

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated : 19.03.2025

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THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P.No.10711 of 2011
and M.P.No.2 of 2011

All India Food & Allied Workers Union,
Rep. by its Secretary,
Central Office : 7901,
Ram Nagar, Naibasti,
Paharganj, New Delhi – 55.

... Petitioner

Vs.

1. The Presiding Officer,
The Employees Provident Fund Appellate Tribunal,
Ministry of labour & Employment
(Government of India),
Scopeminar, Core -II,
4th Floor, Lakshmi Nagar, District Centre,
Lakshmi Nagar,
New Delhi – 110 092.

2. The Regional Provident Fund Commissioner,
Employees Provident Fund Organization,
Tamilnadu & Pondicherry States,
No.37, Royapettah High Road,
Chennai – 600 014.

3. The Tamilnadu Civil Supplies Corporation Limited,
Rep. by its Chairman and Managing Director,
No.12, Thambusamy Road,
Kilpauk, Chennai 600 010.

... Respondents



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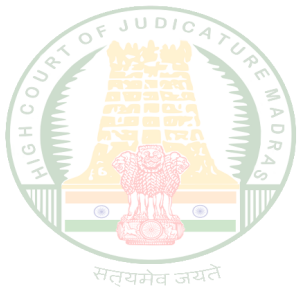
Prayer: Writ petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorarified Mandamus, calling for the records pertaining to the order, dated 25.06.2007 from the first respondent, quash the same and consequently direct the 2nd Respondent to recover the entire amount as per their order dated 24.11.1995 together with interest and penalty payable as on date within a specified time and credit the said amounts to the respective accounts of 444 loadmen.

For Petitioner : Mr.V.Ajoy Khose

For Respondents : Mr.K.Ramamoorthy for R1
Mr.T.R.Sundaram for R2
Mr.Venkatesh Kumar for
Mr.Gupta & Ravi for R3

ORDER

The petitioner Union is impugning the order passed by the first respondent dated 25.06.2007 reversing the finding given by the second respondent vide an order dated 24.11.1995. The first respondent had rejected the prayer of the petitioner Union to direct the third respondent to remit the provident fund, Family Pension fund and insurance fund contribution between April 1975 and August 1995 in accordance with the provisions of the relevant schemes. The petitioner Union is espousing the cause of its members whose services were regularized with effect from 1995.



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2. The members of the petitioner Union were working as a load man under the contractor of the third respondent. After a long struggle and series adjudication, the services of the members of the petitioner Union came to be regularized w.e.f. 1995 as against their original entry into the service as loadman under contractor in the year 1972.

3. The prayer of the petitioner Union is that even though their services were regularized only from 1995, the petitioner union made a prayer that the contribution, as mentioned above, should have been remitted by the third respondent from 1975. The second respondent vide an order dated 24.11.1995, allowed the prayer of the petitioner Union. On appeal filed by the third respondent, the first respondent reversed the finding of the second respondent. The said order is challenged in this writ petition.

3. Heard the learned counsel on either side and perused the materials available on record.



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4. A perusal of the materials available on record reveals that the petitioner claimed that the employer was paying the wages indirectly through the contractor. It is further the case of the workmen that they were employed with the third respondent since 1975 but regularization has been granted only in the year 1995. The second respondent had allowed the claim of regularization from 1975 in favour of the workmen which was interfered with by the first respondent, which is assailed on the ground that the materials have not been properly appreciated more particularly Section 2(f) of the Employees Provident Funds Act. To appreciate aforesaid contention, it is necessary to advert to Section 2(f) of the Act, which for ready reference, quoted hereunder:

"Section 2(f): Employee means any persons who is employed for wages in any kind of work, manual or otherwise in or in connection with the work of an establishment and who gets his wages directly or indirectly from the employer, and includes any person employed by or through contractor in or in connection with the work of the establishment."

5. The aforesaid provision clearly reveals that employee means any persons who is employed for wages in an establishment either directly or indirectly by the employer and includes any persons employed to the



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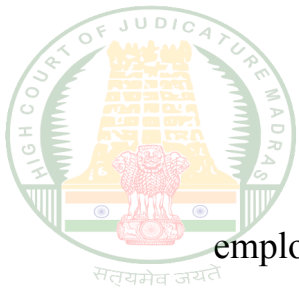
contractor. There could be no quarrel with the fact that the persons employed through a contractor for prescribed length of time or also entitled to have the said services counted for the purpose of payment of employees contribution to the provident fund. The petitioner claims that it was its members were employed by the contractor since 1975 but regularization has been granted only in the year 1995 and therefore, the Provident Fund contribution from 1975 ought to have been paid by the third respondent in regard to the individual workmen. As there case would squarely stand attracted under Section 2(f) of the Act.

6. Though the contention of the petitioner is acceptable, however, it is to be pointed out that to attract Section 2(f) of the Act, it is incumbent upon the petitioner to prove that they were in continuous employment of the contractor for discharging the work of the third respondent. However, a perusal of the materials available on record, it does not reveal any materials which points a finger with regard to the continuous employment of the members of the petitioner Union with the third respondent through the contractor. Though the contractor may have been carrying out the works of the third respondent, not necessarily, the very same individual has to be employed by the contractor to have the works completed. The contractor



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could very well solicit the services of any person to do the job and in such a scenario, it becomes imperative for the members of the petitioner union to establish that they were continuously engaged by the contractor for discharging the work entrusted to the contractor by the third respondent. However, there is no materials available on record to show that the employment of the members of the petitioner Union was continuous with the contractor so as to give a direction to the third respondent to pay the contribution with respect to the individual workmen to the employees provident fund. This material fact was lost sight of by the second respondent while passing the impugned order, which has come to the notice to the first respondent and which has resulted in the interference with the said order passed by the second respondent. The finding arrived at by the first respondent with regard to their being no material to substantiate the continuous employment of the members of the petitioner union with the third respondent through the contractor. The claim of the petitioner for payment of compensation and contribution to the employees provident fund with respect to the individual workmen from the year 1975 though they were regularized in the year 1995, cannot be said to be erroneous or perverse. When the petitioner has not established its continuous



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employment through the contractor for discharging the works of the third respondent, the first respondent has properly appreciated the materials and in the absence of clear cut materials to show their continuous employment, the first respondent has rightly interfered with the order passed by the second respondent, which cannot be said to be illegal or perverse, warranting interference.

7. For the reasons aforesaid, the impugned order passed by the first respondent does not call for any interference. Accordingly, the writ petition fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

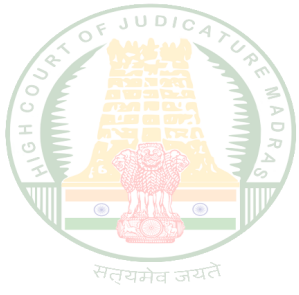
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To

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M.DHANDAPANI,J.



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