BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.10.2024

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

WP(MD)No.2039 of 2020
and
WMP(MD)Nos.1706, 1707 of 2020

Assistant Provident Fund Commissioner,
Office of the Regional Provident Fund Commissioner,
P.B.No.588, Sree Complex, 'D' Block,
No.18, Madurai Road, Tiruchirappalli.

.. Petitioner

v.

1.The Presiding Officer,
Employee's Provident Fund Appellate Tribunal,
Scope Minor, Core II, 4th Floor,
Lakshmi Nagar District Centre,
Lakshmi Nagar,
New Delhi.

2.M/s.Bharath Associates,
No.85, Sriramapuram,
Rayar Garden,
Srirangam,
Trichy District.
Rep. Through its Partner / Proprietor

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India seeking issuance of a Writ of Certiorari calling for the records relating to the order passed by the first respondent in A.T.A.No.440(13)2014, dated 13.08.2014 and quash the same.

For Petitioner : Mr.I.Pinaygash

For Respondents : No appearance

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ORDER

This writ petition is filed by the petitioner / Assistant Provident Fund Commissioner as against the order passed by the first respondent / Tribunal in ATA.No.440(13)2014, dated 13.08.2014, modifying the penalty imposed by the petitioner, vide proceedings dated 28.06.2013, u/s.14B of the Employees' Provident Fund and Misc. Provisions Act, 1952 [EPF Act].

2.The second respondent is an establishment covered under the EPF Act. With an allegation that the establishment has failed to pay the contribution as required u/s.6, 6A, 6C of the Act in time, the petitioner /

original authority has initiated proceedings u/s.14B of the EPF Act, by issuing summons and imposed penal damages to the tune of Rs.92,185/- u/s.14B and interest to the tune of Rs.71,463/- u/s.7Q of the EPF Act. This order was challenged by the second respondent / establishment before the first respondent / Tribunal and the Tribunal, by its order dated 13.08.2014, has set aside the order passed by the original authority and permitted the establishment to remit the outstanding revised determined amount in 36 monthly instalments. Aggrieved over the same, the present writ petition has been filed.

3.Learned Standing Counsel for the petitioner / original authority submitted that the penal damages has been imposed as per the guidelines in Para 32A of the EPF Scheme. However, the Tribunal, without any reasons, has interfered with the same. He further submitted that the second respondent / establishment has not made out any case for consideration, however, the Tribunal has mechanically passed this order. Therefore, the impugned order is liable to be set aside.

4.Though notice has been served on the second respondent / establishment, there is no representation for the second respondent.

5.This Court considered the submissions made by the petitioner's Counsel and perused the orders passed by the original authority and the appellate authority.

6.The appellate authority has set aside the order passed by the original authority, by holding that there was no *mens rea*, that the damages was imposed by the original authority without providing sufficient opportunity to the establishment and also in a mechanical manner by taking into account of the table as provided in Para 32A of the EPF Scheme.

7.The question with regard to *mens rea* is no longer *res integra*, inasmuch a Full Bench of this Court in ***Sun Pressing (P) Ltd and Others v. Presiding Officer and Others*** [***2024 (1) Writ L.R. 801***] has held that *mens rea* or *actus reus* is not an essential requirement or *sine quo non* for levying penalty under Section 14B of the Act. Therefore, this finding of the Tribunal lacks merit. However, before levying damages in terms of Section 14B of the Act, the authority is required to follow the principles of natural justice and to consider all the mitigating circumstances projected by the employer / establishment. The Full Bench further held that there should be proper application of mind, objectively, on the merits of the case and in any event, the authority cannot resort to the arithmetical calculation or for levying damages as per Para 32A of the Scheme, without considering the mitigating circumstances.

8.In the case on hand, the petitioner / original authority has initiated proceedings as against the second respondent / establishment, by issuing summons dated 30.04.2013 fixing the date of enquiry as 17.06.2013. However, there was no representation for the establishment on that date. Immediately thereafter, the original authority has proceeded with the proceedings and imposed the penalty to an extent of Rs.92,185/- together with interest to an extent of Rs.71,463/-, by order dated 28.06.2013. In other words, this order has been passed, without considering the establishment's case / mitigating circumstances, if any.

9.The power u/s.14B of the EPF Act is like a judicial power and therefore, a fair opportunity ought to have been provided by the original authority while imposing damages. Here, the authority proceeded u/s.14B and imposed the penalty without providing sufficient opportunity to the establishment.

10.This aspect was rightly considered by the Tribunal while interfering with the order, however, the Tribunal ought to have remanded the matter back to the original authority to pass orders, after providing an opportunity to the second respondent / establishment.

11.Therefore, the order passed by the first respondent / Tribunal dated 13.08.2014 is set aside and the matter is remitted back to the file of the petitioner. The petitioner / original authority shall issue notice to the second respondent / establishment and thereafter, pass appropriate orders, on merits and in accordance with law, after providing due opportunity of hearing.

Accordingly, this writ petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

28.10.2024

Index	:	Yes / No
NCC	:	Yes / No
Internet	:	Yes

gk

B.PUGALENDHI, J.

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