



W.P.(MD)No.435 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.06.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.435 of 2015

and

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

M/s.K.S.Hospital,
60, Mutt Street,
Kumbakonam-612 001,
Through its Proprietor.

... Petitioner

vs.

The Assistant Provident Fund Commissioner,
Employees' Provident Fund Organization,
Sub Regional Office,
No.18, Sri Complex, Madurai Road,
Trichy- 8.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records from the file of the respondent herein in



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No.Enf.D3/TN/TR/43242/SRO-TRY/2014, dated 18.11.2014 and to quash the same and to direct the respondent to fix the date of hearing relating to the petition, dated 28.10.2014, filed by the petitioner under Section 7A(4) of the EPF Act for setting aside the ex-parte order.

For Petitioner : Mr.C.Karthikeyan

For Respondent : Mr.I.Pinayassh

ORDER

This writ petition is filed for writ of Certiorarified Mandamus, to quash the order dated 18.11.2014 passed by the respondent and to direct the respondent to fix the date of hearing relating to the petition, dated 28.10.2014, filed by the petitioner under Section 7A(4) of the EPF Act for setting aside the ex-parte order.

2. The petitioner is a Hospital covered under EPF Act. The respondent issued Section 7(A) hearing notice, dated 24.06.2014 and as



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per the original order, dated 13.10.2014, the enquiry was fixed on 07.08.2014. The petitioner was represented by an Advocate namely, Mr.Srikumar and he sought adjournment. The hearing was adjourned to 18.09.2014. Again on 18.09.2014, the said Srikumar appeared for enquiry and requested for the copy of the report submitted by the Enforcement Officer and the respondent has issued the same. Hence, the enquiry was adjourned to 09.10.2014. However, the petitioner did not appear on 09.10.2014. Therefore, the respondent passed the order, dated 13.10.2014, fixing the liability on the petitioner. Immediately, the petitioner within the prescribed time limit filed a restoration petition on 28.10.2014. On receipt of the same, the respondent has issued the impugned order stating that three chances were granted to the petitioner. But the petitioner has not availed the opportunity to submit records. Hence, the request for restoration was rejected. Aggrieved over the same, the present writ petition is filed.



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3.The contention of the petitioner is that the petitioner appeared before the authorities and has sought for adjournment for two times and the same was granted. As far as the third hearing is concerned, the petitioner had informed the authority through e-mail, but the same was not considered. On verifying the said e-mail, it is seen that the petitioner has sent the e-mail on 9th October, 2014 at 4.51 PM and the same is extracted hereunder:

“As I am sick, I am unable to attend the hearing so kindly adjourn the hearing some other date and oblige.

*Yours faithfully,
For K.S.Hospital,
K.SRIKUMAR (AR),
Kumbakonam.”*

Therefore, this Court is of the considered opinion that the respondents have not considered the email, but proceeded to pass orders, thereby the respondent had failed to grant one more opportunity to the petitioner.



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4. Hence, this Court is inclined to allow this writ petition by setting aside the impugned order, dated 18.11.2014 and the order passed on 13.10.2014, are set aside. The respondent is directed to grant opportunity to the petitioner. The respondent is directed to issued fresh notice to the petitioner. The petitioner shall appear on the said date along with the records without fail. After perusing the records and after giving opportunity to the petitioner, the respondent is directed to pass an order. The said exercise shall be completed within a period of three months from the date of receipt of a copy of this order.

5. With the above said observation, the writ petition is allowed.
No costs. Consequently, connected miscellaneous petition is closed.

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

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Tmg

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