Nos.17406 of 2017
in
W.P.No.16117 of 2017

M.DHANDAPANI., J.

Dispensed with for the present.

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