IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2024

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.444 of 2024
and W.M.P.No.475 of 2024

M/s.Randstad India Pvt. Ltd.,
Old No.5 & 5A, New No.9,
Pycrofts Garden Road,
Nungambakkam,
Chennai - 600 034.
Rep. by its Authorised Signatory .. Petitioner

Versus

The Regional Provident Fund Commissioner - I,
Regional Office - Chennai North,
Employees Provident Fund Organisation,
37, Royapettah High Road,
Chennai - 600 014. .. Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Mandamus directing the respondent to consider the representations of the petitioner, dated 26.12.2023 frame issue being taken up for adjudication in the Section 7A proceedings No.TN/RO/CHN-I/TN/35791/ENF/CC-1/D-517/2022 permit the petitioner to cross examine the enforcement officer, make submissions on the claim being made.

For Petitioner : Mr.G.Ananda Gopalan,
for M/s.Agam Legal

For Respondent : Mr.K.Venkatesan,
Standing Counsel

ORDER

This Writ Petition is filed for a direction to the respondent to consider the representation of the petitioner, dated 26.12.2023 by framing issues to be taken up for adjudication under Section 7A of the proceedings and to permit the petitioner to cross-examine the Enforcement Officer and make submissions.

2. Heard *Mr.G.Ananda Gopalan*, learned Counsel for the petitioner and *Mr.K.Venkatesan*, learned Standing Counsel for the respondent.

3. The learned Counsel for the petitioner would submit that firstly, the respondent organisation issued a circular on 14.02.2020. As per the instruction No.5 contained in the said circular, once an enquiry is initiated for specific reasons and period, the scope thereof cannot be extended beyond the facts in issue. In this case, originally, three inspection reports are furnished to the petitioner and totally a sum of Rs.64,22,22,672/-was said to be the due and the enquiry was proceeded. However, during the course of the enquiry, the calculation is now furnished along with a

communication, dated 22.11.2023, by which, now, it is calculated that the total sum due is Rs.112,05,01,673/-. Therefore, the enquiry is going beyond the scope of the original issue. Secondly, when the cross-examination was duly done by the learned Counsel, abruptly, the same stands closed merely because one question was asked which was not to liking to the respondent organisation. Therefore, the present Writ Petition is filed.

4. Per *contra*, the learned Counsel for the respondent organisation would submit that the cross-examination was closed only because the repeated questions, not with reference to the issue on hand, were being put and it was prolonged forever. The respondent organisation is not averse to the idea of reopening the cross-examination provided this Court grants a specific time frame in which the questions can further be put and the cross-examination be closed.

5. As far as the subject matter is concerned, the learned Counsel would submit that now the calculation is given and the petitioner is very much put on notice and the enquiry is proceeding. The enquiry is not proceeding beyond the scope of the show-cause notice which is for the

period 2012-2016 and therefore, during the course of the enquiry, if a different calculation is arrived at, the only thing is that the petitioner should be given ample opportunity and that is being provided with and this is not a case where the enquiry is straying beyond the issue on hand.

6. I have considered the rival submissions made on either side and perused the material records of the case.

7. As the due is said to be huge and the organisation is also a huge organisation, I am of the view that ample opportunity can be given to the learned Counsel for the management to continue the cross-examination. Accordingly, one more opportunity will be given on the date hereinafter mentioned and on the said date or subject to some other date as per the convenience of the officers of the organisation as well as the learned Counsel may fix, the cross-examination may be continued and be completed within a maximum period of two working days.

8. As far as the first question is concerned, firstly, the circular is an inter-departmental circular. Further, the instruction No.5 is extracted hereunder:-

> "**5.** Once an inquiry is initiated for specific reasons and period, the scope thereof cannot be extended beyond the fact-in-issue. The scope of the inquiry need not travel beyond the issues identified at the stage of its initiation. For any new reason or period separate notice must be issued. The records summoned from the employer, therefore, must have reasonable linkage with the subject matter of determination and the period. The practice of summoning unrelated records for prolonged period amounts to conducting a fishing and roving inquiry which is not permissible in law."

Therefore, the enquiry should not stray beyond the subject matter.

9. As far as the subject matter is concerned, it is essential to extract relevant portion of the show-cause notice, dated 06.07.2022 which reads as follows:-

> "WHEREAS information has been laid before the undersigned and on consideration whereof, the undersigned has reasons to believe that:
> 1. The employer has failed to remit the contributions as per Section 6 of the Act read with paragraphs 26A(2) & 29(3) of EPF Scheme, 1952 for the period** from **03/2012 to 10/2014, 11/2014 to 01/2015 and 02/2015 to 01/2016; &**
> 2. The employer has failed to enroll all the eligible employees under section 2(f) of the Act read with Paragraph 26(1)(a) of the Employees Provident Funds Scheme, 1952 provided for class of International Workers entitled and required to join."

As far the calculation with reference to the said period, the authorities are not bound by the inspection report alone. But, at the same time, the petitioner has to be put on notice. Now, that the calculation is given to the petitioner, the petitioner can very well cross-examine the witness with reference thereto as to how the said amount was arrived or as to how the calculation is erroneous or it can make such arguments during the course of the enquiry.

10. Therefore, this Writ Petition is disposed of on the following terms:-

(i) The petitioner will be permitted to further cross-examine the witness namely, the Enforcement Officer namely, *C.Balachandar*, by posting the further enquiry on 10.01.2025. This Court is indicating the date only to continue the proceedings;

(ii) If the enquiry could be held on 10.01.2025, the cross-examination can be completed by two working days. It is made clear that the dates are only indicative and the authority concerned and the learned Counsel for the petitioner can also thereafter fix any other convenient date and the cross-examination shall go on and shall be completed not later than two working days and a detailed cross-examination shall be permitted by the authorities;

(iii) The above proceedings shall be undertaken and proceeded with upon production/receipt of a web-copy of this order and without waiting for a certified copy of this order. As a matter of fact, the date as 10.01.2025 is pronounced loud and clear before this Court and even if the order is not uploaded, the matter can be taken up further;

(iv) As regards the other allegations, by grant of the relief of cross-examination, the other grievances are taken care of;

(v) There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

21.12.2024

Neutral Citation : no
grs

To

The Regional Provident Fund Commissioner - I,
Regional Office - Chennai North,
Employees Provident Fund Organisation,
37, Royapettah High Road,
Chennai - 600 014.

D.BHARATHA CHAKRAVARTHY, J.

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