IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.06.2024

PRONOUNCED ON : 27.06.2024

CORAM:

THE HONOURABLE Dr. JUSTICE D. NAGARJUN

W.P.No.12788 of 2021
and
WMP.No.13592 of 2021

The Kilvelur Primary Agricultural
Cooperative Credit Society Ltd.,
Kilvelur (Po)
Nagapattinam (Dt)
Pin:611 104. ...Petitioner

-Vs-

The Assistant Provident Fund Commissioner
Employees Provident Fund Organisation
Sub-Regional Office
No.18, Sree Complex
Madurai Road
Truchirapalli 620 008. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, Writ of Certiorarified Mandamus, calling for the records of the respondent relating to his orders No.TN/SRO-TRY/PDC/C-33/11236/14B PROC/2014 dated 25.07.2014 and TN/SRO-TRY/PDC/C-33/11236/7Q PROC/2014 dated 25.07.2014 and also of the Employees Provident Fund, Appellate Tribunal, Chennai in EPFA No.438 of 2017 dated 29.03.2021 in so far as they relate to levy of penal damages and interest on the amount of wage revision arrears invested as presents to the employees and quash all the orders.

For Petitioner	:	Mr.P.Anbarasan
For Respondents	:	Mr.M.Palanimuthu

ORDER

This Writ Petition is filed seeking to Writ of Certiorarified Mandamus to quash the orders No.TN/SRO-TRY/PDC/C-33/11236/14B PROC/2014 dated

25.07.2014 and also the Employees Provident Fund, Appellate Tribunal, Chennai, in EPFA.No.438 of 2017 dated 29.03.2021.

2. The brief facts that are necessary for disposal of this Writ Petition are as follows:

i) The petitioner is a Cooperative Society registered under the Tamil Nadu Cooperative Societies Act, 1983, in the year 1992-1993 and it had only 7 employees in its establishment. Thereafter, the Society was having 23 employees as on date of filing of this Writ Petition, i.e., in the year 2021. However, the petitioner Cooperative Society was wrongly brought under the purview of the Employees Provident Fund Act.

ii) The State Government has appointed a Commission to go into the wage revision of the employees of all Primary Agricultural Cooperative Credit Societies in Tamil Nadu and based on the recommendation of the Commission, the said Commission revised the wages of their employees in GO.(Ms).No.189, Cooperation, Food and Consumer Protection Department dated 17.11.2009. As per the said GO.(Ms).No.189, wage revision arrears was given retrospectively from

01.04.2008 and that the arrears of the wages were ordered to be credited to the Provident Fund account of the employees.

iii) In pursuance of the said G.O.(Ms).No.189, the Cooperative Society entered into a settlement under Section 12 (3) of the Industrial Disputes Act, 1947, and the employees of the Society expressed their willingness to deposit the adhoc payment of the wage revision arrears from April 2008 to March 2010 in the Provident Fund Account. Accordingly, the wage revision arrears of 15 employees for the period commencing from April 2008 to March 2010 amounting to Rs.3,89,434/- were remitted in the Provident Fund account No.TN.11236 with the respondent on 28.04.2010.

iv) The respondent has issued a notice dated 14.03.2014 stating that there were certain remittances for the period from 01.04.1996 to 13.03.2014 which were deposited belatedly and thereby, in respect of those remittances the Cooperative Society became liable to pay penal damages and interest of Rs.3,04,486/-. The petitioner Society has given a reply dated 30.05.2014 stating that the said amount credited were the wage revision arrears which the employer remitted into the Provident Fund Account for the future benefit of the employees. However, the respondent has passed the impugned orders No.TN/SRO/TRY/PDC/C-33/11236/14B PROC/2014 dated 25.07.2014 directing to pay Rs.2,08,086/- towards penal damages under Section 14B of the Act and Rs.93,386/- towards interest under Section 7 (Q) of the Act respectively. Thereby, directed the petitioner Society to remit in all an amount of Rs.3,01,472/-. Aggrieved by the same, the present Writ Petition is filed before this Court.

3. The respondent has filed a counter affidavit stating that the petitioner Society has remitted dues as well as administrative charges belatedly for the period from April 2008 to October 2013, thereby rendering the petitioner liable for penal damages on the amount remitted belatedly for the said period under Section 14B of the Act read with Para 32-A of the Employees' Provident Funds Scheme, 1952, Para 5 of the Employees' Pension Scheme, 1995 and Para 8A of the Employees' Deposit Linked Insurance Scheme, 1976 in addition to the penal interest under Section 7 Q of the Act.

4. It is mentioned in the counter affidavit that an enquiry was initiated on 14.03.2014 by summoning the petitioner for enquiry on 07.05.2014. During the course of enquiry on 11.06.2014, the Secretary appeared for enquiry and submitted a representation that the arrears payment was made to the employees for the period from 01.04.2008 to 31.03.2010 and subsequently the contributions were remitted in the respective Provident Fund accounts of the employees.

5. It is also mentioned in the counter affidavit that the petitioner Society has clarified that the enhanced wages has been given with effect from 01.04.2008 to 31.03.2010 and remitted on 28.04.2010. It is submitted further in the counter affidavit that since the petitioner Society has paid belatedly for the period commencing from 01.04.2008 to 31.03.2010, it has to pay damages and interest under Sections 14B and 7(Q).

6. Heard both sides and perused the records.

7. The Government of Tamil Nadu issued G.O.(Ms).No.189 dated 17.11.2009 and revised the wages of the employees of the Primary Agricultural

Cooperative Credit Society. According to which, the pay revision was granted with effect from 01.04.2008 and arrears of the wages were ordered to be paid in the Provident Fund of the account of the employees.

8. Based on the said wage revision, the arrears of 15 employees were drawn for the period commencing from April 2008 to March 2010 to the tune of Rs.3,89,434/- and remitted in the Provident Fund Account with the respondent on 28.04.2010. This remittance of wage revision arrears has created cause of action to the respondent to issue a notice on 14.03.2014 stating that remittances were made in respect of the arrears for the period commencing from 01.04.1996 to 13.03.2014 belatedly and thereby imposed penal damages and interest amounting to Rs.3,04,486/-. The petitioner Society has clarified by way of its reply that the said remittance was made on account of G.O(Ms).No.189 dated 17.11.2009 revising the salary retrospectively from 01.04.2008 and thereby there is no delay in remittance and therefore, the penal damages and interest cannot be levied. For which, the respondent did not agree and passed the impugned orders.

9. There is no complaint from the respondent in respect of regular remittances by the petitioner Society. The dispute was raised by the respondent is in respect of remittances of arrears of 15 employees for the period commencing from April 2008 to March 2010. The respondent has took the plea that since the remittance were made with effect from April 2008 to March 2010 and the said remittances were made only on 28.04.2010, there is abnormal delay and thereby, interest and damages were calculated.

10. This stand of the respondent is erroneous. It is quite surprising that the respondent authority failed to appreciate that the cause of action for the petitioner Society to draw the arrears for the period commencing from April 2008 to March 2010 arose only after issuance of G.O.(Ms).No.189 on 17.11.2009. If the GO (Ms).No.189 dated 17.11.2009 is not issued, there was no occasion for the petitioner society to draw the arrears and remit them to the respondent. Since the G.O.(Ms).No.189 dated 17.11.2009 has revised the salaries retrospectively from 01.04.2008, the petitioner society has drawn the arrears of the wages of the 15 employees and as per the GO deposited in the Provident Fund Account of the

petitioner with the respondent.

11. The learned counsel for the respondent has repeatedly submitted that because the remittance for the period commencing from April 2008 to March 2010, the said remittance was belatedly remitted and thereby the respondent is justified in levying of interest and damages. This submission is not acceptable. The remittances made by the petitioner on 28.04.2010 to the tune of Rs.3,89,434/- though belong to period from April 2008 to March 2010, they are not belated payment as they become due only on account of G.O.(Ms).No.189 which was issued on 17.11.2009. Not only that, the petitioner Society has calculated the arrears from 01.04.2008 to 31.03.2010 and paid the remittance on 28.04.2010. That means since the arrears were calculated up to 31st March 2010, even if the delay is to be calculated it can only difference was to 02.04.2010 until date of payment of remittances which is on 28.04.2010. However, any stretch of imagination, it cannot be interpreted that since the remittances made on 28.04.2010 is in respect of period from April 2008 to March 2010, they are belated payment.

12. In view of the above discussion, the impugned orders are totally

perverse without any factual basis and thereby, will not sustain at all. In view of the above discussion and on perusal of the records considering the facts and circumstances of the case, this Writ Petition is allowed and the impugned order is liable to be set aside. No costs. Consequently, connected Miscellaneous Petition is closed.

27.06.2024

Index:Yes/No
Internet:Yes/No
dna

<u>Dr.D. NAGARJUN,J.,</u>

dna

To

The Assistant Provident Fund Commissioner
Employees Provident Fund Organisation
Sub-Regional Office
No.18, Sree Complex
Madurai Road
Truchirapalli 620 008.

Pre-Delivery Order made in
<u>W.P.No.12788 of 2021</u>
<u>and</u>
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