



W.P.(MD).No.1905 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 26.06.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.1905 of 2015

and

M.P.(MD).No.1 of 2015

Sri Aurobindo Mira Matriculation
Higher Secondary School,
239/48, Bye Pass Road,
Madurai – 625 010,
Madurai District,
Through its Director.

... Petitioner

Vs.

The Assistant Provident Fund Commissioner,
Employees' Provident Fund Organization,
Regional Office – Lady Doak College Road,
Chokkikulam,
Madurai – 625 002.

... Respondent

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 respondent herein No. TN/RO/MDU/41168/RO/Circle7/PDC/LD/2015 dated 22.01.2015 and No.TN/41168/M.7/7Q/PDC/MDU/2015 dated 22.01.2015 and to quash the same as illegal and direct the respondent to give opportunity of hearing to the petitioner.



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For Petitioner : Mr.C.Karthikeyan

For Respondent : Mr.S.Anwar Sameem

ORDER

This Writ Petition is filed challenging the order dated 22.01.2015 and to direct the respondent to give opportunity of hearing to the petitioner.

2. The petitioner Matriculation School is run by charitable trust. The Enforcement Officer inspected the school on 01.12.2006 and verified all the records. Then notice under 7-A of the Employees Provident Fund Act was issued fixing personal hearing on 23.01.2007. The petitioner sought the report of the Enforcement Officer and the same was granted on 04.12.2006.

3. The contention of the petitioner is that the Enforcement Officer has taken the entire net salary of teaching staffs, part-time teaching staffs and non-teaching staffs for the month of February 2006 payment and multiplied the said net salary for ten months from February 2006 to November 2006 and arrived at total of Rs.4,59,308.65. The said calculation made by the Enforcement Officer is completely wrong and erroneous. While calculating the net salary, the



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respondent has included House Rent Allowances and the Medical Allowances.

Without considering the objections, the respondent had passed the order dated 19.07.2007 under 7A(1) (b) of the EPF Act. Aggrieved over the same, the petitioner has approached the Tribunal in ATA No.848(13)2007 challenging the orders passed under Section 7A of the said Act and ATA No.839(13)2007 challenging the orders passed under Section 7C of the said Act. The Tribunal has dismissed the appeal filed under Section 7A and allowed the appeal under Section 7C of the Act by remitting back for fresh consideration. Aggrieved over the same, the petitioner has filed Writ Petition in W.P.(MD).No.14728 of 2010 and W.P.(MD).No.14729 of 2010. In the meanwhile, the recovery proceedings were initiated and the petitioner has deposited the entire amount. Once it is deposited the respondent now had initiated 14B proceedings claiming damages for belated payment. In the meanwhile, the aforesaid writ petitions were dismissed on 07.09.2011. The petitioner had preferred Writ Appeal along with condone delay application in S.R.No.50397 of 2014 against the order passed in W.P.(MD).No.14728 of 2010 alone Writ Petition order and the same is pending. In the meanwhile, since the respondent had initiated proceedings to collect the damages, hence the petitioner is before this Court.



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4. The respondent has filed a counter stating that the petitioner has not raised any plea of House Rent Allowance etc. under in 7A proceedings. Therefore, the petitioner cannot claim the same in the damage proceedings. Moreover, the Tribunal has dismissed the appeal under 7A but allowed the appeal under 7C of the Act and remitted back for fresh consideration. The reason for allowing the appeal under Section 7C of the Act is that the respondent have issued two orders for the same period. Therefore, the petition filed under Section 7C of the Act was also allowed. In the Tribunal also, the petitioner has not taken such a plea that House Rent Allowances was included while calculating the salary. Therefore, at this stage, the petitioner is not entitled to take a plea. Moreover, against the Tribunal order, the petitioner has filed the Writ Petition and the same was also dismissed and preferred Writ Appeal and it is condoned delay stage and the same is pending. The respondent further submitted that the petitioner is Matriculation School and is not a corporate Company or any other establishment where they offer House Rent Allowances. The salary to the teachers would be a lump sum salary without any splitting under any heads. Therefore, the respondent submitted that the impugned order need not be interfered.



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5. Heard Mr.C.Karthikeyan, learned counsel for the petitioner and Mr.Anwar Sameem, learned counsel for the respondent.

6. The first contention of the respondent is that the petitioner has not raised any such plea during the enquiry proceedings under 7A. On perusing the order of the Tribunal, it is seen that the Tribunal has recorded that it is seen that the Enforcement Officer included the teaching staff and non-teaching staff and calculate the contribution wrongly. Moreover, the Tribunal has dealt with the plea of the petitioner and has stated that no materials were available to show that there was error in calculation. The plea of the petitioner itself is the calculation of Enforcement Officer is wrong, because it has included the House Rent Allowances. When the said plea was not denied by the respondent, then the Tribunal ought to have remitted the matter back for recalculating the liability to be fixed on the petitioner. In the present petition, the petitioner has taken a specific plea that the respondent had included House Rent Allowances and Medical Allowances. In the EPF Act, the Act specifically states the House Rent Allowances and Medical Allowances cannot be added in the basic wages and in such circumstances, the claim of the petitioner ought to be considered.



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7. The next plea of the respondent is that the school will pay only lump sum amount and there will not be any distinction under which heads they are paying. The said contention cannot be accepted because when the Act provides for the employer to split up the salary for various heads, then the establishment is having every right to fix under various heads. Therefore, such plea cannot be entertained.

8. The next contention of the respondent is that 7A order was challenged in Writ Petition and the Writ Petition was dismissed and therefore, now the petitioner is not having any right to re-agitate the issue. This Court is of the considered opinion that the Act specifically states when the House Rent Allowances and Medical Allowances cannot be included, if the respondent has included such amount while calculating, then the said portion of the amount is an illegal amount in the hands of the respondent. Therefore, such plea is not available to the respondent. When the respondent ought to act legally, being an establishment under statutory provisions, they are bound to act legally and cannot act beyond the Act which is prescribed for them. Moreover, in the present case it is penal damages, at least in this proceeding if the petitioner is able to prove with documents that the split up ought to be taken, then the



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damages would be reduced. Therefore, this Court is inclined to allow this Writ Petition by remitting the matter back to the authorities.

9. The respondent further submitted that the 7A order, it is only for the limited period. However, 14B was imposed on the subsequent period also and therefore the respondent ought to recalculate the same. The impugned orders are quashed and the respondent is directed to recalculate by deducting House Rent Allowances and Medical Allowances for the subsequent period. For the 14B order, recalculation can be carried out by the respondent. The said exercise shall be completed within a period of eight (8) weeks from the date of receipt of a copy of this order.

10. With the above direction, this Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

26.06.2023

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



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S.SRIMATHY, J.

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