IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 10.2.2025

Pronounced on : 25.2.2025

CORAM:

**THE HON'BLE DR. JUSTICE A.D. MARIA CLETE**

W.P.No. 587 of 2020
and
W.M.P.Nos. 687 & 689 of 2020

M/s. Jaisakthi Matriculation School,
Rep. by its Correspondent,
P.K.Sekar,
Kartharapatti, P.N.Halli (PO),
Palacode (TK), Dharmapuri – 636 808. …Petitioner

Vs.

Assistant Provident Fund Commissioner,
Employees Provident Fund Organisation,
Regional Office, S.J.Plaza,
Swarnapuri, Salem – 636 004. …Respondent

**Prayer in W.P.No. 587 of 2020**

To issue a Writ of Certiorari or any other appropriate Writ or any Order or direction in the nature of a Writ of Certiorari, calling for records of the impugned order passed by the Employees Provident Fund Appellate Tribunal in EPFA No.222 of 2019 dated 13-11-2019 and the Proceedings bearing Ref.No. CB/SLM/COMP-II/90190/KNG III Dn/2019 dated 16-04-2019 issued by the Respondent under section 7A of the Employees Provident Fund & Miscellaneous Provisions Act, 1952 to quash the same and pass such further or other orders as this Hon'ble Court may deem fit.

**Prayer in W.M.P.No. 687 of 2020**

To dispense with the original order dated 16-04-2019 in the Proceedings CB/SLM/COMP-II/90190/KNG III Dn/2019 issued by the Respondent.

**Prayer in W.M.P.No. 689 of 2020**

To stay the impugned order passed by the Employees Provident Fund Appellate Tribunal in EPFA No.222 of 2019 dated 13-11-2019 and recovery proceedings initiated by the Respondent based on his proceedings bearing Ref. No.CB/SLM/COMP-II/90190/KNG III Dn/2019 dated 16-04-2019 pending disposal of the above writ petition and pass such further or other orders as this Hon'ble Court may deem fit.

**Appearance of Parties:**

For Petitioner : M/s. P.Thangaraj and Kamaraj, Advocates

For Respondent : Mr. P.K.Panneer Selvam, Panel Advocate for EPFO

**JUDGMENT**

Heard.

2. The writ petitioner, a matriculation school in Dharmapuri, has filed the present petition challenging the order of the Employees Provident Fund Appellate Tribunal (Central Government Industrial Tribunal-cum-Labour Court, Chennai) in EPFA No. 222/2019, dated 13.11.2019, by which the appeal was dismissed as barred by limitation.

3. When the writ petition was taken up for admission on 10.01.2020, the standing counsel for the Respondent entered an appearance, and the matter was directed to be listed after four weeks. In the meantime, an interim stay was granted, subject to the condition that the petitioner deposits a sum of Rs.10 lakhs within four weeks. When the case was subsequently heard on 25.02.2020, the petitioner informed the Court that a sum of Rs.3 lakhs had been paid to the Respondent through a Demand Draft dated 14.02.2020 and filed a memo seeking an extension

of four weeks to remit the balance amount of Rs.7 lakhs. Accepting the request, the Court extended the time for payment by four weeks, stipulating that failure to comply would result in the automatic vacation of the stay.

4. The Respondents filed a counter affidavit dated 31.12.2021. The petitioner contends that the school was established in 2004. Initially, with classes up to the 6th standard, the institution had 12 staff members, which later increased to 20 by 2012. On 05.04.2017, the Respondent issued a notice under Section 7A, demanding contributions under the Provident Fund Scheme and computing the amount payable for the period from 2012 to 2017. The enquiry commenced on 28.04.2017, during which the petitioner submitted all relevant registers and the balance sheet. The petitioner was duly represented by an authorized representative throughout the proceedings.

5. On 16.04.2019, the Respondent issued an order assessing the dues payable by the school for the period from November 2012 to March 2017,

amounting to Rs.24,40,392/-, which included contributions for both teaching and non-teaching staff. As the said amount remained unpaid, the Respondent initiated proceedings for the sale of the school's properties under Section 8B of the Employees' Provident Funds Act. The petitioner challenged the order passed under Section 7A by filing an appeal before the EPF Tribunal. However, by order dated 13.11.2019, the Tribunal dismissed the appeal on the ground of an abnormal delay of 124 days in filing, stating that, as per the prescribed time limit of 60 days, it lacked the power to condone any delay beyond that period.

6. Before the appeal could be disposed of, the petitioner approached this Court by filing W.P. No. 35643 of 2019, challenging the Respondent's order dated 16.04.2019. However, this Court, by order dated 02.01.2020, dismissed the writ petition, granting the petitioner permission to withdraw the petition with liberty to file a fresh one with an appropriate prayer. The petitioner has now filed the present writ petition, challenging not only the Tribunal's order dated 13.11.2019 but also the Respondent's order dated 16.04.2019.

7. In the counter affidavit, the Respondent stated that the school's employment strength in June 2004 was 38, and after a detailed inquiry, the number of non-teaching staff was also ascertained. Based on the Enforcement Officer's report, it was determined that the dues payable for 25 teaching staff from November 2012 to March 2017 amounted to Rs.12,87,202/-, while the dues for 17 non-teaching staff for the same period totaled Rs.11,53,190/-, bringing the total liability of the school management to Rs.24,40,392/-. The Respondent contended that the order issued under Section 7A was legally valid and did not suffer from any infirmity.

8. The counsel for the petitioner relied on the Constitution Bench judgment of the Supreme Court in *State of U.P. v. Mohammad Nooh* (AIR 1958 SC 86) and the Division Bench judgment in *Mahindra & Mahindra Ltd. v. The Joint Commissioner (CT) Appeals, Chennai & Ors.* (MANU/TN/1256/2021) to argue

that the authorities had not followed the proper procedure in assessing the dues payable, rendering the order legally infirm.

9. In the present case, the petitioner school had filed a statutory appeal before the Tribunal, which was dismissed on the ground of delay. Consequently, the Respondent's order attained finality, raising the question of whether the petitioner can now challenge its validity without first setting aside the Tribunal's order. In support of their stance, the Respondents, in their counter affidavit, relied on the Division Bench judgment of this Court in *Q-793, Madathupatti Weavers Co-operative Production and Sales Society Ltd. v. Regional Provident Fund Commissioner, Madurai & Ors.*, reported in 2003 (3) LLJ 795 (Mad), emphasizing the following passage from the judgment:

> *"9. As far as the determination under Section 7-A of the Act is concerned, it is seen that the provision comprises two parts. Firstly, the authority has to decide whether the Act applies to the establishment and secondly, he has to determine the amount due from the employer. For the purpose of this determination, the officer has to conduct such*

*inquiry as deemed necessary. A reading of Sub-section (2) of Section 7-A of the Act shows that the officer conducting the inquiry has to decide the issue as if he is trying a suit in a civil Court with powers under the Code of Civil Procedure. The inquiry shall be deemed to be judicial proceedings. Sub-section (3) shows that no order shall be made under Sub-section (I), unless the employer concerned is given a reasonable opportunity of representing his case. Sub-section (3) empowers the officer to compel the attendance of the person concerned or the production of documents to decide the applicability of the Act or determination of the amount due from the employer. From the reading of these provisions, it is clear that no order under Section 7-A of the Act can be passed without conducting a full-fledged inquiry as if the matter is decided in a suit and that the officer determining the question has to decide both the coverability as well as the determination of the amount."*

10. Based on the above reasoning, the learned counsel contended that the Respondent's order does not suffer from any infirmity. In support of this argument, reliance was also placed on the judgment of the Supreme Court in *State of Uttar*

*Pradesh v. Satish Chand Shivhare and Brothers* (MANU/SC/1464/2022). This case, which arose under the Arbitration and Conciliation Act, dealt with a similar question, and the Court made the following observations in paragraphs 21 and 22:

> *"21. ……..The right of appeal is a statutory right, subject to the laws of limitation. The law of limitation is valid substantive law, which extinguishes the right to sue, and/or the right to appeal. Once an appeal is found to be barred by limitation, there can be no question of any obligation of the Court to consider the merits of the case of the Appellant.*
>
> *22………. The Court considering an application under Section 5 of the Limitation Act may also look into the prima facie merits of an appeal. However, in this case, the Petitioners failed to make out a strong prima facie case for appeal. Furthermore, a liberal approach, may adopted when some plausible cause for delay is shown. Liberal approach does not mean that an appeal should be allowed even if the cause for delay shown is glimsy. The Court should not waive limitation for all practical purposes by condoning inordinate delay caused by a tardy lackadaisical negligent manner of functioning."*

11. The learned counsel further contended that, having filed a statutory appeal and allowed it to be dismissed due to latches, the petitioner cannot now seek relief under Article 226. In this context, reference was made to the judgment of the Supreme Court in *Assistant Commissioner (CT) LTU, Kakinada v. Glaxo Smith Kline Consumer Health Care Limited*, reported in 2020 (19) SCC 681, wherein the Court observed as follows:

> *"18. ……The remedy of appeal is creature of statute. If the appeal is presented by the assessee beyond the extended statutory limitation period of 60 days in terms of Section 31 of the 2005 Act and is, therefore, not entertained, it is incomprehensible as to how it would become a case of violation of fundamental right, much less statutory or legal right as such."*

12. The learned standing counsel also referred to the judgment of the Bombay High Court Division Bench in *Siddhi Engineering v. Regional Provident Fund Commissioner-II*, reported in 2024 SCC OnLine Bom 44, and relied on the following passages from paragraphs 12 and 13 of the judgment:

*"12... if the Writ Petitioner chooses to approach the High Court after expiry of the maximum limitation period of 60 days (120 days in case before us), the High Court cannot disregard the limited statutory period for redressal of the grievance and entertain the Writ Petition of such party as a matter of course, only because the appeal before the CGIT is barred by limitation. It is further held by the Hon'ble Supreme Court that 'doing so would be in the teeth of the principle underlying the dictum of the three Judge Bench of the Hon'ble Supreme Court in ONGC Vs. Gujarath Energy Transmission Corporation, (2017) 5 SCC 42'.*

*13. Considering the above, since the Petitioner has approached this Court beyond the period of 120 days, effectively with a delay of 24 months there beyond, we would not be justified in entertaining this Writ Petition in the light of the law laid down by the Hon'ble Supreme Court in Assistant Commissioner (CT) LTU, Kakinada (supra)."*

13. In view of the foregoing discussions, it is evident that the Respondent's order dated 16.04.2019, passed under Section 7A of the EPF Act, does not suffer

from any infirmity. Accordingly, the writ petition is liable to be dismissed. Even otherwise, since the petitioner allowed the Tribunal's order in the statutory appeal to attain finality, they cannot now seek to challenge the original order of the authorities through a writ petition under Article 226. Consequently, W.P. No. 587 of 2020 stands dismissed. The Miscellaneous Petitions in WMP. Nos. 687 and 689 of 2020 are also dismissed. The authorities are at liberty to recover the outstanding dues from the petitioner, after duly crediting the amounts already deposited under the interim order of this Court. However, there shall be no order as to costs.

**25.02.2025**

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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Copy to:
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Swarnapuri, Salem – 636 004.

**DR.A.D.MARIA CLETE, J.**

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Pre-delivery Judgment in
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and
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25.02.2025