



WP(MD)No.1636 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 01.10.2024

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

**WP(MD)No.1636 of 2014
and
MP(MD)No.1 of 2014 &
WMP(MD)No.8779 of 2022**

The Assistant Provident Fund Commissioner,
Office of the Regional Provident Fund Commissioner,
Lady Doak College Road,
Chokkikulam,
Madurai District.

...Petitioner

Vs

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

2.M/s.Sun Pressing Private Limited,
Represented by its Managing Director,
F 2 and 3 SIDCO Industries Estate,
K.Pudur, Madurai District.

...Respondents

PRAYER: Writ Petitions filed under Article 226 of the Constitution of India for issuance of a writ of certiorarified mandamus to call for the records relating to the order passed by 1st respondent in ATA.No.651(13) 2010 dated 04.03.2013 and quash the same as illegal and consequently direct the 2nd respondent to pay a sum of Rs.2,33,247/- as per reference



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No.TN/RO/MDU/57204/RO/Circle4/PDC/LD/2010 dated 24.09.2010

passed by the APFC, Madurai within a time frame as fixed by this Court.

For Petitioner : Mr.K.Murali Sankar

For Respondents : No appearance

ORDER

The Assistant Provident Commissioner has preferred this writ petition as against the order passed by the Presiding Officer, Employee's Provident Fund Appellate Tribunal dated 04.03.2013.

2.The Provident Fund Authorities have initiated proceedings under Section 14-B of the Employees Provident Fund and Miscellaneous Provident Funds Act [herein after shall be referred to as 'the Act'] as against the 2nd respondent that the 2nd respondent has failed to pay the contribution in time as per the Act. The authority has also imposed damages as against the 2nd respondent under Section 14-B of the Act. The order passed under Section 14-B of the Act dated 24.09.2010 was challenged before the 1st respondent / appellate tribunal and the same was allowed by the 1st respondent as under:



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“In the instant case, damages have been levied blindly by following the criterion laid down under paragraph 32 A of the EPF Scheme 1952. A perusal of the impugned order indicates that the officer conducting the enquiry under Section 14-B of the Act has not followed the law in its correct perspective. There is no enquiry or finding of fact that the appellant has wilfully and deliberately withheld the PF contribution and also there is no findings to establish that the appellant had unlawfully diverted the funds collected from the employees for its business use.

8.A perusal of the impugned order indicates that the officer conducting enquiry under Section 14B of the Act has not followed the law in its correct perspective. There is no enquiry or finding of fact that the appellant has wilfully and deliberately withheld the PF contribution. Therefore, it cannot be held that the delay in remittance of PF dues was deliberate. In terms of the above, it is considered prudent that justice would be met if the appellant is directed to pay the nominal damages, ie., 50% of the actual amount of damages levied under the impugned order. In terms of the above said the appeal is disposed of. Copy of the order be sent to the parties. The file be consigned to recorded room.”



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3.Challenging the order of the appellate tribunal, the Assistant Provident Fund Commissioner has filed this writ petition.

4.Though the 2nd respondent was directed to pay the 50% of the damages by the appellate tribunal, the 2nd respondent has not preferred any appeal. There is no representation for the 2nd respondent in this writ petition.

5.The learned Counsel for the petitioner submits that though the appellate tribunal has passed an order without considering that proper enquiry was conducted and the 2nd respondent had also represented through an advocate. The advocate had taken several adjournments and failed to participate in the enquiry and substantiate his case. Admittedly the 2nd respondent has paid the amount only after the statutory period. However without considering the fact that there was delay in payment of PF contribution and they were provided with sufficient opportunity during the enquiry, the appellate tribunal has passed the order as if no opportunity was provided to the 2nd respondent. If the appellate tribunal was of the view that no opportunity was provided, the matter ought to have been remitted for fresh consideration, instead of partly allowing the appeal. Therefore, the impugned order is liable to be set aside.



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6.This Court considered the submission made by the learned Counsel for the petitioner and perused the materials placed on record.

7.A perusal of the orders shows that the original authority without any discussion and without any finding whether there is any wilful default or negligence on the part of the 2nd respondent has mechanically passed the order imposing damages and therefore, the appellate authority has rightly set aside the order and decided the issue. The appellate Tribunal in fact has directed the 2nd respondent to pay 50% of the damages and the 2nd respondent has not challenged the order and therefore, this court is not inclined to interfere with the impugned order. Accordingly this writ petition is dismissed. No costs. Consequently connected miscellaneous petitions are also dismissed.

01.10.2024

Internet : Yes / No

Index : Yes / No

DSK



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