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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on 12.06.2024

Order delivered on 31.07.2024

CORAM

THE HONOURABLE Mrs. JUSTICE J.NISHA BANU
and
THE HONOURABLE Mr.JUSTICE.P.DHANABAL

W.A.No.3268 of 2023
and
C.M.P.No.26615 of 2023

M/s. Pachamuthu College of Arts &
Science for Women,
rep. by its Chairman,
Krishnagiri Main Road,
Dharmapuri - 636 701 ....Appellant

Vs

1. The Presiding Officer,
   Employees Provident Fund Appellate Tribunal,
   Scope Minar Core-II,
   4th Floor, Lakshmi Nagar,
   New Delhi - 110 092

2. The Assistant PF Commissioner,
   Sub-Regional Office,
   Employees Provident Fund Organisation,
   S.J.Plaza, Swarnapuri,
   Salem - 636 004. ..Respondents.

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Prayer: Writ Appeal filed under Clause 15 of Letter Patent as against the order passed in W.P.No.3974 of 2015 dated 25.08.2023.

For Appellant	: Mr.S.Ravindran, Senior Counsel for Mr.S.Bazeer Ahamed
For Respondents	: R1-Court Mrs.R.Meenakshi for R2

JUDGMENT

(The judgment of this Court was delivered by J.Nisha Banu,J.)

This writ appeal has been filed challenging the order passed in W.P.No.3974 of 2015, by which, the learned Judge, set aside the order dated 16.10.2014, passed by the first respondent/Appellate Tribunal stating that the PF Commissioner/2nd respondent herein has rightly assessed the PF dues payable by the appellant herein but the Tribunal/first respondent had mechanically allowed the appeal filed by the appellant herein.

2. The case of the appellant is that though the appellant is covered under the provisions of EPF and MP Act only from 01.06.2011, the 2nd respondent determined the contribution from the appellant from August, 2008 onwards till November, 2013 at Rs.18,98,552/- as additional contribution payable by the

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appellant in terms of its order dated 25.02.2014, confirmed by order dated 25.07.2014 in the review petition filed by the appellant. The appellant challenged the above said orders by filing appeal before the 1st respondent which was numbered as ATA.No.720(13) of 2014. By order dated 16.10.2014, the appeal filed by the appellant was allowed by the 1st respondent. The 2nd respondent, challenged the said order by filing a writ petition before this Court in W.P.No.3974 of 2015. By order dated 25.08.2023, the learned single Judge allowed the writ petition filed by the 2nd respondent. Hence, the present appeal.

3. (i) Learned counsel for the appellant would state that the impugned order suffers from non-application of mind and without any analysis of evidence on record available with the respondent. Learned counsel would further state that during August, 2008 to September, 2009, the strength of the employees as disclosed in the annexure to the order is less than 20, therefore, the Act is not applicable. In the impugned order, the identification of the employees or the salary of each employee is not determined but an adhoc determination is made which is unlawful.

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(ii) Learned counsel would further state the the impugned order is contrary to the decisions of the Hon'ble Supreme Court and the Division Bench of this Court reported in ***2008(5) SCC 756 (Himachal Pradesh State Forest Corporation Vs RPFC),*** wherein it has been held as follows:

> *"The amount due from the corporation will be determined only with respect to those employees who are identifiable and whose entitlement can be proved on the evidence."*

(iii) Learned counsel would further state that in the circular of EPFO dated 14.02.2020 , it is stated that the Assessing officers shall record reasons in file, on the basis of evidence available on record, regarding existence of *prima facie* case of default or of an applicability dispute, before initiating process u/s 7A.

(v) Learned counsel would further state that since the order of the authority is non-est in law, the Appellate Tribunal, by order dated 16.10.2014, rightly allowed the appeal filed by the appellant by holding that "the power given to the commissioner to decide not abstract questions of law but only to

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determine actual concrete differences in payment of contribution and other dues by identifying the workmen".

(vi) Learned counsel would further state that the learned single Judge has allowed the writ petition filed by EPFO without reference to any of the above legal principles by merely stating that the Tribunal mechanically allowed the appeal on the ground that the management was not given an opportunity to produce the documents which is not in fact the contention of the management.

(vii) Learned counsel would further state that under Section 7-I of the EPF and Miscellaneous Act, appeal is maintainable against an order passed under Section 7B of the said Act. He would further state that the appellant's appeal before the EPF Tribunal is not maintainable and without substance. No objection was raised in this regard in the appeal or before the learned single Judge. Thus, the order of the lower authority is non-est in law, without application of mind and without material evidence on record. Hence, he would pray to allow the appeal.

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4 (i) Per contra, the learned counsel appearing for the 2nd respondent/ contesting respondent would state that while verifying the records submitted by the appellant such as trust deed dated 24.11.2004, it was noticed that M/s.Pachamuthu Educational Trust runs a school viz., M/s. Pachamuthu Matriculation Hr. Secondary School at Dharmapuri, which is also covered under the Act with effect from 1.6.2006. The internal audit party of the 2nd respondent department had scrutinized the coverage proposal of M/s. Pachamuthu College of Arts and Science for Women, Dharmapuri on 17.09.2012 and observed that the coverage is incomplete and directed to examine the possibility of pre-ponement of coverage. Therefore, the Enforcement Officer was directed vide letter dated 18.10.2011, to verify the records and to submit a detailed report to finalize the date of coverage. An enquiry was initiated under Section 7A of the Act to decide the applicability and determination of dues and summon was issued to the employer on 21.05.2012 with relevant records. None appeared on 21.05.2013, thereafter, though it was posted for more than 10 dates, nobody appeared. Therefore, the Enforcement Officer visited the establishment on 18.09.2013, 6.11.2013, 03.01.2014 and 28.01.2014. The appellant employer produced the Original Attendance Register of the College, Salary statement duly signed by the

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employer and Income Tax Returns in Balance sheet for the period 2006 to 2012 to the Enforcement Officer and the same is admitted by the appellant.

(ii) Learned counsel would further state that the Enforcement Officer had submitted the dues report to the Assessing Authority on 10.02.2014. The Enforcement Officer has recommended to prepone the coverage date of M/s. Pachamuthu College of Arts and Science for Women from 01.06.2011 to 01.08.2008 under section 2A of the Act. M/s.Pachamuthu Matriculation School, Dharmapuri, run by the same trust was also covered under the Act from 01.06.2006.

(iii) Learned counsel would further state that the 2nd respondent preponed the date of coverage of college from 1.6.2011 to 1.8.2008 under Section 2A of the Act and assessed the dues for the period from August, 2008 to November, 2013 to the tune of Rs.32,80,947/- under Section 7A vide order dated 25.02.2014. This is the original order and this order is not challenged by the appellant. The balance amount to be paid by the employer for the period is amounting to Rs.18,98,552/-.

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(iv) Learned counsel would further state that the employer applied for review of the order under Section 7B of the Act for the reason that during the period of 7A inquiry, his representative could not produce the documents relevant for assessment of dues. The request of the appellant was considered and fresh enquiry was initiated. The Vice Chairman of the establishment attended the hearing and stated that all records are with Enforcement Officer. The enquiry was adjourned to several dates. Even though reasonable opportunities were given, the employer failed to produce the records in his review petition. Therefore, the authority concluded the review under Section 7B and confirmed the dues determined under section 7A of the Act. However, the appellant clandestinely filed an appeal before the 1st respondent in ATA No.720(13) 2014, challenging the review order filed under section 7B without challenging 7A order to escape from limitation.

(v) Learned counsel would further state that ample opportunities was given to the 2nd respondent but he remained absent during the inquiries after acceptance of the dues during inspection. The inquiry was conducted in a free and fair manner after affording opportunity to the appellant for more than 17 hearings in a span of 10 months. The intention of the authority is not to

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penalize the employer unnecessarily. It is the statutory provision in the Act to remit the Provident Fund dues at the rates prescribed and within the stipulated time, which will otherwise attract penal damages and interests. Considering all the aspects and after duly following the principles of natural justice, the order under section 7A dated 25.02.2012 has been passed. Therefore, he would pray to dismiss the appeal.

5. Heard the learned counsel for the appellant, the learned counsel appearing for the contesting 2nd respondent and perused the materials available on record.

6. M/s. Pachamuthu College of Arts & Science for Women is run by the Trust vide Trust Deed dated 24.11.2004. The said College started its functioning from 11.08.2008 vide copy of 1st Admission Register and is covered under the Employees Provident Fund & Miscellaneous Provisions Act, 1952, and the schemes framed thereunder with effect from 01.06.2011 provisionally and was allotted Code No.TN/SLM/90087 vide APFC letter dated 23.09.2011.

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7. While the 2nd respondent verified the records submitted by the employer, it was noticed that M/s.Pachamuthu Educational Trust runs a School viz., M/s. Pachamuthu Matriculation Hr.Secondary School at Dharmapuri which was also covered under the said Act with code No.CB/SLM/70483 with effect from 1.6.2006. The Enforcement Officer was directed to verify the records and submit a detailed report to finalize the date of coverage. Accordingly, the Enforcement Officer visited the establishments and the employer produced the original attendance register of the College, salary statement duly signed by the employer and Income Tax Returns in Balance sheet for the period 2006-2012 to the Enforcement Officer.

8. The dues are assessed based on the original attendance register and salary registers and statements duly signed by the employer and Income Tax Returns for the period August 2008 to November 2013 by the assessing authority under Section 7A of the Act. The report of the Enforcement Officer has been checked by the assessing authority and found that the dues tallied with the income and expenditure statement.

9. The 7A inquiry was conducted and finalised after giving reasonable

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opportunity to the establishment based on records. The Review Petition filed under Section 7B was also finalised based on records, after giving reasonable opportunity to the establishment. The dues payable by the establishment have been prepared on the basis of the records produced by the appellant College.

10. The documents produced would reveal that from the month of August 2008 onwards, the appellant College paid salary to its employees which is seen from the income tax returns. Only on verification of all the documents, the Enforcement Officer preponed the coverage to 01.08.2008 as contemplated under Section 2(A) of the Act. The 2nd respondent has rightly assessed the dues as Rs.32,80,947/- payable by the appellant College.

11. The dues payable by the appellant have been prepared only based on the records produced by them. The 2nd respondent determined the contribution from the appellant from August 2008 onwards till November 2013 at Rs.18,98,552/- as additional contribution payable by the appellant in terms of order dated 25.02.2014. The same was also confirmed in the review petition dated 25.07.2014. The appellant challenged the above two orders by filing appeal before the first respondent. However, the first respondent vide

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order dated 16.10.2014, allowed the appeal setting aside the order dated 25.07.2014 passed by the 2nd respondent.

12. The appellant was given ample opportunities but he remained absent during inquiries after acceptance of the dues during inspection. As per the report of the Enforcement Officer, the dues are tallying with the income and expenditure statement produced by the appellant. Thus, the order passed by the 2nd respondent is strictly in accordance with law.

13. We find that the Writ Court, after elaborately discussing all the factual and legal aspects of the case, had allowed the same, setting aside the proceedings dated 16.10.2014 of the 1st respondent. We find no grounds to interfere with the order dated 25.08.2023 passed in W.P.No.3974 of 2015. Accordingly, the Writ Appeal fails and the same stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(J.N.B.,J.) (P.D.B.,J.)
31.07.2024

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To

The Presiding Officer,
Employees Provident Fund Appellate Tribunal,
Scope Minar Core-II,
4th Floor, Lakshmi Nagar,
New Delhi - 110 092

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J. NISHA BANU, J.
and
P.DHANABAL,J.

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Pre-delivery order in
W.A.No.3268 of 2023

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