



W.P(MD) No.6965 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **08.04.2024**

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.(MD) No.6965 of 2024

and

W.M.P(MD)No.6487 of 2024

The Correspondent/Principal

M/s.The Chola International School,

Kasavazha Nadu Pudur,

Vilar to Chokkali Road,

Kandithampattu Post,

Thanjavur – 614904.

... Petitioner

Vs.

The Assistant Provident Fund Commissioner,

Employees Provident Fund Organisation,

P B No. 588, Sree Complex,

D Block, 18 Madurai Road,

Tiruchirappalli – 8.

... Respondent



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari calling for the records of the Respondent in Proceedings No.CB/TRY/ENF-D1/82498/7A Order/2023 and quash its order dated 16.11.2023 pending disposal of the writ petition.

For Petitioner : Mr.P.Raghathees
Senior Counsel
for Mr.T.S.Gopalan & Co.
For Respondent : Mr.I.Robert Chandrakumar
Standing counsel

ORDER

The petitioner has filed this Writ Petition seeking a Writ of Certiorari to quash the proceedings No.CB/TRY/ENF-D1/82498/7A Order/2023 of the respondent, dated 16.11.2023.

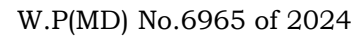


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2.The learned counsel for the petitioner submitted that the petitioner has been given with a demand to pay a sum of Rs.28,49,040/-. The petitioner claims that the above demand was made by the first respondent without taking into account the fact that the demand comprises of the undue contribution that has to be deleted, in respect of the employees who are not eligible to be brought under Section 2(f) of the Employees Provident Fund Scheme. However, the petitioner admits that the contribution of Rs.8,66,497/- in respect of those persons who are eligible to be covered under the Provident Fund Scheme. Even though the petitioner has admitted that the said amount of Rs.8,66,497/- has not been paid in view of his financial constraints, the same was not released. However, he had challenged only the rest of the demand made against him.

3.Mr.I.Robert Chandrakumar, learned standing counsel submitted that despite the petitioner has got statutory avenues for



4. It is further submitted that the petitioner was given time to file an affidavit in respect of the non-eligible employees also and the portion of the contribution that was demanded. As the petitioner could not file those affidavits within time, the impugned order has been passed and hence, it is liable to be quashed.

5. The petitioner has continuously participated in the enquiry proceedings. The petitioner ought to have complied the requirements of the statute in order to prove that a portion of the contribution demanded was not due to be paid by him, for the reason that the contribution is inclusive of non-enrolled employees as well.



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6. It is seen that the petitioner had lost the appeal opportunity, in view of the passage of time. In fact, the demand for filing an affidavit itself came up because on 26.09.2023, the respondent authorities doubted the genuineness and the signatures of the employees in Form-11. So the petitioner voluntarily has come forward to file an affidavit to the effect that all those signatures are genuine and there is no ground for suspicion. But without waiting for the petitioner to file an affidavit, the respondent authority has passed the impugned order. The petitioner ought to have been vigilant enough in following the hearing dates and adhered to the conditions without agitating it at the later point of time by way of filing this Writ Petition. However, the petitioner pleads only ignorance and mercy and hence, it is appropriate for the respondent authority to consider the matter afresh.

7. In view of the above, the Writ Petition is **allowed** and the impugned order, dated 16.11.2023 is set aside and the matter is



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remanded back to respondent authority to consider the matter afresh by receiving all those details and by giving an opportunity to the petitioner to file an affidavit and then consider and pass orders afresh. However, the petitioner has to file the affidavit within a period of two weeks from the date of receipt of a copy of this order and on receipt of the same, the respondent shall consider the same and pass appropriate orders within a period of four weeks, thereafter. No costs. Consequently, connected miscellaneous petition is closed.

08.04.2024

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

RM



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To

The Assistant Provident Fund Commissioner,
Employees Provident Fund Organisation,
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R.N.MANJULA, J.

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