



WP(MD)No.6998 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 24.10.2024

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

WP(MD)No.6998 of 2018
and
WMP(MD)No.6685 of 2018

M/s.Arulmigu Subramaniasamy Thirukoil,
Through its Executive Officer,
Thirupparankundram,
Madurai.

.. Petitioner

v.

1.The Assistant Provident Fund Commissioner,
Employees Provident Fund Organization,
Regional Office,
No.1, Lady Doak College Road,
Chokkikulam,
Madurai.

2.R.K.T. Agency,
241N, Rose 3rd Street,
Railway Colony,
Madurai.

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India
seeking issuance of a Writ of Certiorari calling for the records relating of



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the first respondent's order in No. TN/RO/MDU/57655/PDC/M-02/14-B/2018 dated 09.03.2018 and quash the same.

For Petitioner : No representation

For Respondents : Mr.S.Anwar Sameem
for R.1

ORDER

Arulmigu Subramaniasamy Temple has filed this writ petition, through its Executive Officer, as against the order passed by the first respondent / PF Authority levying damages u/s.14B of the EPF Act.

2.As against the order impugned in this writ petition, the petitioner is having an appeal remedy before the Tribunal u/s.7(I) of the EPF Act. However, the order was challenged by way of this writ petition in the year 2018 and this Court has also entertained this writ petition, by issuing notice on 28.03.2018. Thereafter, this writ petition was listed for hearing on 23.10.2024 and at the request of the petitioner's Counsel, it was adjourned to today. Therefore, this Court is not inclined to dwell into the same any further.



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3. In the morning session, the petitioner's Counsel represented that the petitioner is a religious institution and that they are not liable under the EPF Act. According to the petitioner's Counsel, certain contract employees have been engaged through the second respondent / Contractor and that for those employees, the liability is on the second respondent and not on the Temple. In order to make his submissions further in this regard, at the request of the petitioner's Counsel, the matter has been passed over and again, taken up for hearing in the afternoon session. However, in the afternoon session, there is no representation for the petitioner.

4. This Court has perused the petition and the documents filed in support of this petition. The main contention of the petitioner is that the Temple is engaging some staff by outsourcing, through a Contractor and that the Contractor has to pay the salary and other contributions, if any, for those workers. The petitioner further claim that there is a specific clause in the contract and therefore, the liability, according to the petitioner, is as against the Contractor and not as against the Temple.



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5.Learned Counsel for the first respondent / PF Authority submitted that the liability of this petitioner for contribution was determined by the PF Authority by order dated 04.11.2016. As against this order of determination, fixing the quantum liable to be paid by the petitioner towards the PF contribution u/s.7A of the EPF Act, the petitioner Temple has filed a review application u/s.7B of the EPF Act and it was dismissed. Challenging the orders passed u/s.7A and 7B of the EPF Act, the petitioner Temple filed WP(MD)Nos.543, 544 of 2017 and this Court, by order dated 11.01.2017, has disposed of the said writ petitions as under:-

“5.Merely because there is a condition mentioned in the tender, it does not mean that the said condition can over ride the provisions of the Act. The review filed by the petitioner has been negatived by E.P.F. Authorities. The petitioner has got right to file an appeal under Rule 7-1 of E.P.F. Appellate Tribunal (Procedure), Rules 1998. The petitioner is not out of time, and, it is open to the petitioner to file an appeal before the Appellate Tribunal and the Appellate Tribunal is expected to consider the case of the petitioner and the thrid respondent, taking note of the conditions in the tender, dated 03.03.2015 and pass appropriate orders within a period of six months from the date of filing of an appeal,



if filed within the time stipulated under Rule 7-1 of the E.P.F. Appellate Tribunal (Procedure), Rules 1998. This Court expect the Tribunal to have sitting at Tamil Nadu and hear the matter. The recovery shall be kept in abeyance till the appeal time is over. The EPF Authorities are expected to follow the decision extracted supra."

6.While disposing of the said writ petitions, this Court has permitted the petitioner to exhaust the appeal remedy available under the statute. However, the petitioner Temple has not filed the appeal, as directed in the said writ petitions and as such, the determination made by the PF Authority u/s.7A of the EPF Act, in its order dated 04.11.2016, has become final. The impugned proceedings of levying damages u/s.14B and interest u/s.7Q of the EPF Act are only a consequential proceedings. In fact, the petitioner Temple has paid the interest amount, however, has filed this writ petition as against the levy of damages u/s.14B of the EPF Act. Therefore, the learned Counsel for the PF Authority prayed for dismissal.

7.Since the liability of this petitioner establishment under the EPF Act has already been determined u/s.7A of the EPF Act and the writ petitions



filed by the petitioner as against the same were also disposed of (supra), the order of determination passed by the PF Authorities has become final.

Therefore, the consequential proceedings of levying damages u/s.14B of the EPF Act cannot be found fault with.

8.In this case, levying of damages has been made as per Para 32A of the EPF Scheme and the Authority has imposed the maximum damage u/s. 14B of the EPF Act. The Authority, while imposing the damages, has to consider the other mitigating circumstances. Since a maximum damage, as per the Table, has been imposed in this case, this Court, considering the fact that the petitioner is a Temple and that the damages, if any, would be paid from the contributions provided by its devotees, is inclined to modify the damages to 50% of the amount levied by the PF Authority.

Accordingly, this writ petition is disposed of and the damages imposed by the first respondent / PF Authority dated 09.03.2018 is modified to 50% of the actual amount levied. Liberty is also granted to the petitioner to recover the amount from the second respondent / Contractor,



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if otherwise eligible. There shall be no order as to costs. Consequently,

connected miscellaneous petition is closed.

Index : Yes / No

NCC : Yes / No

Internet : Yes

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