BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.10.2024

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

WP(MD)No.8806 of 2016
and
WMP(MD)No.7014 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.Trichy Engineering College,
1st Floor, A-1 Salai Road,
Trichy – 620 003.
Rep. Through its Finance Officer

.. Respondents

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. 304(13)2012, dated 14.03.2013, quash the same and consequently, directing the second respondent to pay the amount in Ref.No.SDC/TN/TRY/27006/CIRCLE-12/SRO-TRY/2014, dated 31.01.2012, within a stipulated time limit.

For Petitioner : Mr.I.Pinaygash

For Respondents : Mr.K.Mu.Muthu for R.2

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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.304(13)2012, dated 14.03.2013, setting aside the penalty imposed by the petitioner, vide proceedings dated 31.01.2012, 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 penal damages to the tune of Rs.5,02,498/- u/s.14B and interest to the tune of Rs.1,34,326/- 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 14.03.2013, has set aside the order passed by the original authority. 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 set aside 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.Learned Counsel for the second respondent / establishment made his submissions in line with the order passed by the Tribunal.

5.This Court considered the rival submissions made by the learned Counsel on either side and perused the orders passed by the original authority and the appellate authority.

6.The appellate authority has interfered with the order passed by the original authority, 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 07.09.2011 fixing the date of enquiry as 13.10.2011. However, on the said date, no one appeared and therefore, the enquiry was adjourned to 15.11.2011. Thereafter, the enquiry was adjourned for two hearings and a representative of the establishment appeared and accepted the delay in remittance. After considering the same, the original authority has concluded the proceedings and imposed the penalty to an extent of

Rs.5,02,498/- together with interest to an extent of Rs.1,34,326/-, by order dated 31.01.2012.

9.The original authority has passed this order, only after considering the establishment's case. 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 came 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.304(13)2012, dated 14.03.2013 is set aside and the order passed by the petitioner / original authority dated 31.01.2012 stands revived.

In the result, this writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Index	:	Yes / No	**18.10.2024**
NCC	:	Yes / No	
Internet	:	Yes	

gk

B.PUGALENDHI, J.

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