



W.P.(MD) Nos.10027 and 11239 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.02.2024

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THE HON'BLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.(MD) Nos.10027 and 11239 of 2020

and

W.M.P.(MD) Nos.9400 and 9831 of 2020

W.P.(MD) No.10027 of 2020:

M/s.A.K.Ahamed & Co.,
Rep., by its Managing Partner,
A.K.Ahamed,
141-A, South Masi Street,
Madurai-625 001.

... Petitioner

Vs.

The Employees' Provident Fund Organisation,
Rep., by its Regional Provident Fund Commissioner,
Regional Office,
No.2, Lady Doak College Road,
Madurai-625 002.

... Respondent

Prayer: Petition filed under Article 226 of the Constitution of India to issue Writ of Certiorari calling for the records relating to the impugned order made by the Central Government Industrial Tribunal in EPFA No.166/2017, dated 10.06.2020 and quash the same as illegal.



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W.P.(MD) No.11239 of 2020:

M/s.A.K.Ahamed & Sons.,
Rep., by its Managing Partner,
A.K.Ahamed,
141-A, South Masi Street,
Madurai-625 001.

... Petitioner

Vs.

The Employees' Provident Fund Organisation,
Rep., by its Regional Provident Fund Commissioner,
Regional Office,
No.2, Lady Doak College Road,
Madurai-625 002.

... Respondent

Prayer: Petition filed under Article 226 of the Constitution of India to issue Writ of Certiorari calling for the records relating to the impugned order made by the Employees Provident Fund Appellate Tribunal, Chennai in EPFA No. 168/2017, dated 10.06.2020 and quash the same as illegal.

In both cases:

For Petitioner	:	Mr.M.Ajmalkhan Senior Counsel for M/s.Ajmal Associates
For Respondent	:	Mr.A.John Xavier Standing Counsel



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COMMON ORDER

These two writ petitions are by the two sister companies filed against the orders passed by the respondent under Section 7-A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as “the Act, 1952” for brevity) as confirmed by the Employees Provident Fund Appellate Tribunal, Chennai in the appeals filed by the petitioners under Section 7-I of the Act, 1952.

2. This Court, while admitting W.P.(MD) No.10027 of 2020, passed the following interim order on 25.08.2020 :

“Admit.

2. Issue Rule Nisi.

3. Call for records.

4. The petitioner's counsel would point out that the respondent passed an order under Section 7A of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 on 19.06.2012 and that the same was question by him by filing appeal. The Tribunal dismissed the appeal on 10.06.2020. Questioning the same, this writ petition has been filed.



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5. *The primary ground taken by the petitioner's counsel is that the original authority did not identify the so called 20 employees, who had been left out of coverage. The pointed contention raised by the petitioner's counsel is that the Hon'ble Supreme Court in the case of **Himachal Pradesh State Forest Corporation v. R.P.F. Commissioner** reported in (2008) 5 SCC 756 held held that when the beneficiaries have not been identified, the original authority would not be justified in coming to the conclusion that they have been left out.*

6. *I find prima facie force in the said contention. Even though, the petitioner's counsel has not inadvertantly filed stay petition, there shall be order of interim stay.”*

3. Perusal of the orders passed by the Original Authority under Section 7-A of the Act, 1952 and the Appellate Tribunal, do not indicate that the contributions that are required to be paid by the petitioners towards furniture maintenance expenses, godown expenses, stitching coolie etc., in both the writ petitions are relatable to any of the employees of the petitioner-company. But the respondent and the Appellate Tribunal, without verifying



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as to who are the employees, required the petitioners to remit the contributions determined under Section 7-A of the Act, 1952 as confirmed by the Appellate Tribunal.

4. Learned counsel for the petitioners placed reliance on various decisions of the Hon'ble Apex Court as well as the High Court of Patna in **(i) Food Corporation of India vs. Provident Fund Commissioner and Others** reported in **(1990) 1 SCC 68**; **(ii) M/s.Roxy Cinema vs. State of Bihar and another** reported in **2012 SCC OnLine Pat 1100**; and **(iii) Raj Kumar Gupta vs. Assistant Provident Fund Commissioner and another** reported in **2013 SCC OnLine Pat 1206** and contended that in the absence of identifying the employees by conducting due enquiry, requiring the petitioners to remit the PF contributions is illegal and the same will only amount to enriching the organisations.

5. Then coming to the demand for making contributions in respect of the amounts paid towards house rent allowance and conveyance allowance, *prima facie* from the perusal of Section 6 read with Section 2(b)



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of Act 1952, both the allowances are excluded from the purview of Section 6 of the Act, 1952, thereby there is no obligation on the part of the establishment to pay contribution in respect of such amounts. But the Original Authority under Section 7-A of the Act, 1952 and the Appellate Tribunal, without going into these aspects, appears to have passed the impugned orders in a mechanical manner on the premise that the Act, 1952 is on the beneficial legislation and that should be given effect to.

6. After having heard the counsel on either side at length and after elaborate consideration, both the counsel have agreed that it is a fit case for remanding the matter back to the respondent for fresh adjudication by duly conducting necessary enquiry into the matter. As both the counsel have conceded for remand and in the light of the observations made in the paragraphs supra, this Court is also of the considered view that it would be in the best interest of justice to leave it open to the respondent herein to look into the matter afresh by conducting necessary enquiries as required under law and then pass appropriate orders afresh.



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7. In the circumstances, the impugned orders passed by the respondent herein under Section 7-A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 as confirmed by the Appellate Tribunal are set aside and the matter is remanded back to the respondent for taking appropriate action in accordance with law by duly affording opportunity to the petitioners.

8. Accordingly, these Writ Petitions are allowed to the extent indicated above. No costs. Consequently, connected miscellaneous petitions are closed.

19.02.2024

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

ABR

To

The Regional Provident Fund Commissioner,
The Employees' Provident Fund Organisation,
Regional Office,
No.2, Lady Doak College Road, Madurai-625 002.



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MUMMINENI SUDHEER KUMAR, J.

ABR

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