



W.P.(MD).No.1521 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 14.06.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.1521 of 2016

and

W.M.P.(MD).No.1281 of 2016

1.M/s.Government Polytechnic,
Konam,
Nagercoil – 629 004.
Represented by its Principal,
Thiru.Dr.K.M.Murugesan

2.The Government of Tamil Nadu,
Represented by its Principal Secretary,
Higher Education Department,
Secretariat, Chennai – 600 009.

... Petitioners

*(P-2 is suo motu impleaded vide Court Order dated 12.04.2023 in
W.P.(MD).No.1521 of 2016)*

Vs.

1.The Regional Provident Fund Commissioner,
Employees' Provident Fund Organization,
(Ministry of Labour, Government of India),
Sub Regional Office,
No.66, Water Tank Road,
Nagercoil – 629 001.

2.The Assistant Provident Fund Commissioner,
Employees' Provident Fund Organization,
(Ministry of Labour, Government of India),
Sub Regional Office,
No.66, Water Tank Road,
Nagercoil – 629 001.

... 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, calling for the records relating to the impugned order dated 25.11.2015 in No.TN/NGL/Enf/Circle32/79636/2015 issued by the first respondent and the consequential impugned proceedings dated 08.12.2015 vide No.TN/NGL/79636/Circle32/Enf/2015 issued by the first respondent and also the original proceedings of second respondent dated 10.04.2013 in No.TN/MD/NKL/79636/Circle32/Enf/2013 as confirmed by the second respondent in File No.TN/NGL/Enf/Circle32/79636/2013, dated 31.12.2013 and quash the same.

For Petitioner : Mr.Veera Kathiravan,
Additional Advocate General,
Assisted by,
Mr.R.Suresh Kumar,
Additional Government Pleader.

For Respondents : Mr.Mahaboob Athiff

ORDER

This Writ Petition is filed by the Government Polytechnic College represented by its Principal.

2. The Government Polytechnic College is one of the two Polytechnics started in the year 1959 under the second five year plan. Initially, it was functioning on the ST Hindu College Campus with 120 students and thereafter



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it was shifted to the present place which covers an area of 20 hectares. The Institution is having 122 employees in which 115 are regular employees and they were covered under General Provident Fund Scheme and the remaining 7 employees were appointed on temporary basis for maintenance of Hostel attached to the petitioner Polytechnic College. Out of the said 7 daily wages employees, 5 employees were not in service as on date and only 2 persons namely, Subramanian and Ramakrishnan are serving as daily wages employees. The said Subramanian and Ramakrishnan have already filed Writ Petition to regularize their service and the same is pending.

3. The contention of the petitioner is that after 2014, the hostel maintenance is left with persons on contract basis, whose contract amount is shared by the students themselves. In fact, from 1983 to 2014, at no point of time, total daily wages employees exceeded 20 to cover EPF Act. In such circumstances, the respondents Provident Fund authority has issued notice under 7-A of the Employees Provident Fund and Miscellaneous Provisions Act, 1952. Without proper consideration of the legal and factual aspects, the respondents brought the Institution under the purview of the said Act with effect from 01.02.2013 vide order dated 10.04.2013. The Institution has questioned the applicability of Act and was decided by an order dated



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31.12.2013 under 7-A of EPF Act and has become final. But the said order is void and it was wholly without jurisdiction. In the meanwhile, the Principal of the Polytechnic College has sent written communication to the higher authorities for necessary action to challenge them. However, the said files were missing. Further, the petitioner submitted before the authorities that temporary employees are being appointed in the Hostel attached to the Institution. Hence, they will not come under the purview of Section 2(f) of the Employees Provident Fund and Miscellaneous Provision Act. Without considering the objections raised by the petitioners, the respondents have passed an order dated 25.11.2015 directing the petitioner to pay a sum of Rs.23,14,312/- towards EPF contribution for a period from 01/1983 to 04/2014.

4. An inspection was conducted by Squad Enforcement Officers and submitted a report on 19.01.2015, which states that apart from the regular employees, who are covered under General Provident Fund, there are three categories of employees not covered in any manner. They are as follows:

- i. Employees who are paid remuneration on hourly basis or part time employees,
- ii. Employees employed on daily wages
- iii. Employees of hostel, mess etc.,



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The report proceeds to term them as employees under Section 2(f) of the EPF Act and the Polytechnic comes within the meaning of establishments under section 1(3)(b) of the EPF Act. The said report was served on 21.01.2015 and the petitioner submitted objection on 03.02.2015. Without considering the objections, the respondents issued another proceedings dated 08.12.2015 directing the petitioner to comply with the order dated 25.11.2015 on or before 60 days. Thereafter in pursuant to this, the petitioner approached higher authorities and also approached the Special Government Pleader for opinion and it was advised that the to challenge the order since the same is issued without jurisdiction. But the respondents fixed the crucial date as 22.01.2016 to comply with the order, hence the present writ petition was filed on 22.01.2016. The petitioner further submitted that the respondents have not granted proper opportunity which is violative of principles of natural justice and has passed orders without jurisdiction. Even though the challenge to the first notice is belated, the petitioner submitted that in order to get proper authority and proper instructions from the higher authorities, this Writ Petition is filed belatedly.

5. The respondents have filed a counter stating that the petitioner who is Government Polytechnic College represented by the Principal cannot be considered as juristic person. Hence, the Writ Petition is not maintainable. The



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petitioner was granted ample opportunity to present their case before the authority. In spite of several opportunities, the petitioner did not avail the same. Therefore, now they cannot turn around and state they were not granted any opportunity before the authorities. Moreover, the petitioner is having alternative remedy to file an appeal before the Tribunal. Moreover, the present petition was dismissed for non-prosecution and the same is restored. In the meanwhile, the respondents have taken steps to recover the amount by attaching the amount available in the Bank account in the name of the petitioner Institution. After recovery of the amount, the entire proceedings had come to an end and hence at this stage, it cannot be reopened and re-agitated the entire issue. Therefore, the respondents prayed to dismiss this Writ Petition.

6. Heard Mr.Veera Kathiravan, learned Additional Advocate General, assisted by, Mr.R.Suresh Kumar, learned Additional Government Pleader, for the petitioner and Mr.Mahaboob Athiff, learned counsel for the respondents.

7. The issue of employees working in hostel establishment be considered as employees under the main establishment so as to attract EFP Act is frequently raised issue. Since the present college is Government established college, this Court thought it fit to issue notice to the Government and direct to



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submit its response to the issue. Hence, when the Writ Petition was taken up for hearing on 12.04.2023, this Court has *suo motu* impleaded the Government of Tamil Nadu, represented by its Principal Secretary, Higher Education Department and directed the Additional Advocate General to take notice and submit the Government response to the issue.

8. Today, i.e. on 14.06.2023 when the Writ Petition is taken up for hearing, the learned Additional Advocate General submitted that the Government has given an authorization letters to the Principal of Government Polytechnic to represent and putforth the entire case before this Court on behalf of the Government. Therefore, the first plea of the respondent that the college is not a juristic person and hence the writ petition is not maintainable, no longer exists, because the Government is impleaded as party and Government has authorized the Principal of the College to defend the case.

9. The next contention that was raised by the respondents is that the petitioner was granted ample opportunity and they did not produce any evidence to substantiate their contention that the hostel is separate entity. Now, they cannot turn around and state opportunity was not granted and there is violation of principles of natural justice. However, the learned Additional



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Advocate General submitted that in order to in order to take appropriate authorization from the Government there was a delay in contesting the case effectively. Moreover, the respondents have taken steps to impose the liability from 01.01.1983 onwards, the petitioner could not lay its hands for the old records. Therefore, the petitioner could not submit their old records before the authorities in time and effectively contest the case. Therefore, this Court is of the considered opinion that the petitioner needs to grant some more opportunity and it is evident that the effective opportunity was not availed by the petitioner.

10. The next contention is the alternative remedy. Since this Court is inclined to set aside the order and grant one more opportunity to the petitioner, then the plea of alternative remedy is rejected. Hence, the impugned orders dated 10.04.2013, 31.12.2013, 25.11.2015 and 08.12.2015 are quashed.

11. At this juncture the Learned Counsel appearing for the respondents submitted since the present Writ Petition was dismissed, the respondents already have appropriated the amount by attaching the account of the petitioner. Therefore, this Court is directing the respondents to keep the account and amount in abeyance. The respondents are directed to conduct enquiry after giving opportunity to the petitioner. The amount shall be decided based on the



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outcome of the enquiry which will be conducted by the respondents. The enquiry shall be conducted within a period of four (4) months from the date of receipt of a copy of this order.

12. With the above direction, this Writ Petition is allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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