IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.08.2023

CORAM

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

W.P.No.16122 of 2017
and
WMP.No.17412 of 2017

The Assistant PF Commissioner,
Sub-Regional Office,
Employees Provident Fund Organisation,
S.J.Plaza, Swarnapuri, Salem – 636 004. ...Petitioner

Vs.

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

2. M/s.Madhucon Granites Limited,
Addakurki Village, Kamandoddi Post,
Hosur, Krishnagiri – 635 109. ...Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records relating to the proceedings of 1st Respondent, dated 04.09.2014 in ATA No.447(13)2014 and quash the order.

For Petitioner : Mr.M.Palanimuthu

For Respondents : Mr.Ilayarajkumar
for M/s.Ramalingam & Associates, for R2

O R D E R

This Writ petition has been filed seeking quashment of the order of the 1st respondent dated 04.09.2014 made in ATA No.447(13)2014.

2. The case of the petitioner is that, the 2nd respondent (for brevity 'the employer') is covered under the Employees Provident Fund & Miscellaneous Provisions Act, 1952 (for short 'the Act'). The default committed by the 2nd respondent in payment of the Provident Fund contributions and other dues, attracted the provisions of Section 14B of the Act, and thereby, inquiry was initiated u/s 7-A of the Act to determine the amount due and payable by the employer and to that end upon quantification, the petitioner, vide separate orders both dated 19.05.2014, directed the 2nd respondent to remit the interest of Rs.1,68,390/- and damages to the tune of Rs.3,04,350/- under Section 7Q and 14B of the said Act respectively. Challenging the aforesaid order, the employer filed an appeal before the 1st respondent, who in turn,

passed the present impugned order dated 04.09.2014, restricting the damages to 25% and directed the 2nd respondent to remit the same in 24 installments, which has resulted in filing this petition.

3. Learned counsel for the petitioner submitted that, the 2nd respondent being an establishment covered under the Employees Provident Fund & Miscellaneous Provisions Act, 1952, it has to comply with all the provisions of the Act and the schemes framed thereunder and hence, for the default committed by the 2nd respondent in payment of the Provident Fund contributions and other dues, he is liable to pay interest of Rs.1,68,390/- and damages to the tune of Rs.3,04,350/- under Section 7Q and 14B of the said Act respectively and further, the 2nd respondent had remitted the PF Contributions only pursuant to the initiation of inquiry under Section 7A of the said Act and not on their own. Further, as per the provisions of Para 30 of the EPF Scheme 1952, *the employer shall, in the first instance, pay both the contribution payable by himself and also, on behalf of the member employed by him, the contributions payable by such member.* As such, the 2nd respondent is liable to remit the PF Dues well in time and since there was a delay in remittance, the 2nd respondent is liable for penal damages and

interest under Section 7Q and 14B of the said Act respectively. Further, though the tribunal itself held in certain other cases that there is no appeal provision under Section 7 I of the Act, for the amount payable towards interest under Section7Q and the appeal against the amount payable towards interest is not at all maintainable under the Act, however, in the present case in hand, violating its own views, the Tribunal entertained the appeal filed by the 2nd respondent, which is wholly unsustainable. Hence, he prayed for appropriate orders.

4. Learned counsel appearing for the 2nd respondent fairly submitted that, pursuant to the impugned order passed by the 1st respondent, the 2nd respondent paid the entire amount as directed by the 1st respondent in 24 installments, even prior to filing of this Writ petition and thereby, nothing survives for further adjudication. Further, the Tribunal, to render substantial justice and considering the difficulties faced by the employer and the act not being wilful or wanton, had reduced the damages, which cannot be said to be outside the purview of the Tribunal. Therefore, no interference is warranted with the said order.

5. Heard learned counsel on either side and perused the material

documents placed on record.

6 . Admittedly, the petitioner is not the aggrieved party and if at all there is any aggrieved party, it is the PF authority and not the petitioner. Further, the petitioner has no locus standi to file the writ petition challenging the order passed by the Tribunal as the petitioner is a quasi-judicial authority, who having determined the liability of the employer, when its order is put in issue before the Tribunal, the higher appellate forum, determination made by the Tribunal is binding on the petitioner and, therefore, the authority cannot file writ petition challenging the order of the Tribunal.

7. The Apex Court in the case of ***Mohtesham Mohd. Ismail Vs. Spl. Director, Enforcement Directorate & Anr.*** reported in ***2007 (8) SCC 254,*** 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 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-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 its order of adjudication has been set aside by the Appellate Board."

(Emphasis Supplied)

8. Further, in the absence of any explicit authorization 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 petition is not only beyond its jurisdiction, but is also against the statute, which cannot be permitted to be continued. When the appellate authority, in unequivocal terms, has passed an order modifying the order passed by the original authority, but for the aggrieved party, the

original quasi judicial authority has no locus to challenge the said order and, therefore, it does not lie in the mouth of the petitioner to contend that the act of the employer in defaulting in payment of PF contributions and other dues is a question of law, which has to be gone into by this Court, is nothing but trying to split hairs in order passed by the appellate authority.

9. Hence, this Court is of the considered view that the decision arrived at by the appellate authority, on the basis of the facts placed before it, cannot be the basis for this Court to entertain the writ petition. When the petitioner has no authorization to file the writ petition on behalf of the Central Government or Board of Trustee, challenge made to the order of the appellate authority by filing the writ petition is an act without jurisdiction of the authority and, therefore, the writ petition deserves to be dismissed by confirming the order passed by the Tribunal.

10. Further, it is evident from records that, even prior to filing of the present Writ petition, the 2nd respondent paid the entire amount as directed by the 1st respondent, vide present impugned order. However, it is open to the petitioner to proceed the matter in the manner known to law, if the 2nd

respondent has not paid the amount as ordered by the Tribunal.

11. For the reasons aforesaid, this Writ petition stands dismissed confirming the impugned order passed by the Tribunal. No costs. Consequently, connected Miscellaneous petition is closed.

02.08.2023

skt

NCC : Yes/No
Speaking Order : Yes/ No
Index : Yes/ No

To

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

M.DHANDAPANI., J.

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