



W.P(MD)No.22029 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.09.2024

CORAM :

THE HON'BLE MR.JUSTICE B.PUGALENDHI

W.P(MD)No.22029 of 2024

and

W.M.P.(MD)No.18665 of 2024

The Correspondent / Principal,
M/s.The Chola International School,
Kasavazha Nadu Pudur
Vilar to Chokkali Road,
Kandithampattu PO
Thanjavur 614 904.

... Petitioner

Vs

1.The Enforcement Officer,
Employees Provident Fund Organisation,
P B No. 588,
Sree Complex, D Block,
18 Madurai Road,
Tiruchirappalli -8.

2.The Enforcement Officer,
Employees Provident Fund Organisation,
District Office,
No.35B, Pandian Nagar,
Medical College Road,
Thanjavur.



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3.The Assistant Provident Fund Commissioner,
Employees Provident Fund Organisation,
(Ministry of Labour & Employment, Government of India)
Regional Office,
P.B.No.588, Sree Complex, D Block,
No.18, Madurai Road,
Trichy-08

... Respondents

***(*R2 & R3 are suo-motu impleaded by
this Court vide order dated 18.09.2024)***

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus calling for the records of the respondent dealing the issue of notice CB/TRY/TAN DN I/EO/82498/2024, dated 13.08.2024 and quash the same and direct the respondent to consider the plea of the petitioner that the concerned 27 teachers were excluded employees based on the records produced.

For Petitioner : Mr.S.Raghunathan
For M/s. T.S.Gopalan and Co
For Respondent : Mr.N.Dilip Kumar
Standing Counsel

ORDER

This Writ Petition has been filed seeking to quash the notice issued by the first respondent in CB/TRY/TAN DN I/EO/82498/2024, dated



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13.08.2024, wherein, the petitioner was called for to offer his report and to produce the following documents for their examination:

- "1.Attendance and salary register from the date of joining of all the excluded employees (Dispute raised by the establishment).*
- 2. Appointment order and the resume submitted by the each member*
- 3. Bank statement in the respect of the establishment for the corresponding period.*
- 4. Bank statement in respect of each excluded employees from their date of joining to July 2019 or date of exist whichever is earlier.*
- 5. Details of TDS(Tax Deduction at Source), Income Tax return and form 16/16A in respect of all excluded employees.*
- 6. Salary ledger of the establishment for the 7A inquiry period."*

2.The learned Counsel for the petitioner submits that this enquiry has been now contemplated under Section 7A of Employees' Provident Funds and Miscellaneous Provisions Act, 1952, pursuant to the orders of this Court in W.P(MD)No.6965 of 2024, dated 08.04.2024, wherein, this Court has set aside the earlier proceedings of the Assistant Provident Fund Commissioner, Trichy, in the enquiry conducted under Section 7A



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of the said Act, dated 16.11.2023 and remanded the matter back only for a limited purpose and permitted the writ petitioner to file an affidavit as required by the Assistant Provident Fund Commissioner, Trichy, during the enquiry under Section 7A of the said Act. According to the learned Counsel for the petitioner, the enquiry cannot be expanded and prolonged exceeding the orders passed by this Court in W.P(MD)No.6965 of 2024, dated 08.04.2024, by calling upon the petitioner to furnish the documents as stated supra. The learned Counsel for the petitioner also submits that this notice has been issued by the Enforcement Officer/respondent. The Enforcement Officer is not the competent officer, who is in the cadre of Inspector, which has been defined in the Section 7A of the said Act to conduct or call for the report as required.

3.Mr.N.Dilip Kumar, learned Counsel sought permission to take notice for the first respondent and also filed dates and events on the previous proceedings, dated 16.11.2023. He also submitted that this petition is liable to be dismissed for two reasons that the notice, dated 13.08.2024, was issued by the Enforcement Officer of the District Office at Thanjavur, whereas, in the writ petition, it has been shown the Enforcement Officer, Employees Provident Fund Organisation,



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Trichirapalli as the respondent. He also submits that by this notice, dated 13.08.2024, the writ petitioner school was called upon to furnish the above documents on or before 21.08.2024. However, the petitioner has not filed this petition before 21.08.2024 and only after expiry of that period as stipulated in the notice, he has filed this petition. Insofar as the contention of the learned Counsel for the petitioner that this Court in W.P(MD)No.6965 of 2024 by order dated 08.04.2024, has set aside the order passed by the Provident Fund authorities, he submits that only on mercy ground enabling him to participate in the enquiry is concerned, this Court has passed the above order. This Court has also permitted the Provident Fund authorities to receive all necessary details and also to give opportunity to the petitioner to file an affidavit during the enquiry.

4.The learned Counsel for the respondents by referring the provision under Section 7A of the said Act submits that this is a quasi-judicial proceedings, which has been conducted by the authorities as defined under Section 7A of the said Act, for the purpose of assessing the contribution, which is liable to be paid by any association. The prosecution would be initiated by the Inspector after acquiring the evidence as required under Section 13 of the said Act. Similarly, the



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establishment was also permitted to adduce evidence by producing relevant documents to establish their case. In this proceedings the department as well as the establishment are having equal responsibility to place all the documents before the Enquiry Officer. Therefore, the department namely, the Enforcement Officer/Inspector, Employees Provident Fund Organisation, Thanjavur, is having every right to call for the documents as required under Section 13 of the said Act, for considering the matter afresh as directed by this Court.

5.The proceedings, which is impugned in the petition is the notice issued by the Inspector of the Provident Fund, Thanjavur, calling upon the petitioner establishment to furnish the details as stated supra. This notice has also been issued only pursuant to the orders passed by this Court in W.P(MD)No.6965 of 2024, dated 08.04.2024. The Inspector of Provident Fund has conducted an inspection in the writ petitioner establishment in the month of August 2019 and found that some of the employees have not been brought into the contribution of the Provident Fund. Therefore, an enquiry was contemplated under Section 7A of the said Act on 28.09.2019 and an order was passed on 16.11.2023 directing the petitioner school to pay a sum of Rs.28,49,400/-. The said order,



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dated 16.11.2023, was challenged by the writ petitioner school in W.P(MD)No.6965 of 2024. In that petition, a plea was taken by the petitioner that the establishment/petitioner school was not provided sufficient opportunity during the enquiry for filing their affidavit and therefore, it needed to be remanded back. From the materials now placed by the respondent authorities it appears that sufficient opportunity was provided to the petitioner during the earlier proceedings, dated 16.11.2023. However on the ground of mercy, this Court has allowed the earlier writ petition filed by the petitioner and set aside the impugned order, dated 16.11.2023 as under:

"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 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. "



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6.This Court has not only permitted the petitioner to file an affidavit during the enquiry proceedings but also enabled the respondent authorities to receive all those details from the petitioner association. It is an order, which has been invited by the petitioner and therefore, this Court is not inclined to find fault with the notice issued under Section 13 of the said Act, by the Inspector, who is also supposed to participate in the enquiry under Section 7A of the said Act. Section 13 of the said Act is extracted as under:

"Any Inspector appointed under sub-section (1) may, for the purpose of inquiring into the correctness of any information furnished in connection with this Act or with any Scheme or the Insurance Scheme or for the purpose of ascertaining whether any of the provisions of this Act or of any Scheme or the Insurance Scheme have been complied with in respect of [an establishment to which any Scheme or the Insurance Scheme applies or for the purpose of ascertaining whether the provisions of this Act or any Scheme or the Insurance Scheme are applicable to any establishment to which the Scheme or the Insurance Scheme has not been applied or for the purpose of determining whether the conditions subject to which exemption was granted under section 17 are being complied with by the



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employer in relation to an exempted establishment]—

(a) require an employer or any contractor from whom any amount is recoverable under section 8A to furnish such information as he may consider necessary;

(b) at any reasonable time and with such assistance, if any, as he may think fit, enter and search any establishment or any premises connected therewith and require any one found in charge thereof to produce before him for examination any accounts, books, registers and other documents relating to the employment of persons or the payment of wages in the establishment;

(c) examine, with respect to any matter relevant to any of the purposes aforesaid, the employer or any contractor from whom any amount is recoverable under section 8A, his agent or servant or any other person found in charge of the establishment of any premises connected therewith or whom the Inspector has reasonable cause to believe to be or to have been, an employee in the establishment;

(d) make copies of, take extracts from, any book, register or other document maintained in relation to the establishment and, where he has reason to believe that any offence under this Act has been committed by an employ, seize with such assistance as he may think fit, such book, register or other document or portions thereof as he may consider relevant in respect of that offence;

(e) exercise such other powers as the Scheme or the



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Insurance Scheme may provide."

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7.The information sought for by the Inspector under Section 13 of the said Act is for the enquiry, which has been contemplated under Section 7A of the said Act, pursuant to the earlier orders of this Court. As rightly pointed out by the learned Counsel for the petitioner, the authority, who can conduct the enquiry under Section 7A of the said Act, shall be the Central Provident Fund Commissioner or the Additional Central Provident Fund Commissioner or the Deputy Provident Fund Commissioner or the Regional Provident Fund Commissioner or the Assistant Provident Fund Commissioner. The Commissioner, who is conducting enquiry is also entitled to call for these documents, which have been now called by the impugned notice under Section 7 A(2) of the Act, which is extracted as under:

"The officer conducting the inquiry under sub-section (1) shall, for the purposes of such inquiry, have the same powers as are vested in a court under the Code of Civil Procedure, 1908 (5 of 1908), for trying a suit in respect of the following matters, namely:—

(a)enforcing the attendance of any person or examining him on oath;



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*(b)requiring the discovery and production of documents;
(c)receiving evidence on affidavit;
(d)issuing commissions for the examination of witnesses, and
any such inquiry shall be deemed to be a judicial proceeding
within the meaning of sections 193 and 228, and for the
purpose of section 196, of the Indian Penal Code (45 of
1860). "*

8.In this case, the impugned notice has been issued by the Enforcement Officer/Inspector, who is expected to prosecute the enquiry under Section 7A of the said Act before the Assistant Provident Fund Commissioner. This Court in the earlier writ petition filed by the petitioner while remanding the matter back to the respondent authority has passed an order to consider the matter afresh by receiving all those details and by giving an opportunity to the petitioner to file an affidavit, which includes an opportunity to the petitioner as well as to the authority and therefore, this Court is not inclined to find fault with the notice issued by the Inspector under Section 13 of the said Act, calling for the details as required under Section 13 of the said Act. Even otherwise, the authority under Section 7A of the said Act is also empowered to receive all those documents under Section 7A(2) of the said Act for the enquiry



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and therefore in all fairness, it is the responsibility of the petitioner to furnish the documents to the respondent authority to enable them to pass an appropriate order in accordance with law.

9.This Court also takes note of the dates and events filed by the respondent in the enquiry, which is pending under Section 7A of the said .

10.The dates and events furnished by the respondent would reveal that the proceedings which has been initiated in the year 2019 has been successfully dragged by the petitioner by one way or the other for the past six years and therefore, this Court while dismissing this petition, *suo-motu* impleads the Enforcement Officer, Thanjavur and the Assistant Provident Fund Commissioner, Trichy as second and third respondents to this petition. The petitioner is directed to furnish the details as requested in the impugned notice within a period of two weeks, from the date of receipt of a copy of this order and the petitioner is also expected to co-operate for the enquiry to be conducted under Section 7A of the said Act. The Assistant Provident Fund Commissioner, Trichy, is directed to conclude the enquiry under Section 7A of the said Act, within a period of



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eight weeks from the date of receipt of details from the petitioner.

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11. Accordingly, this Writ Petition is dismissed with the above direction. No costs. Consequently, connected miscellaneous petition is closed.

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

LR



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