



WP(MD)No.8803 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 18.10.2024

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

WP(MD)No.8803 of 2016
and
WMP(MD)No.7011 of 2016

Assistant Provident Fund Commissioner,
Employees Provident Fund Organization,
P.B.No.588, Sree Complex, 'D' Block,
No.18, Madurai Road, Tiruchirappalli.

.. Petitioner

v.

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

2.M/s.Thirumalai Associates
85-B, Sri Ramapuram,
Rayar Garden, Trichy.
Rep. Through its Proprietor

.. Respondents



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PRAYER: Petition filed under Article 226 of the Constitution of India seeking issuance of a Writ of Certiorarified Mandamus calling for the records relating to the order passed by the first respondent in A.T.A.No. 445(13)2014, dated 13.08.2014, quash the same and consequently, directing the second respondent to pay the amount in Ref.No.C-11/TN/76080/PDC/SRO-TRY/14B/2014 dated 02.06.2014, within a stipulated time limit.

For Petitioner : Mr.N.Dilip Kumar

For Respondents : No appearance

ORDER

This writ petition is filed by the petitioner / Assistant Provident Fund Commissioner as against the order passed by the first respondent / Tribunal in ATA.No.445(13)2014, dated 13.08.2014, modifying the penalty imposed by the petitioner, vide proceedings dated 02.06.2014, u/s.14B of the Employees' Provident Fund and Misc. Provisions Act, 1952 [EPF Act].



2.The second respondent is an establishment covered under the EPF Act. With an allegation that the establishment has failed to pay the contribution as required u/s.6, 6A, 6C of the Act in time, the petitioner / original authority has initiated proceedings u/s.14B of the EPF Act, by issuing summons and imposed damages to the tune of Rs.11,87,571/- u/s. 14B and interest to the tune of Rs.6,70,754/- u/s.7Q of the EPF Act. This order was challenged by the second respondent / establishment before the first respondent / Tribunal and the Tribunal, by its order dated 13.08.2014, has set aside the damages and permitted the establishment to remit the interest imposed u/s.7Q in 36 installments. Aggrieved over the same, the present writ petition has been filed.

3.Learned Standing Counsel for the petitioner / original authority submitted that the penal damages has been imposed as per the guidelines in Para 32A of the EPF Scheme. However, the Tribunal, without any reasons, has simply modified the order. He further submitted that the second respondent / establishment has not made out any case, however, the Tribunal has mechanically passed this order.



4. Though notice has been served on the second respondent / establishment, there is no representation for the second respondent.

5. This Court considered the submissions made by the petitioner's Counsel and perused the orders passed by the original authority and the appellate authority.

6. The appellate authority has modified the order, by holding that there was no *mens rea*, that the damages was imposed by the original authority without providing sufficient opportunity to the establishment and also in a mechanical manner by taking into account of the table as provided in Para 32A of the EPF Scheme.

7. The question with regard to *mens rea* is no longer *res integra*, inasmuch a Full Bench of this Court in *Sun Pressing (P) Ltd and Others v. Presiding Officer and Others* [2024 (1) Writ L.R. 801] has held that *mens rea* or *actus reus* is not an essential requirement or *sine quo non* for levying penalty under Section 14B of the Act. Therefore, this finding of the Tribunal



lacks merit. However, before levying damages in terms of Section 14B of the Act, the authority is required to follow the principles of natural justice and to consider all the mitigating circumstances projected by the employer / establishment. The Full Bench further held that there should be proper application of mind, objectively, on the merits of the case and in any event, the authority cannot resort to the arithmetical calculation or for levying damages as per Para 32A of the Scheme, without considering the mitigating circumstances.

8. In the case on hand, the petitioner / original authority has initiated proceedings as against the second respondent / establishment, by issuing summons dated 03.12.2013 fixing the date of enquiry as 13.12.2013. From 13.12.2013, the enquiry was adjourned to 27.01.2014, on which date, a representative of the second respondent appeared and sought time. Hence, the enquiry was adjourned to 26.03.2014, on which date, a representative of the establishment appeared and thereafter, adjourned to 11.04.2014, 25.04.2014, 22.05.2014. However, there was no representation for the second respondent / establishment on these hearings. Therefore, the original



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authority has concluded the proceedings and imposed the penalty to an extent of Rs.11,87,571/- together with interest to an extent of Rs.6,70,754/-, by order dated 02.06.2014.

9.The original authority has passed this order, only after providing sufficient opportunity to the establishment. If there is any delay in remitting the dues, then the original authority is entitled to conduct enquiry and impose damages, as provided under Section 14B of the Act and as per Para 32A of the EPF Scheme. However, without any valid ground, the appellate authority has come to a conclusion that there is no willful default by the second respondent / establishment in remitting the dues. Therefore, this finding of the Tribunal also lack merit.

10.For the foregoing reasons and discussions, this Court is inclined to interfere with the order passed by the Tribunal. Accordingly, the order passed by the first respondent / Tribunal in ATA.No.445(13)2014, dated 13.08.2014 is set aside and the order passed by the petitioner / original authority dated 02.06.2014 stands revived.



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WEB COPY In the result, this writ petition stands allowed. No costs.

Consequently, connected miscellaneous petition is closed.

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B.PUGALENDHI, J.

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