



W.A.No.2552 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.09.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S. RAMESH
AND
THE HONOURABLE MR. JUSTICE C. KUMARAPPAN

W.A.No.2552 of 2023
and W.M.P.No.21510 of 2023

The Secretary,
M/s.Madrsa – Mazahirul Uloom,
Chettichavadi Post,
Salem – 12.

... Appellant

Vs.

1.The Assistant Provident Fund Commissioner (Compl),
Employees Provident Fund Organisation,
Sub Regional Office,
Sri Jayalakshmi Plaza, Anna Salai,
Swarnapuri, Salem – 4.

2.Regional Provident Fund Commissioner,
Employees Provident Fund Organization,
Sub Regional Officer,
Salem – 1.

... Respondents

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent Act,
praying to set aside the order passed in W.P.No.2016 of 2005 dated
01.06.2023.

For Appellant : Mrs.V.Srimathi



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For Respondents : Mr.Vishnu Ramu

JUDGMENT

(Judgment of the Court was made by *M.S.RAMESH, J.*)

When the appellant herein had earlier invoked Section 7-A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter called as 'the Act'), questioning the applicability of the provisions of the Act, the same came to be rejected by the Regional Provident Fund Commissioner, Salem, through his proceedings in TN/14687/ENF/SRO-SLM/, dated 26.12.1995. Thereafter, when the subsequent contributions to be made by the appellant was determined by the Authorities and summons were issued, he had challenged the same before the Employees' Provident Fund Organization, which came to be rejected on 21.12.2004. The challenge to this order of rejection in W.P.No.2016 of 2005 was also dismissed by the learned Single Judge on 01.06.2023, which order is assailed in this appeal.

2. The only ground raised by the appellant before us, is that the



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appellant establishment is entitled to claim exemption/exclusion under Section 16(2) of the Act. Earlier, when he had made a similar request for questioning the applicability of the provisions of the Act, the appropriate Authority had rejected his claim through the order dated 26.12.1995. When this order was challenged, the learned Single Judge had taken note of the earlier orders passed by the Writ Court in W.P.No.9629 of 1994 dated 02.12.2003, wherein, the recovery proceedings initiated by the Authorities, was rejected on the ground that the coverage to the establishment has been upheld in that order. This apart, perusal of the impugned order of the learned Single Judge would reflect that the Authority had taken cognizance of the fact that the claim of the appellant for immunity from the provisions of the Act, has been rejected on 26.12.1995 itself and therefore, his contention for exemption/exclusion under Section 16(2) was denied.

3. At this juncture, the learned counsel for the appellant placed reliance on a decision of the Division Bench of the Bombay High Court in the case of '**Reverend Father Agnelo Gracies Vs. Regional Provident Fund Commissioner For Maharashtra and Goa at Bombay**' reported in '**2005(1) Mh.L.J.**', to claim that the appellant/Madrassa is a place of study



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and would not fall under the ambit of an establishment.

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4. The claim of the appellant is based on a factual matrix, which he ought to have established when he had sought for immunity from the provisions of the Act in the proceedings under Section 7A of the Act, which culminated into passing of the final order dated 26.12.1995. Having failed to do so, it is now not open to him to canvass the applicability of the provisions to the Madrasa at the Writ Appeal stage. Above all, the appellant had challenged the order of the second respondent dated 26.12.1995 after 10 years, without assigning any valid or acceptable reasons and hence, his claim also deserves to be dismissed on the ground of delay and laches.

5. Accordingly, we do not find any infirmity in the order of the Authority, so also, in the findings of the learned Single Judge. When a final decision has already been taken in the case of the appellant with regard to his claim for immunity from the provisions of the Act, he would be estopped from making same claim before this Court.



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6. In the view of the above findings and observations, the Writ Appeal stands dismissed. No costs. Connected miscellaneous petition is closed.

[M.S.R., J] [C.K., J]
03.09.2024

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

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To

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Sub Regional Office,
Sri Jayalakshmi Plaza, Anna Salai,
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2.Regional Provident Fund Commissioner,
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