



W.P.(MD).Nos.11193 and 11206 of 2015

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.06.2023

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).Nos.11193 and 11206 of 2015

and

M.P.(MD)Nos.1 to 3 of 2015

W.P.(MD).No.11193 of 2015:

M/s.T.J.SPL.20, Vijayapuram Primary
Agriculture Cooperative Credit Society
Limited,
Subramaniapuram Post,
Aranthanki Taluk,
Pudukottai District,
Through its Secretary

... Petitioner

Vs.

1.The Regional Provident Fund Commissioner,
Employees' Provident Fund Organization,
Sub-Regional Office,
Madurai Road- Trichy-620 008,
Trichy District.



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2.The Assistant Provident Fund Commissioner,
Employees' Provident Fund Organization,
Sub-Regional Office,
Madurai Road- Trichy-620 008,
Trichy District.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a ***Writ of Certiorarified Mandamus***, to call for the records from the file of the 2nd respondent regarding the 7A order passed in No.B2/TN/TR/44174/SRO-TRY/2008-2009, dated 24.04.2008 and to quash the same and to direct the 1st respondent to consider and allow the petitioner's withdrawal application, dated 11.05.2015, from the EPF fund.

For Petitioner	: Mr.P.Chandra Bose
For Respondents	: Mr.I.Robert Chandrakumar

W.P.(MD).No.11206 of 2015:

M/s.T.J.SPL.20, Vijayapuram Primary
Agriculture Co-operative Credit Society
Limited,
Subramaniapuram Post,
Aranthanki Taluk,
Pudukottai District,
Through its Secretary

... Petitioner

Vs.



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- 1.The Regional Provident Fund Commissioner,
Employees' Provident Fund Organization,
Sub-Regional Office,
Sree Complex, Block No.18,
Madurai Road- Trichy-620 008,
Trichy District.
- 2.The Assistant Provident Fund Commissioner,
Employees' Provident Fund Organization,
Sub-Regional Office,
Sree Complex, Block No.18,
Madurai Road- Trichy-620 008,
Trichy District.
- 3.The Recovery Officer/ The Assistant P.F.
Commissioner (PDC),
Employees' Provident Fund Organization,
Sub-Regional Office,
Sree Complex, Block No.18,
Madurai Road- Trichy-620 008,
Trichy District.
- 4.The Branch Manager,
The Pudukottai District Central Co-operative
Bank Limited,
Subramaniyapuram Branch,
Pudukottai District.

... 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 Certiorarified Mandamus***, to call for the records from the file of the 2nd and 3rd respondents regarding the 14B and 7Q orders passed and consequent recovery proceedings of the 3rd respondent passed in No.SDC/TN/TRY/44174/Circle C12/SRO-TRY/2015, dated 05.03.2015 and to quash the same and also to direct the 1st and 2nd respondents to refund the collection of past accumulation contribution for the period upto 31.03.2003 with interest.

For Petitioner	: Mr.P.Chandra Bose
For R1 to 3	: Mr.I.Robert Chandrakumar
For R4	: No appearance

COMMON ORDER

The writ petition in W.P.(MD)No.11193 of 2015 is filed for writ of ***Certiorarified Mandamus***, to quash the 7A order dated 24.04.2008 on the file of the 2nd respondent and to direct the 1st respondent to consider and allow the petitioner's withdrawal application, dated 11.05.2015, from the EPF Fund. The writ petition in W.P.(MD)No.11206 of 2015 is filed for writ of ***Writ of Certiorarified Mandamus***, to quash the 14B and 7Q orders passed by 2nd and



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3rd respondents and consequent recovery proceedings dated 05.03.2015 of the 3rd respondent and to direct the 1st and 2nd respondents to refund the collection of past accumulation contribution for the period upto 31.03.2003 with interest.

2. The petitioner Society is registered under the Tamil Nadu Cooperative Societies Act and the rules framed there under. It is situated in a backward area of Pudukottai District. On 24.12.2003, the employees of the petitioner Society as well as the management filed an application under Section 1(4) of the EPF Act on voluntary basis and requested to allot a code number with effect from 01.01.2004. Along with the application, a Demand Draft No. 677955 dated 23.12.2003 for a sum of Rs.4,142/ was sent towards contribution for the month of January, 2004. Coverage was granted for 4 employees as referred in the application. The 1st respondent through the letter dated 04.02.2004 accepted the application and allotted Code No.44174 and intimated that the Act is applicable with effect from 01.01.2004. In the said letter it has been stated that it is provisionally covered and pending issue of notification by



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the Government of India. At that time of coverage, the Secretary of the Society was Thiru. S. Muthusamy, but later on he died on 02.09.2007. Subsequently the present Secretary assumed the office. Thereafter, on perusing the file it is seen that no notification or order from the above authorities was found place in the office file. Till date either the Government of India or the Central Provident Fund Commissioner or the 1st respondent have not sent any notification covering the establishment under the EPF Act. However, the petitioner Society has remitted the contribution promptly from the date of coverage. Only for a short period from July 2007 and for certain months, the Society could not remit the contribution in time. Thereafter, the 2nd respondent issued a 7A hearing notice dated 22.02.2008 fixing the date of hearing on 13.03.2008.

3. The petitioner appeared for the said hearing and subsequently, no notice was received but the 2nd respondent had passed the order on 24.04.2008 claiming contribution for the past accumulated arrears for the period upto 31.03.2003 to the tune of Rs.3,87,094/-. But the said order is not



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referring from which date the past accumulation arrears arises. In fact, the 1st respondent has issued letter covering the petitioner establishment only with effect from 01.01.2004, hence upto 31.03.2003, the petitioner establishment was not covered under the EPF scheme. Hence claiming contribution for the said period prior to 31.03.2003 is per se illegal and that has not been considered by the 2nd respondent while passing the order.

4. The further contention of the petitioner is that actually before coverage, the employees of their own saved some amount, under the guise of EPF Scheme and the management also contributed certain amount. This amount is deposited in the Society itself, which fetches interest at 8.50% per annum and from that amount the petitioner Society paid loan to their employees and they have repaid the loan amount with nominal interest. From the accumulation of the amount, on the employees' share amount, the employee can withdraw 75% as loan amount and this is the only saving amount which was maintained prior to the coverage of EPF scheme. This saving accumulation amount prior to



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01.01.2004 will not be treated as the EPF scheme amount which the EPF Department cannot claim the amount under Section 15 of the EPF Act. But the 2nd respondent issued a notice dated 22.02.2008 under Section 7A of the EPF Act. In the said summon the 2nd respondent had claimed contribution due from April 2007 onwards and past accumulations. The respondents have not given any information to demand for past accumulations. At the time of hearing on 13.03.2008, the respondents claimed the above past accumulations and directed the petitioner Society to produce evidence.

5. In the meanwhile, the Enforcement Officer visited the Society and the relevant records were produced. The petitioner Society was under the impression that a further notice would be issued for further hearing but the impugned order, dated 24.04.2008 claiming past accumulations upto 31.12.2003 to the tune of Rs.3,87,094/- along with the statement received by the Enforcement Officer regarding the calculation as per his instructions was handed over. Subsequently, a criminal complaint was also filed against the



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Secretary of the petitioner's society. A notice from the Deputy Superintendent of Police, Aranthagi was sent by the respondents making criminal complaint against the Special Officer and against the Secretary, the petitioner herein. Thereafter, the Department invoked Section 8F on 04.06.2008 claiming the amount of Rs.3,87,094/-. The respondents had issued the copy of the 8F order to the Subramainapuram Pudukottai District Cooperative Bank Manager and the said Manager had sent a letter dated 19.07.2008 that the EPF Department has issued 8F order dated 04.06.2008 claiming contribution of Rs.3,87,094/- and along with 8F order dated 04.06.2008. In view of the said letter the Bank had directed the petitioner not to operate the bank account. In view of the circumstances, the petitioner and one Gunasekaran who alone were employees, had submitted a letter dated 08.11.2008 to the RPF Commissioner to withdraw the scheme. In view of the forced circumstances and the coercive steps taken by the respondents, the then Special Officer of the Society instead of approaching the EPF Appellate Tribunal, New Delhi decided to deposit the amount, as he had to face criminal prosecution and remitted the amount. Since the petitioner



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had not challenged the order before EPF Tribunal and also remitted the amount the petitioner had not approached this Court within the time. Though the order is an illegal order, the then Special Officer thought after deposit of the amount, not approaching the EPF Appellate Tribunal, New Delhi within time and employees including the petitioner submitted a petition to withdraw the scheme, the EPF Department would return back the amount to the employees and the question of approaching this Court challenging the order though it is per se non exist, will not arise. Hence the delay in presenting the writ petition is not willful and due to the circumstances narrated above prevented the petitioner to approach the Court in time and hence, there is no laches in preferring the writ petition. The order passed by the 2nd respondent is completely illegal and he had no locus standi or legal authority to claim the amount as if the Society was covered under the EPF Act prior to 0101.2004. Under the delay and laches in approaching the High Court ought to be condoned. A bona fide and circumstances beyond the Society's control was happened and coercive action was taken by the respondents by way of criminal



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action and prevented the petitioner by way of criminal action and prevented the petitioner from operating their bank accounts, prevented the petitioner to approach the High Court within the time. In the meanwhile, the Society and its employees decided to withdraw from the EPF Scheme and on that they have filed joint application dated 11.05.2015 wherein that Society have stated that they have proposed to withdraw from the EPF Scheme with effect from 01.06.2015 onwards. The said application is now pending. Hence, the petitioner has filed this writ petition challenging the order, dated 24.04.2008 and to allow the society from withdrawing from the scheme. Moreover, after nearly after 7 years, the Department initiated 14B proceedings for non-remitting the contribution within the time and without issuing any notice, 14B order and 7Q order was passed claiming damages and interest for the accumulation of the amount to the tune of Rs.6,20,522/- for which the petitioner had challenged the same in W.P.(MD)No.11206 of 2015. This writ petition is filed to quash the 14B and 7Q orders passed by 2nd and 3rd respondents and consequent recovery proceedings dated 05.03.2015 of the 3rd respondent and to direct the 1st and 2nd



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respondents to refund the collection of past accumulation contribution for the period upto 31.03.2003 with interest.

6. The learned Counsel appearing for the respondents submitted that the writ petition W.P.(MD)No.11193 of 2015 is filed belatedly. The impugned order in W.P.(MD)No.11193 of 2015 was passed on 24.04.2008 whereas the said writ petition was filed on 01.07.2015. The petitioner has not stated any convincing reasons to file the writ petition belatedly. The petitioner Society has voluntarily submitted their application to come under the purview of EPF Scheme. After processing the application, they were allotted Code No. 44174 and also intimated that the Act would be applicable from 01.01.2004. Subsequently, the Enforcement Officer visited the premises of the Society. On verification, it was found that the petitioner has deducted some amount from the employees but has not remitted the same. Hence, the respondents have initiated proceedings to collect the same from the petitioner Society. Therefore, there is no infirmity in the order which was passed for the past accumulations



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as well. Therefore, the learned Counsel appearing for the respondents prayed to dismiss the writ petitions.

7. Heard Mr.P.Chandra Bose, learned Counsel appearing for the petitioner in both writ petitions and Mr.I.Robert Chandrakumar, learned Counsel appearing for EPF Organization in both writ petitions and perused the records.

8. It is an admitted fact that in the petitioner society earlier there were four employees and on later date it was reduced to two employees. The EPF Act is applicable to an establishment if there are more than 20 employees whether permanent or temporary. Therefore, the EPF Act is not applicable to the petitioner Society. Even though there are only four employees, the petitioner Society had submitted an application along with the employees' willingness to come within the purview of EPF Act. The EPF Act is applicable



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either if the establishment is having more than 20 employees or on the basis of the willingness of the said establishment. In the present case, the petitioner Society would come under the second clause, wherein the petitioner Society has opted and submitted its willingness to come within the purview of EPF Act. The respondents have also accepted the application of the petitioner Society, dated 24.12.2003 under Section 1(4) of EPF Act on the basis of willingness and accepted Demand Draft No.677955, dated 23.12.2003 for a sum of Rs.4,142/- and also allotted a Code No.44174 and it has been specifically intimated that the effect will be from 01.01.2004. The petitioner society was paying the amount regularly but for some defaults in few months and the petitioner society is not aggrieved over the applicability of the Act.

9. But the petitioner is aggrieved over the action of the EPF organisation, when EPF authorities demanded payment prior to 01.01.2004. The contention of the petitioner is that when the Act was made applicable only from 01.01.2004 based on voluntary and willingness, then the respondent is not



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empowered to claim contribution prior to 01.01.2004. But the contention of the respondents is that the petitioner society had collected contribution from the employees prior to the 01.01.2004 and hence the same is liable to be deposited to the EPF contribution and the respondents are empowered to collect the same. And also to take criminal action against the management of society and hence in the present case a criminal action was initiated. But the petitioner society submitted that the society had not collected any such contribution. However before coverage under EPF, the employees of their own saved some amount, similar to EPF saving and the management also contributed certain amount. This amount is deposited in the Society itself, which fetches interest at 8.50% per annum and from that amount the petitioner Society paid loan to their employees and they have repaid the loan amount with nominal interest. From the accumulation of the amount, on the employees' share amount, the employee can withdraw 75% as loan amount and this is the only saving amount which was maintained prior to the coverage of EPF scheme.



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the same within the Society which carries interest of 8.5% per annum and the employees can avail loan from the said accumulation, which carries less interest. This Court is of the considered opinion that this scheme of loan is formulated by the society for the benefits of its employees and the same cannot be considered as illegal. It is only creating corpus of amount from which the employees can avail 75% of loan and then repay the same with lesser interest. This amount can never be considered as EPF amount.

12. For argument sake, even if this scheme is considered as EPF scheme, the same is not illegal. In fact, if the employer is formulating a better scheme than the EPF scheme, the better scheme is allowed even under EPF Act. The only thing is the petitioner society ought to get approval from the EPF Organisation. But when the employees are less than 20, then the approval of the EPF authority is not necessary. Hence in the present case, the EPF authority is not empowered to interfere with the said scheme which is formulated prior to 01.01.2004. At the cost of repetition, this is not scheme at all it is only creating



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corpus for lending loan to the employees, in turn the employees ought to repay the same with lesser interest. Even if the petitioner society had come within the purview voluntarily, then also the EPF organisation is not empowered to interfere with any past accumulation of amount. Therefore, the action of the respondents to collect the past accumulation is beyond their power and EPF Act, hence, the impugned orders are illegal. It is seen fearing criminal action, the petitioner Society has deposited the amount demanded as past accumulation with the EPF authority. Therefore, the respondents are bound to return the said amount to the Society.

13. The respondents have not stopped with this, but had initiated harsh and illegal proceedings under 7Q and 14B, thereby, claimed 7Q interest and 14B penal damages to the tune of Rs.6,20,522/-. Since this Court has stated that the past accumulations prior to 01.01.2004 itself is illegal, the penal damages demand under Section 14B and interest under 7Q is also illegal.



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14. By the aforesaid illegal and harsh action, now the respondents have pushed the petitioner Society to withdraw themselves from the scheme. The learned Counsel appearing for the EPF organization vehemently opposed for withdrawing from the scheme, since the Act bar from withdrawing from the provisions of scheme or Act by the management. However, the learned Counsel appearing for the petitioner Society submitted that such a blanket denial cannot be accepted. Moreover, the said issue was already considered by another Learned Single Judge in the case of ***Sampath Kumaran and Co. Vs. Regional Provident Fund Commissioner*** reported in 1974 1 MLJ 153 wherein this Court has held as under:

" 1. The petitioner is a firm of chartered accountants. One P.T. Sampath Kumaran was running the firm of M/s. Sampathkumaran & Co., as its sole proprietor. He had on the rolls of his firm four employees consisting of one assistant, one manager, one stenographer and one peon. Under Section 1 (4) of the Employees' Provident Funds Act, 1952, the petitioner-company along with its employees applied to the appropriate statutory authority under the Act for including the petitioner-company as a covered establishment thereunder, for the purpose of institution of a



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provident fund for its employees. Later, the constitution of the firm was changed on 1st April, 1969, when the quondam proprietary firm became a partnership one. On 11th April, 1969, the present petitioner-company after the reconstitution applied for withdrawal of the firm and its employees from the liability to contribute to the provident fund as required under the Act and sought for final orders thereon. The respondent would not permit the establishment to go out of the purview of the Act and he put it on the ground that the partnership was formed subsequent to the notification made by the Government of India on the original request of the petitioner to come within the scheme of the Fund and that therefore they cannot go out of it. By an order dated 13th October, 1970, while rejecting the request of the petitioner to cease its liability to contribute to the provident fund as required under the Act, the respondent proposed to hold an enquiry in terms of Section 7-A of the Act. After such an enquiry, the challenged order was passed on and March, 1971. The respondent submits that the notification covering the establishment under Section 1(4) of the Act was issued on 24th September, 1968 and that on that date, it was a partnership concern. Factually, this finding is not correct. He proceeded further and after examining other details, fixed the contribution payable by the petitioner-company. It is as against these two orders, the present writ petition has been filed.



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2. *The petitioner's case is that the respondent cannot refuse an establishment which joined the provident fund in the circumstances stated above to release it from the statutory liability if the very same establishment and its employees make a subsequent request for that purpose. The Act itself is meant to provide for the institution of provident fund for employees in factories and other establishments. This is one of those beneficial pieces of legislation intended to protect the interests of employees more, rather than those of the employer. The jurisdiction which the statutory authority gets automatically under the Act is in relation to an establishment which is a factory engaged in any industry specified in Schedule I to the Act and in which twenty or more persons are employed and also to any other establishment employing twenty or more persons, etc. Admittedly, the petitioner-company at no time had twenty or more persons on its rolls, and as such the respondent has no jurisdiction to call upon the petitioner-company to contribute under the normal provisions of the Act. But in the instant case, the establishment itself approached the authority to include it, on the list of contributories, and in that behalf, a request was made by the employer as well as the employees resulting in the application of the provisions of the Act to the petitioner-company which normally would be outside the purview and jurisdiction of the Act. The question is if such an establishment comes within the purview of the Act by a voluntary process of its own, can it or can it not go out of it once again on its own request. It is elementary that*



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if a person or a body of persons can do an act for their benefit but contemporaneously burdened with obligations they would, be in order at any time thereafter to seek for a relief of such obligations created by their voluntary act of commission by once again expressing in unequivocal terms their desire not to be burdened any more with such liabilities or obligations. This is reflected in Clause 21 of General Clauses Act. It therefore follows that notwithstanding the reconstitution of the firm from a proprietary one to a partnership one, the majority of the employees together with the employer can seek for a withdrawal of their original application which bound them under the provisions of the Employees' Provident Funds Act, 1952. This is what the petitioner did when it applied on nth April, 1969 for such a relief. The petitioner is entitled to the relief and the respondent is bound to release the petitioner.

3. The question, however, is whether the application for withdrawal has been made by the employer and the majority of the employees in relation to the establishment of the petitioner-company. The reconstituted firm has retained three out of the four employees besides the quondam proprietor of the firm. One of the employees, however, has become a partner; but he is still a serving member of the establishment. At the time when an application was made by the employees for joining the fund, the four employees and the proprietor were the joint applicants. At the time



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when they sought for a release from the obligation under the Act, the peon one Sudandiram, has not obviously signed, since it is reported that by then he had resigned. But under Section 1(4) of the Act, the application for joining should be made by the employer and a majority of the employees. Even so, it follows that a desire that the provisions of the Act need not be made applicable to the establishment may also be communicated by the employer and a majority of the employees therein. Here, the employer and the other employees of the company have made such a request on 4th April, 1969. I am of the view that the petitioner is entitled to the relief asked for, namely, for the issue of a writ in the nature of certiorari, since the order passed by the respondent is without jurisdiction and poses also an apparent error of law. The respondent is bound not only to entertain the application for withdrawal, but also accept the request for the non-application of the provisions of the Act to the petitioner-company, as the respondent has no jurisdiction otherwise as against the establishment under the provisions of the Act.

4. In the result, the Writ Petition is allowed and there will be no order as to costs."

15. The said judgment was followed by another Learned Single Judge in W.P.(MD)No.3024 of 2010, vide order, dated 15.09.2011, wherein it is



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held if the establishment is praying to withdraw from the provisions of the “Act”, then the respondents are bound to accept the request and the proceedings initiated after the request for withdrawal are totally without jurisdiction. However, the learned Counsel appearing for the respondents therein relied on the judgment rendered by the Bombay High Court in the case of ***Forest Development Corporation Vs. Regional Provident Fund Commissioner*** reported in ***(2006) II LLJ 109 Bom.*** The Learned Single Judge has also dealt with the said case and has held that the said judgment is not dealing with the question whether the establishment is permitted to withdraw from the coverage under exercise of power under Section 1(4) of the Act. Since the issue is squarely dealt with in the case of ***Sampath Kumaran and Co. Vs. Regional Provident Fund Commissioner***, the Learned Single Judge has allowed the above said writ petition.

16. Aggrieved over the judgment rendered in W.P.(MD)No.3024 of 2010 dated 15.09.2011, the EPF had filed writ appeal in W.A.(MD)No.568 of



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2013 and the Hon'ble Division Bench had dismissed the writ appeal by recording a memo that the establishment is continuing in the EPF scheme. Since the said judgment is based on the memo, hence the said Division Bench judgment cannot be relied on since there is no ratio laid down in the said judgment.

17. In the present case the petitioner society was having only four employees while joining the scheme and now the employees along with the management had submitted a joint memo to withdraw from the scheme. The reason cited is that the society is finding difficult to paying the salary, hence the EPF contribution could not be paid in time. If not paid in time the society would be facing penal charges and in long run the society would face liquidation. Admittedly the society ought to run from the income which is derived from the loan disbursed to agriculturists. Agriculture depends on the water, rain etc. and other seasonal reasons. Hence the revenue would depend on



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the repayment of the agriculturists and the repayment definitely would not be prompt. The petitioner society had taken a wrong decision and it is trying to set it right at this passage of time. Moreover, in the present case the respondents have literally harassed the petitioner society by claiming the contributions prior to 01.01.2004, preferred criminal complaint to police for such illegal contributions prior to 01.01.2004. The terrified petitioner society and the terrified employees are entitled to withdraw from the scheme. As rightly held in Sampath Kumaran's case if the establishment is voluntarily joining the scheme, then the establishment ought to have right to voluntarily exist as per General Clauses Act. Therefore, following the said judgment rendered in Sampath Kumaran's case this Court is inclined to allow the writ petitions. The respondents are directed to allow the petitioner society to withdraw from the provisions of EPF Act.

18. However it is made clear that this judgment is rendered based on the facts of this case. Hence this judgment cannot be cited as precedent.



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19. For the reasons stated supra the impugned 7A order dated 24.04.2008 is quashed and the 1st respondent is directed to allow the petitioner's withdrawal application, dated 11.05.2015, from the EPF Fund. Hence the writ petition in W.P.(MD)No.11193 of 2015 is allowed. The impugned order dated 05.03.2015 passed to collect the 14B damages and 7Q interest is quashed and consequently the 1st and 2nd respondents are directed to refund the collection of past accumulation contribution for the period upto 31.03.2003 with 6% interest per annum. Hence the writ petition in W.P.(MD) No.11206 of 2015 is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

28.06.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No

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