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W.P.Nos.5280 of 2019 and 5269 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:04.01.2024

CORAM:

THE HONOURABLE MRS.JUSTICE N. MALA

W.P.Nos.5280 of 2019 and 5269 of 2019
and
W.M.P. No.5992 of 2019 and 5986 of 2019

M/s. Imayam Publications Pvt. Ltd.,
represented by its Managing Director
R.A. Jebaraj .

... Petitioner in both W.Ps.

Vs.

1. The Assistant Provident Fund Commissioner
(C & R) Chennai

Employees Provident Fund Organisation,
Regional Office: 37, Royapettah High Road,
Chennai-600 014.

... Respondent in both W.Ps.

2. The Asst. Provident Fund Commissioner (Recovery)
Employees Provident Fund Organisation,
Regional Office: 37, Royapettah High Road,
Chennai-600 014.

.... 2nd Respondent in W.P. No.5269 of 2019

PRAYER in W.P. No.5280 of 2019: Writ Petition filed under Article 226

of the Constitution of India praying to issue a Writ of Certiorari calling for the records pertaining to order dated 04.01.2019 passed in EPFA 37 of 2017 on the file of Central Government Industrial Tribunal-cum-Labour Court, Chennai and quash the same.



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PRAYER in W.P. No.5269 of 2019: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records pertaining to recovery certificate No.CHN2 / CC / 21 / TN / 1349532 / Enf / Regl / 2017 dated 16.11.2017 on the file of 1st respondent and quash the same.

For Petitioner : Mr. M. Venkadeshan
[Both W.Ps.]

For Respondents : Mr. Vishnuramu, Standing Counsel for
[Both W.Ps.] respondents.

COMMON ORDER

The Writ Petition in W.P. No.5280 of 2019 has been filed by the petitioner challenging the order passed by the Central Government Industrial Tribunal-cum-Labour Court, Chennai in EPFA No.37 of 2017 dismissing the petitioner's appeal.

The Writ Petition in W.P. No.5269 of 2019 has been filed by the petitioner challenging the recovery certificate No. CHN2 / CC / 21 / TN / 1349532 / Enf / Regl / 2017 dated 16.11.2017 and quash the same.

As the issue in W.P. No.5269 of 2019 is dependent on the result of the order in W.P. No.5280 of 2019, both the Writ petitions are disposed by this common order.



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2. The petitioner's company was incorporated in the year 2011 under the Companies Act. The Company had opened EPF accounts for its employees since its inception in the year 2011, made deductions regularly and paid EPF contributions to the respondents along with its share regularly. Thereafter, as the company was facing financial difficulties, it was not in a position to pay the EPF contributions. The Enforcement Officer of the respondents' organization inspected the petitioner's company and determined the amount of dues for the period from 06/2015 to 06/2016 at a sum of Rs.31,64,089/-. Thereafter, the Assistant Provident Fund Commissioner (C&R), Chennai passed an order dated 13.04.2017 directing the petitioner to pay a sum of Rs.31,64,085/- within a period of 15 days from the date of receipt of the copy of the order. Thereafter, the petitioner filed an appeal before the Appellate Tribunal in E.P.F.A. No.37 of 2017 challenging the order dated 13.04.2017 of the 1st respondent. The Appellate Tribunal, in the said appeal ordered interim stay on condition of deposit of 30% of the demand made in the order dated 13.04.2017 within one month. Against the said interim order of the Appellate Authority, the petitioner filed a Writ Petition in W.P. No.25382 of 2017 before this Court. This Court vide order dated 28.09.2017 disposed the said Writ petition



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confirming the interim order of the Appellate Authority by granting time till 10.10.2017 for complying with the order. The petitioner, thereafter, filed an application for extension of time for compliance of the conditional order along with condone delay petition before the Appellate Authority, i.e., the Central Government Industrial Tribunal-cum-Labour Court, Chennai. The said application was kept pending for want of Presiding Officer, whose post was vacant.

2.1. According to the petitioner, during the pendency of the extension petition, the petitioner made several payments to the tune of Rs.14,08,704/, which far exceeds the 30%, deposit ordered by the Appellate Authority. While so, the respondents took coercive steps to recover the amount, in spite of knowing that the appeal was kept pending for want of Presiding Officer. The petitioner was, therefore, constrained to file the Writ Petition in W.P. No.27547 of 2018 for a Writ of Mandamus forbearing the respondent from taking coercive steps till the office of the Presiding Officer of the Appellate Tribunal was filled up. While the said Writ Petition was pending, the Recovery Officer sent a Show Cause Notice dated 26.10.2018 to the petitioner directing him to appear before the



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Authority on 12.11.2018. The said Show Cause Notice was issued in pursuance of the Recovery Certificate dated 16.11.2017, which was not served on the petitioner. Therefore, the petitioner filed a Writ Petition in W.P. No.31049 of 2018 seeking to set aside the Show Cause Notice dated 26.10.2018 with further direction to serve the said Recovery Certificate dated 16.11.2017. During the pendency of the said Writ petitions, the copy of the Recovery Certificate dated 16.11.2017 was issued to the petitioner. On 29.11.2018, this Hon'ble Court passed a common order in W.P. Nos.27547 of 2018 and 31049 of 2018 directing the Central Government Industrial Tribunal-cum-Labour Court, Chennai to consider the petitioner's application for extension of time pending along with condone delay application within a period of 8 weeks from the date of receipt of the copy of the order. Thereafter, the Appellate Tribunal vide order dated 04.01.2019, dismissed the petitioner's appeal in EPFA No.37 of 2017. Hence, the petitioner has filed Writ Petition in W.P. No.5280 of 2019 challenging the order dismissing his appeal in EPFA No.37 of 2017 and the Writ petition in 5269 of 2019 against the Recovery Certificate dated 16.11.2017.



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3. The respondents have filed a common counter affidavit stating that the petitioner defaulted in remittance of provident fund dues from the date of its coverage under the Act i.e., 01.06.2015. The dues were assessed vide order dated 13.04.2017 determining the total dues to a sum of Rs.31,64,089/- payable for the period from 06/2015 to 06/2016. Various complaints were also received from the employees against the petitioner establishment for non-remittance of their PF dues. The petitioner establishment defaulted in remittance of Provident Fund dues for the subsequent period also from 07/2016 to 05/2022. The petitioner filed an appeal before the Central Government Industrial Tribunal-cum-Labour Court, Chennai against order dated 13.04.2017 of the 1st respondent. The Appellate Tribunal, vide order dated 01.09.2017 passed a conditional order of stay directing the petitioner to deposit 30% of the demand within one month with further direction that on default, the appeal would stand dismissed. The petitioner challenged the said order dated 01.09.2017 before this Court in W.P. No.25832 of 2017 and this Court vide order dated 28.09.2017 confirmed the order of the Appellate Tribunal while granting time till 10.10.2017 to comply with the conditional order. The petitioner failed to comply with the direction of this Court. Hence the



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Authority proceeded with further action for recovery of dues. The petitioner, aggrieved by the recovery order, issued legal notice dated 14.03.2018. The said legal notice was suitably replied by the respondents directing the petitioner to remit the balance dues immediately to avoid further recovery proceedings. According to the respondent, by suppressing the order of this Court, the petitioner filed for extension of time before the Appellate Tribunal, which, vide order dated 04.01.2019, dismissed the appeal with adverse remarks against the petitioner's bonafides. The respondent stated that having obtained extension of time before this Court, it was not open to the petitioner to seek further extension of time before the Appellate Tribunal. The respondent further stated that the petitioner agreed to the dues and cannot challenge the order passed by the Appellate Tribunal.

4. The learned counsel appearing for the petitioner submitted that the Appellate Tribunal failed to consider that the petitioner had approached this Court vide W.P. Nos.27547 of 2018 and 31049 of 2018, wherein directions were issued to the Appellate Tribunal to consider the application for extension of time as well as the condone delay application. The



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learned counsel further submitted that the Appellate Tribunal ought to have considered the said order before dismissing the application on the ground of non-payment of 30% of the demand. The learned counsel submitted that the Appellate Tribunal failed to note that the petitioner had remitted 30% of the amount to the tune of Rs.9,03,950.74 and the same was acknowledged by the respondents vide a communication letter dated 09.11.2018. The learned counsel further submitted that the Appellate Authority should have considered the aforesaid facts and should have extended the time and condoned the delay as prayed for.

5. The learned counsel for the respondents submitted that the petitioner, in spite of the opportunity given to him by this Court vide order in W.P. No.25832 of 2017 dated 28.09.2017, to remit the amount within 10 days, failed to adhere and comply with the same and therefore, the Appellate Authority had rightly dismissed the appeal.

6. Heard both sides and perused the entire materials available on record.



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7. It is no doubt true that this Court in W.P.No.25832 of 2017 vide order dated 28.09.2017, directed the petitioner to make the conditional deposit of 30% of the demand amount on or before 10.10.2017. The petitioner did not comply with the same, but filed the extension petition and condone delay petition before the Appellate Tribunal, which was kept pending for the want of Presiding Officer. As the petitioner apprehended further action would be taken, he filed W.P.No.27547 of 2018 for mandamus forbearing the respondent from taking coercive action in pursuance of the order dated 13.04.2017, till the Presiding Officer was appointed to the Appellate Tribunal. The petitioner also filed a writ petition in W.P.No.31049 of 2018, challenging the show cause notice dated 26.10.2016, calling for explanation against warrant of arrest. In the affidavit filed in support of the said writ petitions, the petitioner categorically stated that he remitted the conditional deposit of 30% on several occasions. This Court vide the common order dated 29.11.2018 passed the following order in the said writ petitions.

“5. In view of the aforesaid facts and circumstances and considering the prayer in the writ petitions, without going into the merits of the case, this



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Court is inclined to direct the Central Government Industrial Tribunal cum Labour Court (Chennai Bench) to consider the petitioner's application for extension of time, pending along with the condone delay application, if it is otherwise in order, and pass orders within a period of eight weeks from the date of receipt of a copy of this order. Till such time , the impugned show cause notice passed by the Recovery Officer shall be kept in abeyance.”

8. It is seen from the impugned order that the Appellate Tribunal in the impugned order did not consider the aforesaid order of this Court even though a specific direction was issued to it to consider the petitioner's application for extension of time along with the condone delay application. The Appellate Tribunal rejected the petitioner's submission that conditional deposit of 30% was already deposited by him by merely stating that no supportive documents were filed. It is seen from the additional documents filed in W.P.Nos.27547 and 31049 of 2018 that the payment of 30% amount by the petitioner was acknowledged by the EPF organisation



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vide letter dated 09.11.2018. The respondent does not dispute the said documents. The fact that the respondent did not deny the payment made by the petitioner itself shows that there was no dispute regarding the payment of the amount and the letter dated 09.11.2018 is proof of the same. In my view the impugned order cannot be sustained as the Appellate Authority has not only not considered the common order of this Court in W.P.Nos.27547 and 31049 of 2018 dated 29.11.2018 but also the payment of 30% conditional deposit made by the petitioner. The petitioner has produced the acknowledgment letter of the respondent dated 09.11.2018, acknowledging the receipt of Rs.9,03,950.74/-.

9. I am therefore of the view that the impugned order dated 04.01.2019 in EPFA No.37 of 2017 is unsustainable and the same is set aside. A direction is issued to the Appellate Tribunal to dispose the petitioner's appeal on merits within a period of six months from the date of receipt of a copy of this order. It is submitted by both the learned counsels that there is no Presiding Officer for the Appellate Tribunal and therefore extended time of six months is granted to dispose of the appeal. As the order of the Appellate Tribunal is set aside, the Recovery Certificate



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No.CHN2/CC/21/TN/1349532/Enf/Regl/2017 dated 16.11.2017, which is only a consequential order is also set aside.

10. With the above directions, both the Writ Petitions are allowed.

There shall be no order as to costs. Consequently, the connected Miscellaneous Petitions are closed.

04.01.2024

Internet : Yes
Index:Yes/No
Neutral Citation:Yes/No
mjs

N. MALA.J.,

(mjs)

To

1. The Assistant Provident Fund Commissioner
(C & R) Chennai
Employees Provident Fund Organisation,
Regional Office: 37, Royapettah High Road,
Chennai-600 014.

2. The Asst. Provident Fund Commissioner (Recovery)
Employees Provident Fund Organisation,
Regional Office: 37, Royapettah High Road,
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