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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4948 OF 2024

Shri. T.P. Bhatia Jr. College of Sciences .. Petitioner
Versus
Assistant Provident Fund Commissioner .. Respondent

....

- Mr. Rohan Gurjar i/by Mr. Pradhyuman M. Bhagat for Petitioner
- Mr. Gunjan Chaubey for Respondent

....

CORAM : MILIND N. JADHAV, J.

DATE : APRIL 23, 2024

P. C.:

1. Not on board. Mentioned. Taken on board.

2. Perused the praecipe dated 22.04.2024. Heard Mr. Gurjar, learned Advocate for Petitioner and Mr. Chaubey, learned Advocate for Respondent.

3. Present Writ Petition impugns twin orders i.e. order dated 29.11.2023 passed under Section 7Q of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (**"said Act"**) and subsequent order of attachment of bank accounts of Petitioner-Establishment dated 22.03.2024 by virtue of which bank accounts of Petitioner College i.e. A/c. Nos. 03970100045058 & 039702000002142 held in Bank of Baroda, S,V. Road Branch, Kandivali (W) and A/c. No. 30058296349 held in State Bank of India, S.V. Road Branch, Kandivali (W) were attached / freezed.

4. Mr. Gurjar would submit that the impugned orders foisted liability of Rs. 33,77,187/-. This Court incidentally in several orders passed has delineated the procedure to be adopted by the Competent Authority while conducting inquiry in such cases. In the present case, it is seen that inquiry was held on as many as 16 dates between 29.11.2021 and 20.11.2023 and on which dates none had attended on behalf of the Petitioner-Establishment. Petitioner Establishment before me is a College / Junior College of Science and it is unfathomable to believe that the concerned Competent Authority is conducting hearing on 16 dates without the presence of the Establishment's representative. Be that as it may, I have heard the submissions advanced by Mr. Gurjar. The only issue that can be seen is due to late remittance and the reason attributable is due to the Covid 19 lockdown period. This Court has considered such a plea that during the Covid 19 pandemic period, the period of limitation was clearly arrested by virtue of the extant orders passed by the Supreme Court in Suo Motu Writ Petition (C) No. 3 of 2020 and companion matters. That apart, the impugned order is also not sustainable in view of the grounds mentioned in the Petition. What is significant to note is the fact that after passing of the impugned order, Petitioner Establishment deposited an amount of Rs. 5 Lacs in December 2023 and Rs. 4 Lacs in January 2024 with the Competent Authority despite which the attachment order of two bank accounts of the Petitioner was passed on 22.03.2024. By this attachment order, the amounts lying in the two bank accounts of the Petitioner namely the amount of Rs. 6.37 Lacs in the Bank of Baroda and Rs. 1.95 Lacs in the State Bank of India have also been recovered by the Competent Authority against the Petitioner's alleged liability. Thus it is seen that in all an amount of Rs. 17.32 Lacs has already been recovered.

5. Petitioner has filed statutory Appeal before the CGIT (II) on 25.01.2024 to maintain a challenge to the impugned order dated 29.11.2023 as also the subsequent attachment orders.

6. I have perused the impugned orders passed under Section 7Q and 14B of the said Act by the Competent Authority. After perusing the impugned orders, save and except mentioning and giving reference to settled Supreme Court cases, there is nothing in the impugned orders which considers the Petitioner's case on merits. This is my *prima facie* opinion. However due to the intervening circumstances and the Respondent Competent Authority having recovered the amount of Rs. 17.32 Lacs in the interregnum, I am inclined to allow the Petition with appropriate directions to determine the statutory Appeal in accordance with law.

7. Mr. Chaubey would submit that both the impugned orders passed under Section 7Q and 14B of the said Act have been correctly passed after considering the Petitioner's contentions which were considered by the Department as contained in their letter dated 26.07.2023. Be that as it may, considering the substantive challenge maintained to the impugned orders before CJIT(II) in statutory appeal proceedings and substantial amount of Rs. 17.32 Lacs having been recovered from the Petitioner till date, the order of attachment dated 22.03.2024 of the aforesaid bank accounts of the Petitioner stands quashed and set aside. The concerned Banks shall act on a server copy of this order immediately and defreeze both the bank accounts of the Petitioner. The concerned General Manager / Branch Manger of the concerned Banks shall take cognizance of this order and ensure that the aforestated bank accounts of the Petitioner are immediately released from attachment.

8. It is also clarified that in view of the substantive challenge maintained in the statutory Appeal, no further attachment of any of the bank accounts of the Petitioner in any bank shall be effected by the Respondent without leave of the learned CJIT in the statutory Appeal which has been filed by the Petitioner in future in so far as the present liability is concerned.

9. Needless to state that all contentions of both the parties with respect to the impugned orders and merits are expressly kept open to be agitated before the learned CJIT in the statutory Appeal.

10. With the above directions, Writ Petition stands disposed.

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[MILIND N. JADHAV, J.]

RAVINDRA MOHAN AMBERKAR

Digitally signed by RAVINDRA MOHAN AMBERKAR Date: 2024.04.23 15:37:59 +0530