



W.P.No.21205 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	05.09.2024
Pronounced on	25.09.2024

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.No.21205 of 2022 and
W.M.P.No.20196 of 2022

Tamil Nadu Grama Bank
(Successor in title to Pallavan Grama Bank)
6 Yercaud Road,
Hasthampatty,
Salem 536 007
Rep by its General Manager (Admin).

... Petitioner

Vs.

1.The Regional Provident Funds Commissioner - II,
Employees' Provident Fund Organisation,
Regional Office,
Steel Plant Road,
Thalavaipatti
Salem 636 302.

2.The General Secretary,
Tamil Nadu Grama Bank
Workers Union,
Regn.No.457/VDR, 3/12, M.K.Nagar,
Seelanaickenpatti, Salem 636 201.

(R2 impleaded as per order dated 22.02.2024
in W.M.P.No.23953 of 2022)

... Respondents



W.P.No.21205 of 2022

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Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records of the respondent in Proceedings No.CB/RO/SLM/COMP-I/21969/S-3/2021 and quash its order dated 06.06.2022.

For Petitioner : Mr.Anand Gopalan for
M/s.T.S.Gopalan & Co

For Respondents : Ms.R.Meenakshi, Standing Counsel
for R1
Ms.D.Geetha for R2

ORDER

The petitioner has filed this writ petition challenging the impugned order of the first respondent dated 06.06.2022 by proceedings No.CB/RO/SLM/COMP-I/21969/S-3/2021, through which, the first respondent has assessed a sum of Rs.10,29,26,330/- to be payable towards EPF contribution in respect of the employees covered under the Act.

2. Heard Mr.Anand Gopalan, learned counsel for the petitioner, Ms.R.Meenakshi, learned Standing Counsel for R1 and Ms.D.Geetha, learned counsel for R2 and perused the materials available on record.



W.P.No.21205 of 2022

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3. Mr.Anand Gopalan submitted that the petitioner institution itself is excluded from the applicability of the Employees' Provident Funds and Miscellaneous Provisions Act (hereinafter referred to as "the Act") and hence, the very assessment in respect of the petitioner's institution itself is illegal. Section 16(1)(c) of the Act, would state that the establishment set up under any Central, Provincial or State Act and whose employees are entitled to the benefits of contributory provident fund or old age pension in accordance with any scheme or rule framed under that Act governing such benefits, would not be covered under the Act. So, it is submitted by the learned counsel for the petitioner that the employees of the petitioner's institution are only covered under the Regional Rural Banks Act, 1976 and in terms of Section 30 of that Act. The petitioner framed their own regulation in respect of the provident fund and hence, they will not come under the purview of the said Act.

4. However, the counter argument of Ms.R.Meenakshi, learned



W.P.No.21205 of 2022

Standing Counsel for the first respondent is that the above issue has already been dealt by the Hon'ble Supreme Court and the position has been settled in ***Pawan Hans Ltd. Vs. Aviation Karmachari Sanghatana*** reported in ***(2020) 13 SCC 506***, by holding that even when if the institution has got its own scheme by their own regulations or rules, they will be applicable only in respect of the employees under the Scheme, but do not fall under the scheme of the Act and hence, the petitioner cannot seek shelter under Section 16(1)(c) of the Act.

5. Mr.Anand Gopalan submitted that only if the institution is covered under the Act, the question of exemption would arise and the petitioner would be obligated to apply for exemption and get an order in that regard. He further submitted that the Central Government in exercise of powers conferred by Section 5 and 7(1) of the Act, amended the Employees Fund Scheme, 1952 by substituting in the notification dated 18.12.1965 the expression "*banks other than the nationalised banks established under any Central or State Act*" in the place of "*the banks doing business in one State or Union Territory and having no*



W.P.No.21205 of 2022

departments or branches outside that State or Union Territory", which
was published in the Gazette dated 09.03.2000.

6. The following judgments have been cited on behalf of the petitioner:

(i) The decision of this Court in the case of ***Bharat Overseas Bank Ltd., Chennai, Vs. Government of India and Others, reported in 2008 SCC Online Mad 1299;***

(ii) The decision of the Hon'ble Supreme Court in the case of ***Yeshwant Gramin Shikshan Sanstha Vs. Assistant Provident Fund Commissioner and others, reported in (2017) 5 SCC 579;***

(iii) The decision of the Hon'ble Supreme Court in the case of ***Pawan Hans Ltd. and Others Vs. Aviation Karmachari Sanghatana and Others, reported in (2020) 13 SCC 506;***

(iv) The decision of the Hon'ble Supreme Court in the case of ***Maharashtra Chess Association Vs. Union of India, reported in (2020) 13 SCC 285.***

7. The further contention of the learned counsel for the petitioner



W.P.No.21205 of 2022

is that by virtue of the judgment of the Division Bench of this Court held in ***Bharat Overseas Bank Ltd., Chennai, Vs. Government of India and Others***, the notification including the petitioner bank under the scheme has been quashed and hence, the employees' provident fund is not applicable to the petitioner's Bank.

8. Ms.D.Geetha, learned counsel for the second respondent submitted that the petitioner Bank came under the coverage of EPF Scheme voluntarily in view of the regulation 71 of the erstwhile Pallavan Gram Bank (officers and employees). Hence, the petitioner cannot claim that he is exempted from the applicability of the Act. So far as the exemption under Section 16(c) of the Act is concerned, it is available only when conditions stated therein are fulfilled. They are (i) the establishment should be set up under any Central, Provincial or State Act (ii) And its employees are entitled to the benefits of contributory provident fund or old age pension in accordance with any scheme or rule framed under that Act governing such benefits. But the said criteria has not been fulfilled in the petitioner's case. There are 625 persons who are



W.P.No.21205 of 2022

not given with the benefit of the scheme of the bank, but they come under the definition of '*employee*' under the Act. So they have to be covered under the benefit of the Act. In the judgment of the Division Bench held in W.P.No.15728 of 2000 dated 24.03.2008, the notification dated 15.02.2000 has been quashed and hence that has got no relevance to the case in hand. Hence the above case has got no application to the facts of the case. It is further submitted that the impugned order of assessment has been made under Section 7A of the Act and if the petitioner is aggrieved, his remedy would lie by way of preferring an appeal before the Tribunal and not by way of preferring this Writ Petition.

Discussion:

9. Before adverting into the merits of the legal issue raised in this Writ Petition, the primary objection as to the maintainability of the Writ Petition has to be answered. No doubt, the impugned order has been passed for determining the employees provident fund arrears payable by the petitioner under Section 7A of the Act. Hence, it is correct for the



W.P.No.21205 of 2022

second respondent to state that the rightful course open to the petitioner is by preferring an appeal and not by way of filing Writ Petition. But the petitioner contended that he has raised the legal point which would go to the root of the matter and hence, he has preferred to file this Writ Petition.

10. The argument of the petitioner is that the Tamil Nadu Grama Bank will not come under the purview of the Act and there is a lack of competence and jurisdiction on the part of the first respondent authority to pass the impugned order. No doubt the jurisdiction of this Court under Article 226 of the Constitution of India is equitable and discretionary and the above power has to be invoked by the High Courts to uphold the rule and law. In this regard, it is appropriate to cite the judgment of the Constitution Bench of the Hon'ble Supreme Court held in the case of ***A.V.Venkateswaran Vs. Ramchand Sobhraj Wadhwani***. In the said case, *it is held that it is not possible and desirable to lay down inflexible rules which should be applied to the rigidity in every case comes before the High Court.*



W.P.No.21205 of 2022

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11. As the petitioner in the instant case has raised a legal plea stating that the first respondent authority has abused his power and determined the employees provident fund dues on an institution which is excluded under the coverage. As the petitioner has touched upon the root of the validity of the inclusion of the petitioner's institution under the Act, settling the above point in accordance with law would have the direct impact upon the impugned order. Hence, I feel it is appropriate to deal with the contentions raised by the petitioner by invoking the discretionary jurisdiction vested with this Court.

12. In fact it is claimed by the petitioner that the notification which was issued to include the Bank under the Employees Provident Fund Scheme itself has been quashed by virtue of a judgment of the Division Bench of this Court held in the case of ***Bharat Overseas Bank Ltd., Chennai, Vs. Government of India and Others***. Even though the learned counsel for the petitioner raised the above contention before the first



W.P.No.21205 of 2022

respondent authority, the above point was not argued. Even in the Writ Petition, it has been stated that regulation 71 of the Service Regulations provided that an Officer or employee who has satisfied with the eligibility criteria, shall be a member of the Employees' Provident Fund and the contribution to the provident fund by the officer or employee and the bank shall be in accordance with the provisions of the said Act.

13. It is further clarified that the above provision would mean the voluntary coverage of the institution under the Act. Having said that in the Writ Petition, now the petitioner wishes to place reliance on the judgment of the Division Bench of this Court in order to take a different plea that the notification which covers the petitioner's Bank itself was quashed. In fact, the notification in GSR No.170 dated 20.01.1966 would include all the banks doing business in one State or Union Territory and having no departments or branches outside the State or Union Territory.

14. But the controversial notification brought before the Division Bench of this Court in *Bharat Overseas Bank Ltd., Chennai, Vs.*



W.P.No.21205 of 2022

Government of India and Others, is the notification dated 09.03.2000.

The above notification brought the amendment by amending the words "*the banks doing business in one State or Union Territory and having no departments or branches outside the State or Union Territory*", in the earlier notification by substituting the expressions "*banks other than the nationalised bank established under the Tamil Nadu Central or State Act*". The said notification was challenged by various Banks which had branches in more than one State and also by the Union.

15. Originally when the notification of the year 1966 was issued, it had the effect of covering all the Banks doing business in one State or the Union Territory, but did not have departments or branches outside the State or Union Territory. But in view of the amendment dated 09.03.2000, the Act is made applicable only for those banks other than the nationalised banks established under the Central or State Act.

16. It was contended that the above notification is discriminatory in nature without any reasonable basis and hence, it is unconstitutional. By accepting the contention of the petitioner bank therein, the Division



W.P.No.21205 of 2022

Bench has struck down the notification. In view of the above order, the amendment got struck down and the position *ante* amendment got restored. It means that all the Banks whether nationalised or not but doing business in one State or Union Territory and no departments or branches outside the State or Union Territory continue to be covered under the Act.

17. Admittedly the petitioner Bank Tamil Nadu Grama Bank, is by the name of it can have his business inside the State of Tamil Nadu and it does not have any branches outside the State. So the petitioner Bank is well within the coverage of the Act. Hence, the argument that the petitioner Bank has been excluded in view of the judgment of the Division Bench held in the case of ***Bharat Overseas Bank Ltd., Chennai, Vs. Government of India and Others,*** is not acceptable. At the risk of repetition, it is reiterated that the service regulations of the petitioner Bank itself states about the voluntary coverage. Hence, both by virtue of Government notification and the petitioner's own service regulations will make it very much covered under the ambit of the said



W.P.No.21205 of 2022

Act.

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18. The further argument of the petitioner is that the petitioner Bank has got its own pension scheme and the hence, the employees of the Bank are entitled to the benefit of the above scheme and it is exempted from the application of the Act.

19. Ms.R.Meenakshi, learned Standing Counsel for the first respondent made an earnest effort to make out difference between the concepts of '*exclusion*' and '*exemption*'. The word '*exclusion*' would denote something completely falling out of the very coverage. '*Exemption*' is permission given to go out of coverage by special notification, as prescribed under Section 17 of the Act. If any establishment is said to have got a special scheme or fund to cover its employees, it can seek exemption under Section 17 by following the due procedure prescribed therein. Some of the situations which would clarify exemption can be seen under Section 16 of the Act. The word "*exempted employee*" or "*exempted establishment*" is defined under Section 2 (ff)



W.P.No.21205 of 2022

and 2(ff) of the Act. For a better clarification, the above definition is extracted below:

“Section 2(ff) - “exempted employee” means an employee to whom a Scheme [or the Insurance Scheme, as the case may be,] would, but for the exemption granted under Section 17, have applied.

Section 2(fff) - “exempted [establishment]” means [an establishment] in respect of which an exemption has been granted under section 17 from the operation of all or any of the provisions of any Scheme [or the Insurance Scheme, as the case may be], whether such exemption has been granted to the [establishment] as such or to any person or class of persons employed therein]”

20. In some of the situations, it would also exempt the applicability of the Act under Section 16 of the Act. It is seen as below:

*"16. Act not to apply to certain establishments --
This Act shall not apply--*

(a) to any establishment registered under the Co-operative Societies Act, 1912, (2 of 1912), or under any other law for the time being in force in any State relating to Co-operative Societies, employing less than fifty persons and working without the aid of power; or



W.P.No.21205 of 2022

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(b) to any other establishment belonging to or under the control of the Central Government or a State Government and whose employees are entitled to the benefit of contributory Provident Fund or old age pension in accordance with any Scheme or rule framed by the Central Government or the State Government governing such benefits; or

(c) to any other establishment set up under any Central, Provincial or State Act and whose employees are entitled to the benefits of contributory provident fund or old age pension in accordance with any Scheme or rule framed under that Act governing such benefits."

21. The petitioner harps upon Section 16 (c) of the Act and claimed that the petitioner Bank has got its own contributory provident fund and old age pension scheme and hence, the Act is not applicable to the same. The petitioner has not got any exemption in view of the above reason. Even though the petitioner Bank has got its own pension scheme, the employees for whose benefit, the impugned proceedings were passed, did not come under the scheme of the bank. Even in the impugned order, it is stated that the petitioner's employees were not covered under the



W.P.No.21205 of 2022

Bank's pension scheme as well. The position has been well clarified by the Hon'ble Supreme Court in the case of ***Pawan Hans Ltd. Vs. Aviation Karmachari Sanghatana and Others.*** In the said case, the Hon'ble Supreme Court has held that even when the institution has got its own scheme by their own regulations or rules, they will be applicable only in respect of the employees under the Scheme.

22. Since the word employed under Section 16(c) states about those employees who are entitled to the benefit of contributory provident fund and old age pension scheme, for the rest of the employees who did not come under the scheme, the Employees' Provident Fund and Miscellaneous Funds Act only can be applicable.

23. In view of the above discussion, the following inescapable inferences can be made:

(i) The petitioner bank is very much covered under the ambit of the Act.

(ii) If the petitioner Bank has got a special scheme, it is applicable



W.P.No.21205 of 2022

only for the persons who have already been covered under the same.

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(iii) The first respondent appropriate authority has rightly applied the above inferences by rightly understanding the legal submissions made by the parties and held that 625 employees of the petitioner Bank who are not covered under the scheme of the bank, cannot be treated as exempted category under the Act and hence, the bank is liable to pay the EPF contribution dues determined in respect of those employees. Hence the impugned order does not require any interference.

24. In the result, this Writ Petition is **dismissed**. No costs. Consequently, connected miscellaneous petition is closed.

Index : Yes /No
Speaking / Non-speaking
Neutral Citation : Yes / No
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25.09.2024



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To



W.P.No.21205 of 2022

R.N.MANJULA, J.

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25.09.2024