



W.P.No.156 of 2015

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.11.2024

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THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.156 of 2015
and M.P.No.1 of 2015

Central Board of Trustees
Employees Provident Fund Organisation
Represented by The Assistant Provident Fund Commissioner
Bhavishya Nidhi Bhawan, Dr.Balasundaram Road,
Coimbatore – 641 018.

...Petitioner

Vs.

1.Sri Iyyan Spinning Mills (P) Ltd.
Sembianallur Post
Dhasampalayam, Avinashi – 638 654.

2.The Presiding Officer,
Employees Provident Funds Appellate Tribunal,
7th Floor, No.60, Skylark Buildings,
Nehru Palace, New Delhi – 110 019.

...Respondents.

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari or any other appropriate Writs, Order or direction, in the nature of writ, calling for the records relating to the proceedings of the 2nd respondent Tribunal dated 17.06.2014 in A.T.A.No.93 (13) 2013, and quash the same.

For Petitioner : Mr.C.Kulanthaivel



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For Respondents : Mr.S.Gunalan for R1
R2-No appearance

ORDER

This Writ Petition is filed by the Employees Provident Fund Organisation for issue of a Writ of Certiorari calling for the records relating to the proceedings of the second respondent namely the Employees Provident Fund Appellate Tribunal dated 17.06.2014 in A.T.A.No.93 (13) 2013 in and by which the appeal filed by the first respondent management namely Sri Iyyan Spinning Mills Private Limited was allowed by the appellate authority.

2.The learned counsel appearing on behalf of the Writ Petitioner would submit that the order of the appellate authority is challenged on two grounds. In this case before imposing the damages under Section 14 (B) of the Act, a show cause notice was issued on 03.07.2012. The show cause notice clearly gives an opportunity to the first respondent Management to appear before the authority with such documents and also gives an opportunity of personal hearing. Without appearing before the authority and showing cause, the first respondent management have chosen to challenge the show cause notice before the appellate authority. As a matter of fact, subsequently, the final order itself has been passed



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on 28.12.2012. Therefore, the appeal filed only as against the show cause notice and not challenging the final order that is passed, is not maintainable. The learned counsel also submits that at this stage, the first respondent management cannot also challenge the same since there is a outer limit even for condonation of delay. Secondly, the learned counsel would submit that the appellate authority has set aside the damages proposed to be levied on the ground that there is no *mens rea* on the part of the first respondent management. That legal position is also now settled by the Hon'ble Supreme Court of India in ***Horticulture Experiment Station, Gonikoppal, Coorg Vs. Regional Provident Fund Organisation (2022) 4 Supreme Court Cases 516***. More specifically, relying upon paragraph No.19 of the said judgment which reads as follows:-

19.Taking note of the three-Judge Bench judgment of this Court in Union of India V. Dharamendra Textile Processors, which is indeed binding on us, we are of the considered view that any default or delay in the payment of EPF contribution by the employer under the Act is a sine qua non for imposition of levy of damages under Section 14-B of the 1952 Act and mens rea or actus reus is not an essential element for imposing penalty/damages for breach of civil obligations/liabilities.

3.On behalf of the first respondent management though originally the



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learned counsel was appearing, he has reported no instructions as early as on 26.06.2024 which was recorded by this Court. The name of the first respondent is also printed in the cause list. On behalf of the second respondent management none appears in person nor any counsel appears.

4.I have considered the submissions made on behalf of the learned counsel for the petitioner.

5.On a perusal of the grounds of impugned order itself, it can be seen that it is only filed as against the show cause notice dated 03.07.2012 and the final order which is passed on 28.12.2012 is not the subject matter of challenge. Admittedly, as per Section 7-I of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 only the order which is passed under Section 14 B is appealable under Section 7-I. In view thereof I am in agreement with the learned counsel for the petitioner that the second respondent Tribunal ought not to have entertained the appeal which is filed only as against the show cause notice. As far as the other contentions regarding the finding relating to *mens rea* is concerned, since this Court is of the view that the appeal is not maintainable if only first respondent management choses to file an appeal as against the final order if



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permissible under law, as and when such appeal is filed, it would be open for the petitioner organisation to raise the said issue before the appellate authority itself. Therefore, at this stage, no finding is warranted with reference to the said submissions on merits. In view there of this Writ Petition is allowed with following terms:-

i)The impugned order dated 17.06.2014 in A.T.A.No.93 (13) 2013 passed by the second respondent is quashed.

ii)However, it will be open for the first respondent management to challenge the final order dated 28.12.2012.

6.Accordingly, the Writ Petition is allowed. Consequently, connected miscellaneous petition is closed. No costs.

06.11.2024

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Neutral citation : Yes/No

D.BHARATHA CHAKRAVARTHY, J.,

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To

The Presiding Officer,
Employees Provident Funds Appellate Tribunal,
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