



W.P(MD)No.15848 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 28.06.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.15848 of 2023

and

W.M.P.(MD)Nos.13260 & 13262 of 2023

The Professional Courier,
Rep. by its Managing Partner,
H.S.Ashraf Ali,
Old No.4, New No.7,
Kumbeshwaran North,
Kumbakonam.

... Petitioner

Vs.

1.The Recovery Officer,
Regional Office,
Employees Provident Fund Organisation,
No.588, Sri Complex,
D Block,
No.18, Madurai Road,
Trichy-620 008.

2.The Enforcement Officer,
Employees Provident Fund Organisation,
Kumbakonam-II Division,
Kumbakonam.

3.The Authorised Officer,
Assistant Provident Fund Commissioner,
Employees Provident Fund Organisation,
Regional Office, Trichy.

... Respondents



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Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records of the third respondent herein in Ref.No.RRC No.CB/TRY/PDC/C-34/44660/2023, dated 14.06.2023 in respect of the petitioner herein and set aside the same.

For Petitioner : Mr.HS.Mohammed Rafi

For Respondents : Mr.I.Pinaygash
Standing Counsel

ORDER

Heard the learned counsel appearing for the petitioner and the learned standing counsel appearing for the respondents.

2. The petitioner has now been saddled with the recovery order dated 14.06.2023. The said order purports to enforce the earlier order dated 10.01.2023. Though the petitioner had paid the principal contribution, there was delay in remitting the same. Therefore, the authority vide order dated 10.01.2023 has levied interest under Section 7Q of the Act and damages under Section 14B of the Act. Challenging the same, the writ petition came to be filed.



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3. The petitioner's counsel reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to set aside the impugned order and grant relief as prayed for.

4. The learned standing counsel vehemently opposed the writ prayer. He pointed out that liability to pay interest is automatic and notice need not be issued even determining the same. The petitioner have not pointed out any calculation error in the matter of computing interest. He also pointed out that the order levying damages is appealable. He questioned the very maintainability of the writ petition. He pressed for dismissal of the writ petition.

5. I carefully considered the rival contentions and went through the materials on record. I sustain the stand of the learned standing counsel that liability to pay interest is automatic. It comes to Rs.6,54,541/-. The learned counsel appearing for the petitioner submits that the petitioner is facing financial difficulties and that therefore, this Court may consider granting installment facility. The amount is not large. Therefore, it is not



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possible for this Court to give a large number of installments. The petitioner will have to pay a sum of Rs.1,54,541/- on or before 17.07.2023 and pay the remaining Rs.5,00,000/- in five monthly installments thereafter. If the petitioner commits default in remitting two installments successively, the benefit of this order would stand vacated automatically and it would be open to the authority to enforce the petitioner's liability. As regards damages, the petitioner can very well file an appeal before the Tribunal. Admittedly, the order passed under Section 14B of the Act is exparte. Though the learned standing counsel would contend that the petitioner did appear through virtual hearing, on the other hand, the petitioner has been able to demonstrate that though their correct address is Old No.4, New No.7, Kumbeshwaran North, Kumbakonam, summon appears to have been sent to No.69/1, Nageswaran North, Kumbakonam. E.Mail address is also not correct.

6. Therefore, I am *prima facie* satisfied that there has been some error. In any event, I am only making this observation for the purpose of condoning the delay that has been occasioned in filing an appeal. If the petitioner files an appeal before the Tribunal within four weeks from the



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date of receipt of a copy of this order, the appellate tribunal shall entertain the same without reference to limitation. The only relief I am only granting to the petitioner in respect of damages is condonation of delay and nothing else. I have not gone into the merits of the matter as regards levy of damages. Since the primary order has been interfered with, the recovery order dated 14.06.2023 has to be kept in abeyance. If the petitioner commits default either in remitting the installments in the matter of interest or fails to comply with the condition that will be imposed by the Tribunal in the appeal to be filed against the order levying damages, the order dated 14.06.2023 can be pressed into action.

7. The Writ Petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

28.06.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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NOTE:Issue Order Copy on 04.07.2023

G.R.SWAMINATHAN, J.



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