



W.A.No.1070 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.04.2024

CORAM

**THE HON'BLE MRS. JUSTICE J.NISHA BANU
AND
THE HON'BLE MR. JUSTICE P.DHANABAL**

**W.A.No.1070 of 2024
and CMP.No.7692 of 2024**

The Commissioner,
Chengalpattu Municipality,
Chengalpattu.

... Petitioner/appellant

Vs.

The Regional Provident Fund Commissioner-I,
Employees Provident Fund Organization, Regional Office,
3, Rajaji Salai, Tambaram,
Chennai 600 0145.

...Respondents/Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters patent against the order passed by this Court dated 12.10.2023 made in W.P.No.28848 of 2023 on the file of this court.

For Appellant : Mr.P.Srinivas

For Respondents : Mr.R.Thirunavukarasu



W.A.No.1070 of 2024

J U D G M E N T

(Judgment of the Court was made by J.Nisha Banu.)

This appeal has been preferred by Chengalpattu Municipality, as against the order of the learned single Judge, dated 12.10.2023, dismissing the writ petition, whereby the learned Single Judge held that the Writ Petitioners failed to deposit 35% of the Award amount.

2. Mr.P.Srinivas, learned Standing Counsel, appearing for the appellant Municipality would submit that the quantum of EPF has not been determined by Regional PF Commissioner and that the total number of employees is also under dispute. He would further submit that the entire PF amount has been taken based on the employee record and the amount has been determined by the authority and issued final order under Section 7 (A) of the Act.

3. Aggrieved over the decision of the Regional Provident Fund Commissioner-I/respondent, appeals were filed by the appellant appellant herein before the Employees' Provident Fund Appellate Tribunal.



W.A.No.1070 of 2024

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4. The Tribunal, after hearing the parties, passed a conditional order that the appeals would be entertained on deposit of 30% of the amount determined by the authority under Section 7 (A) of the Act.

5. Since the amount determined was not paid, the Tribunal dismissed the appeals on the ground of non-compliance of the conditional order.

6. Challenging the said orders, Writ Petitions were filed and the learned single Judge, by a common order, dated 12.10.2023, has dismissed W.P.Nos.28738 etc batch of cases. The learned Single Judge held that the appeals filed before the Appellate Tribunal along with waiver petitions mandated under Section 7(O) of the Act; though the said waiver petitions were considered by the Tribunal directing the writ petitioners/Municipality to deposit 35% of the Award amount, they did not comply with the orders, therefore, the dismissal order passed by the Appellate Tribunal is perfectly in order.



W.A.No.1070 of 2024

WEB COPY

7. The learned Standing Counsel appearing for the appellant would submit that the Municipality is now willing to deposit the amount of 30% as ordered by the Tribunal and that they have to pay the balance amount alone, as already a sum of Rs.90,95,119/- has been paid, out of Rs.1,64,95,590/- payable in terms of the orders of the Tribunal.

8. Per contra, Mr.R.Thirunavukkarasu, learned counsel for the respondent EPFO, has drawn the attention of this Court to a decision of this Court in W.A.No.765 of 2023, dated 29.03.2023, and also another decision in W.A.No.370 of 2020, dated 10.07.2023, to contend that in view of non-compliance of the interim order passed by the Tribunal, the Tribunal was right in rejecting the appeals.

9. The learned counsel for EPFO would further submit that this Court has passed an order holding that it is the duty on the part of the Municipality to deposit the entire amount with the respondent EPFO and that any amount payable by the contractors can be recovered from the said contractors.



W.A.No.1070 of 2024

WEB COPY

10. The learned counsel for the respondent-EPFO also drew the attention of this Court to the proceedings of Commissioner of Municipal Administration addressed to the Commissioners of Tiruchirapalli, Tambaram and Avadi Municipal Corporations to the effect that the Corporations are to comply with the directions of the Court and that EPFO amount need to be paid periodically.

11. Heard both sides and perused the records.

12. The issue before this Court is, if the condition precedent, imposed in the orders of waiver petitions, is not complied with, whether the Tribunal is justified in dismissing the appeals. Though we agree with the contention of respondent-EPFO that the Tribunal is empowered to dismiss the appeals when there is non-compliance of the orders, which is a condition precedent, in the appellate stage, the Municipality is willing to deposit the amount, as ordered by the Tribunal. Therefore, in the interest of justice, we are of the considered view that an opportunity could be given to the Municipality to raise their grounds in respect of applicability of EPF Act, determination of amount etc.



W.A.No.1070 of 2024

WEB COPY

13. It is a matter of records that an order has been passed by the Appellate Tribunal in Appeal No.75 of 2020, dismissing the appeal on 02.08.2023. Further, the interim order dated 11.05.2022 was passed by the Tribunal directing the appellant/Municipality to deposit 30% of the award amount. The Respondent-authority determined the amount as early as on 31.12.2019 and now almost four years have gone by.

14. Though technically we could have confirmed the order of the Tribunal, in order to give an opportunity to the appellant Municipality, we direct the appellant Municipality to deposit a sum of Rs.1,64,95,590/- less the amount already paid, which they are willing to pay forthwith.

15. The learned Standing Counsel appearing for the appellant submitted that he would instruct the appellant Municipality to deposit the above said amount within a period of one week from the date of receipt of this order.



W.A.No.1070 of 2024

WEB COPY

16. This amount of recovery is only an interim arrangement and without prejudice to the rights of both the parties before the Tribunal. We expect the Tribunal to take up the matter on day-day basis by not adjourning the matter beyond seven working days at any point of time and render a finding within six months from the date of receipt of this order. We also expect the appellant Municipality to depute an exclusive person, who is well versed with the subject, to assist the Court/Tribunal and cooperate with the Tribunal to take a decision within the time stipulated supra. It is open for the parties to avail all legal and factual pleas available to them before the Tribunal, including locus.

17. Writ Appeal is disposed of accordingly. No costs. Consequently, the connected miscellaneous petition is closed.

(J.N.B,J.) (P.D.B., J.)

12.04.2024

Index : Yes / No
Internet : Yes/No
Speaking order : Non-speaking order
Neutral Citation :Yes/No

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W.A.No.1070 of 2024

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and
P.DHANABAL, J.

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To
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