



W.P.(MD)No.5454 of 2014

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.06.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No. 5454 of 2014

Good Shepard Matric Higher Secondary School,
Rep by its Correspondent,
P. George,
S/o.M. Ponnumuthu,
Holy Cross College Road,
Nagercoil - 4,
Kanyakumari District.

... Petitioner

Vs.

The Regional Provident Fund Commissioner-II,
EPF Organisation,
Sub-Regional Office,
Nagercoil,
Kanyakumari District.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari to call for the records pertaining to the Impugned Order in No.TN/NGL/20873/14b/100525/PDC (6)/2014 and the consequential impugned order in No.TN/NGL/20873/7Q/100525/PDC (6) 2014 on the file of the Respondent dated 12.03.2014 and quash the same as illegal.



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For Petitioner : Mr.G.Karthik
for Mr.S.Rajasekar
For Respondent : Mr.K.Gurunathan

ORDER

This writ petition is filed challenging the impugned order, dated 12.03.2014.

2. Heard Mr.G.Karthik for Mr.S.Rajasekar, the Learned counsel appearing for the Petitioner, Mr.K.Gurunathan, the Learned Counsel appearing for the sole respondent and perused the material documents available on record.

3. The contention of the Correspondent is that he was qualified to the post of Assistant Professor, but the said opportunity was denied hence, he decided to start a school as self-employment. Moreover, there are several unemployment youths and in order to give them employment he had started the school, namely “Good Shepherd Matric School”. The well qualified persons were appointed in the school as teachers on temporary basis for the time being. But the said teachers



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left the school when they got better job either in the Government or in the other private sector. Hence the school is running with great difficulties. However, the petitioner have paid the contributions without fail from the year 2000 to till date. In such circumstances, the respondent on 21.11.2013 has issued a notice to pay a sum of Rs.5,93,138/- stating there was delay in payment of contributions. The respondent has stated in the notice that the demand for payment of damages has been initiated based on the submission of the remitted challans and provided an opportunity to send the objections. The petitioner has submitted a detailed representation dated 21.01.2014 seeking to waive the damages, since all the arrears are paid. But the respondent without considering the representation has straightaway passed the impugned order dated 12.03.2014. The respondent has quantified the damages under section 14-B as Rs.3,87,608/- for the period from 2000-2012. The respondent has also demanded interest under section 7Q for the same period to the tune of Rs.3,09,016/-. The petitioner has challenged both the Orders under Section 7Q as well as 14-B of the Employees Provident Funds and Miscellaneous Provisions Act.



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4. The respondents have filed counter stating that the petitioner school M/s. Good Shepherd Matriculation Higher Secondary School, Holy Cross College Road, Nagercoil is an establishment having Code Number TN/20873 and covered under the Act with effect from 01.06.1986 through proceedings dated 14.03.1989. The established had defaulted in remittance from 03/2000 to 04/2012. Hence proceedings were initiated by issuing notice dated 29.11.2013 under Section 7Q of the Act, to collect interest and proceedings were initiated under Section 14B of the Act to collect penal damages and called upon the petitioner to submit objections. The hearing was posted on 12.12.2013, then adjourned to 30.12.2013 and finally heard on 21.01.2014 and the petitioner had submitted written objections on 21.01.2014 and thereafter considering the facts and circumstances the impugned orders are passed. The petitioner requested to waive the damages and expressed financial difficulties.

5. As far as the 14B of the Act, is concerned the damages can be levied 25%, if there is a delay of more than 6 months. The establishment being regular defaulter has accepted the fault and hence, the damage was imposed.



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However, by taking the explanation into consideration, as well as the financial situation of the petitioner School, the respondent without levying 25% has imposed only 10% and has granted concession to the petitioner. Further, the waiver of damages lies with the Central Board. As far as the 7Q of the Act, is concerned if there is any default, the Establishment is liable to pay belated payment dues and the same would be calculated along with the interest and Employees Provident Fund amount along with the interest would be remitted to the employees since the contribution amount is illegally withheld by the petitioner School. Therefore, the petitioner is liable to pay interest for withholding the said amount. Hence, the respondent prayed to dismiss the writ petition.

6. After hearing the rival submissions, this Court has given its anxious consideration. The petitioner has elaborately submitted about the financial difficulties of the school. The school was started with an ambition of giving employment to the unemployment who were highly qualified persons. When the School was started, the teachers were not inclined to join and also the students did not join. The petitioner had taken various steps to admit the students



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and to recruit the teachers. Thereafter, the school was having 1600 students, but subsequently the strength of the students gradually declined. Hence the teachers started quitting from the school and infact one point of time, the school was finding it difficult to retain the teachers. Moreover, the Matriculation School was running by collecting fees from the students and the same would be paid to the teachers and there is no profit motive. The Learned counsel appearing for the Petitioner submitted that income of the school is very meagre and therefore, the petitioner has elaborately narrated the financial difficulties of the school through his representation, dated 21.01.2014. On perusing the said representation, it is seen that the school is running without any profit motive and the income of the school is meagre. The student strength was gradually reduced and the petitioner is facing financial difficulties. The respondents have considered the financial difficulties and has reduced the damages from 25% to 10%. However, this Court is of the considered opinion that the financial difficulties warrant waiver of damages. Hence the levy under Section 14(B) of the Act is quashed. As far as the interest under Section 7Q of the Act is concerned, since it is payable to the employees for belated remittance, this Court is not inclined to interfere with the imposition of interest and the order imposing interest is sustained.



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7. In view of the above discussions and reasons, the impugned order imposing damages under 14-B is quashed and the impugned order imposing interest under 7Q is sustained. Hence the writ petition is partly allowed. No costs.

Index : Yes / No
Internet : Yes
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28.06.2023

To

The Regional Provident Fund Commissioner-II,
EPF Organisation,
Sub-Regional Office,
Nagercoil,
Kanyakumari District.



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S.SRIMATHY, J

ksa

**Order made in
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