



W.P.Nos.13074 and 13429 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.03.2025

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

W.P.Nos.13074 and 13429 of 2015

and

M.P.No.25120 of 2015 in W.P.No.13074 of 2015

M.P.No.1 of 2015 in W.P.No.13429 of 2015

The Central Board of the Trustees of the
Employees Provident Fund Organisation,
Represented by The Assistant Provident Fund Commissioner,
Regional Office,
No.3, Rajaji Salai, Tambaram,
Chennai – 600 045

...Petitioner in both Writ Petitions

Vs.

1. The Presiding Officer,
Employees' Provident Fund Appellate Tribunal,
4th Floor, Core 2, Scope Minar,
Laxmi Nagar, New Delhi – 110 092.

...1st Respondent in both Writ Petitions

2. R. Kumar
No.2A, LT High way Road,
No.04, Kanakkapattu,
Thiruporur, Chennai – 603 110.

... 2nd Respondent in WP No. 13074 of 2015

3. A. Sukumaran
No.51, East Madam Street,
Kanakkapattu,
Thiruporur, Chennai – 603 110

...2nd Respondent in WP No. 13074 of 2015



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Common Prayer : Writ Petition filed under Article 226 of Constitution of India pleaded to issue a Writ of Certiorari, calling for the records of the first respondent relating to the impugned order of the first respondent in ATA No.730 (13) 2013 dated 19.08.2014 in W.P. No. 13074 of 2015 and ATA No.732 (13) 2013 dated 19.08.2014 in W.P. No. 13429 of 2015 and quash the same.

For Petitioner : Mr.Y.T. Aravind Gosh in both
Writ Petitions

For Respondents : Tribunal [R1]
Mr.B.Gopalakrishnan for R2 in
both Writ Petitions

COMMON ORDER

These Writ Petitions have been filed seeking for a Writ of Certiorari, to call for the records of the first respondent relating to the impugned orders of the first respondent in ATA No.730 (13) 2013 dated 19.08.2014 in W.P. No. 13074 of 2015 and ATA No.732 (13) 2013 dated 19.08.2014 in W.P. No. 13429 of 2015 and quash the same.

2. When the matter is taken up for consideration, learned counsel appearing for the 2nd respondent in respective writ petitions have brought to the notice of this Court that similar issue has been raised in a batch of petitions in W.P.Nos.26413/2017, etc. Batch and this Court, vide order dated 04.08.2023 had allowed the writ petitions setting aside the order passed by the original



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authority. Learned counsel appearing for the petitioner submits that the ratio laid down in the aforesaid order would be applicable to the case as well as the order impugned herein has been passed by the Board of Trustees, who is not clothed with power to question the order of the Tribunal.

3. This Court perused the order passed in W.P.Nos.26413/2017, etc. Batch, wherein, this Court has held as under :-

“25. A conjoint reading of Sections 7-I and 7-L shows that an appeal to the Tribunal could be filed only by the person aggrieved by the order of the authority or the Central Government and it cannot be by an authority, even higher in hierarchy to the authority, who had passed the order in the absence of any authorisation by the Central Government. Further, for the purpose of determination of moneys to be recovered, the inquiry by the authority is deemed to be a judicial proceeding as is passed by a civil court. In effect, the order passed by the authority, is a judicial order passed exercising quasi-judicial power.

26. Further, as evidenced above, sub-section (4) of Section 7-L makes the order passed by the Tribunal a finality, which could not be questioned in any court of law. True it is that the order of the Tribunal can be put in issue before this Court under Article 226 of the Constitution, as this Court exercises extraordinary jurisdiction. However, the only interpretation that could be given harmoniously to sub-section (4) of Section 7-L is that the authority, who had passed the order, being an authority lower in hierarchy to the Tribunal, is



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bound to accept the order passed by the Tribunal and is estopped from questioning the said order by filing appeal, except where the order passed is without jurisdiction and that too only if the authority has proper authorisation from the Central Government.

27. However, the other party to the lis, viz., the individual, cannot be estopped from taking the same on appeal before a higher judicial forum. Meaning thereby, the order passed by the Tribunal in an appeal by the employer, could at best be challenged only by the employer, if it is against the employer and the authority, who passed the original order is bound to act on the basis of the order passed by the Tribunal as the Tribunal is the final arbiter under the statute insofar as the authority is concerned. Further, it should be pointed out that the order passed by the original authority merges with the appellate order and the original authority is bound by the order passed by the appellate authority. Any other construction, if given to Section 7-L (4) would render the appeal remedy an empty formality as every time, the order of the original authority is interfered with by the appellate authority, the original authority, if permitted to rush before the higher judicial forum, including the High Court under Art. 226, then it would defeat the very intent of the Parliament in including Section 7-L (4). Only to put a stop to further litigative process, more specifically by the original authority, sub-section (4) to Section 7-L had put shackles on the original authority by making the order passed by the Tribunal a finality. The order could be challenged by the authority by way of a writ petition only when the authority is clothed with authorisation by the



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Central Government or Board of Trustee to prefer appeal against the order passed by the appellate authority. In the absence of any power granted by the Central Government or Board of Trustee to the authority to file appeal assailing the order passed by the appellate authority, not only the original authority is barred from filing a writ petition, but any writ petition, if entertained would be against the statute, which is not the intent of the law makers. Further, it is to be pointed out that the only situation in which the original authority could put in issue an order in appeal is when the authority who had passed the order is not vested with jurisdiction. In all other scenarios, the original order merges with the appellate order and the appellate order becomes final and the original authority is bound by the order of the appellate authority.

28. It is to be pointed out that when an authority performs quasi-judicial function, by passing orders in a matter, it neither acts in favour of the Government nor the individual, but is performing a duty endowed on it by the statute. The authority is immune from all attachments and realisations for and on behalf of the Government and is in no way attached with the order, as it is only the statutory prescription that is sought to be enforced by the authority and it has no personal afflictions to the said issue. In case, the order passed by the authority is not in favour of the department, at best the department, upon proper authorisation from the Government could seek further judicial recourse but it is not open to the original authority, who passed the order, without any authorisation, to challenge the order passed by the Tribunal.

29. The above view expressed by this Court finds



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favour in the decision of the Apex Court in Mohtesham Mohd. Ismail case (supra), which clearly portrays the position in which the original authority is positioned when it comes to questioning the appellate order as has happened in the present case. For better appreciation, the relevant portion of the decision is quoted hereunder :-

“15. From the notification dated 22.09.1989, whereupon reliance has been placed by Mr. Bhan, it would appear that the officer authorized by the Central Government for the purpose of enforcing the provisions of the Act was specifically empowered to adjudicate upon the dispute. The said notification itself is a pointer to the fact that for the purpose of exercising the functions of the Central Government under one provision or the other, the officer concerned must be specifically empowered in that behalf. A general empowerment would, however, be permissible. Before the High Court, no notification was filed to show that the authority concerned was empowered to prefer an appeal on behalf of the Central Government. The Central Government was not even impleaded as a party to the appeal. First Respondent did not file the appeal on behalf of or representing the Central Government. It was filed in its official capacity as the adjudicating authority and not as a delegatee of the Central Government.

16. An adjudicating authority exercises a quasi-judicial power and discharges judicial functions. When its order had been set aside by the Board, ordinarily in absence of any power to prefer an appeal, it could not.



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do so. The reasonings of the High Court that he had general power, in our opinion, is fallacious. For the purpose of exercising the functions of the Central Government, the officer concerned must be specifically authorized. Only when an officer is so specifically authorized, he can act on behalf of the Central Government and not otherwise. Only because an officer has been appointed for the purpose of acting in terms of the provisions of the Act, the same would not by itself entitle to an officer to discharge all or any of the functions of the Central Government. Even ordinarily a quasi-judicial authority can not prefer an appeal being aggrieved by and dissatisfied with the judgment of the appellate authority whereby and whereunder its judgment has been set aside. An adjudicating authority, although an officer of the Central Government, should act as an impartial Tribunal. An adjudicating authority, therefore, in absence of any power conferred upon it in this behalf by the Central Government, could not prefer any appeal against the order passed by the Appellate Board.

17. The Madras High Court in Rama Arangannal (supra) opined :

“4. On the question as to the maintainability of the appeal, it is seen that the Explanation to Section 54 of the Foreign Exchange Regulation Act 1973 treats only the Central Government as an aggrieved party for the purpose of filing an appeal to the High Court in respect of orders passed by the Foreign Exchange Regulation



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Appellate Board under that section. Therefore, only the Central Government can file and prosecute an appeal against the order of the Appellate Board, and not any other authority, In this case, the appeal has been filed by the Director of Enforcement, who is the initial authority who passed the adjudication order against the respondents and whose order has been set aside by the Appellate Board on an appeal filed by them. Therefore, the Director of Enforcement cannot be said to be aggrieved by the order of the Appellate Board merely because its order of adjudication has been set aside by the Appellate Board.”

(Emphasis Supplied)

31. When the appellate authority, in unequivocal terms, has rendered a categorical finding that the findings arrived at by the original authority, which are on the basis of facts, are erroneous, it does not lie in the mouth of the petitioner to contend that the act of the employer in tampering with the basic wages to their benefit is a question of law, which has to be gone into by this Court, is nothing but trying to split hairs in order passed by the appellate authority. When the appellate authority has clearly spelt out that the Act clearly defines basic wages and so long as the language of the enactment is without any ambiguity, the definition provided to any term therein has to be interpreted plainly and, therefore, original authority is bound by the language of the enactment and cannot borrow the language from any other enactment to suit its taste is a clear exposition of the ratio, which has been laid down time



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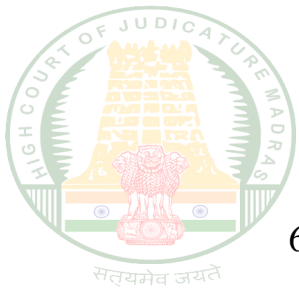
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immemorial in respect of the manner in which a statute has to be understood and in the said context, this Court is of the considered view that the decision arrived at by the appellate authority, on the basis of the facts placed before it, cannot be the basis for this Court to entertain the writ petitions, more so, when the petitioner has no authorisation to act on behalf of the Central Government by filing the present petitions.

32. When the petitioner has no authorisation to file the writ petitions on behalf of the Central Government or Board of Trustee, challenge made to the order of the appellate authority by filing the writ petitions is an act without jurisdiction of the authority and, therefore, the writ petitions deserve to be dismissed by confirming the order passed by the Tribunal.”

4. In the aforesaid decision, this Court has clearly held that the original authority, who had passed the order, cannot challenge the order passed by the appellate authority without the permission of the Central Government or the Board of Trustees and had set aside the said order.

5. Curiously, the present petition has been filed by the Board of Trustees challenging the said order passed by the appellate authority, viz., the Tribunal and it is contended that the Board of Trustees could very well challenge the said order.



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6. In the aforesaid decision, this Court has clearly held that the power to file an appeal will enure on the original authority only if either the Central Government or the Board of Trustees had authorised the original authority to file an appeal against the order passed by the appellate authority. If no such permission is granted or obtained, the original authority has no *locus* to file an appeal challenging the said order passed by the Tribunal.

7. In the aforesaid scenario, it is canvassed on behalf of the petitioner that it is only the Board of Trustees, who have filed the petition and, therefore, the same is maintainable and the Board of Trustees is empowered to challenge the order passed by the appellate authority, viz., the Tribunal.

8. The only point that arises for determination in the present case is –

Whether in the absence of any express permission from the Central Government, the Board of Trustees could file an appeal against an order passed by the appellate authority.

9. There could be no quarrel with the fact that aggrieved by an order of the original authority, Tribunal may be moved by the person so aggrieved. The orders of the Tribunal are provided for under Section 7-L, which has already



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been discussed in the aforesaid writ petition, wherein, specific mention has

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been made to sub-section (4) of Section 7-L, which mandates that any order made by a Tribunal finally disposing of an appeal shall not be questioned in any court of law.

10. Against the order of the authority, when appeal is taken by the aggrieved person before the Tribunal, while the Tribunal is clothed with power to interfere with the said order, equally, the Tribunal could also remit the matter to the authority for fresh determination. In this backdrop, this Court has to consider the issue aforesaid to find out whether the Board of Trustees would stand on a different footing to challenge the order passed by the Tribunal.

11. Section 5-A of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (for short 'the Act') provides for the constitution of a Central Board by the Central Government by notification, which, for better appreciation is quoted hereunder :-

5A. Central Board. - (1) *The Central Government may, by notification in the Official Gazette, constitute, with effect from such date as may be specified therein, a Board of Trustees for the territories to which this Act extends hereinafter in this Act referred to as the Central Board consisting of the following persons as members, namely:-*



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(a) a Chairman and a Vice-Chairman to be appointed by the Central Government;

(aa) the Central Provident Fund Commissioner, Ex officio;

(b) not more than five persons appointed by the Central Government from amongst its officials;

(c) not more than fifteen persons representing Governments of such States as the Central Government may specify in this behalf, appointed by the Central Government;

(d) ten persons representing employers of the establishments to which the Scheme applies, appointed by the Central Government after consultation with such organisations of employers as may be recognised by the Central Government in this behalf; and

(e) ten persons representing employees in the establishments to which the Scheme applies, appointed by the Central Government after consultation with such organisations of employees as may be recognised by the Central Government in this behalf.

(2) The terms and conditions subject to which a member of the Central Board may be appointed and the time, place and procedure of the meetings of the Central Board shall be such as may be provided for in the Scheme.

(3) The Central Board shall subject to the provisions of section 6 and section 6C administer the Fund vested in it in such manner as may be specified in the Scheme.

(4) The Central Board shall perform such other functions as it may be required to perform by or under any provisions of the Scheme, the Pension Scheme and the



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Insurance scheme.

(5) The Central Board shall maintain proper accounts of its income and expenditure in such form and in such manner as the Central Government may, after consultation with the Comptroller and Auditor-General of India, specify in the Scheme.

(6) The accounts of the Central Board shall be audited annually by the comptroller and Auditor-General of India and any expenditure incurred by him in connection with such audit shall be payable by the Central Board to the Comptroller and Auditor-General of India.

(7) The Comptroller and Auditor-General of India and any person appointed by him in connection with the audit of the accounts of the Central Board shall have the same rights and privileges and authority in connection with such audit as the Comptroller and Auditor-General has, in connection with the audit of Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers, documents and papers and inspect any of the offices of the Central Board.

(8) The accounts of the Central Board as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon shall be forwarded to the Central Board which shall forward the same to the Central Government along with its comments on the report of the Comptroller and Auditor-General.

(9) It shall be the duty of the Central Board to submit also to the Central Government an annual report of its work



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and activities and the Central Government shall cause a copy of the annual report, the audited accounts together with the report of the Comptroller and Auditor-General of India and the comments of the Central Board thereon to be laid before each House of Parliament.”

12. The Board of Trustees for the respective, as notified by the Central Government, is constituted by notification in the Official Gazette and the sub-sections to Section 5-A clearly prescribe the duties of the Board of Trustees.

13. Delegation of powers is provided for u/s 19, which is very relevant to the present case and for proper appreciation, the same is quoted hereunder:-

“19. Delegation of powers - The appropriate Government may direct that any power or authority or jurisdiction exercisable by it under this Act, the Scheme, the Pension Scheme or the Insurance Scheme shall, in relation to such matters and subject to such conditions, if any, as may be specified in the direction, be exercisable also -

(a) where the appropriate Government is the Central Government, by such officer or authority subordinate to the Central Government or by the State Government or by such officer or authority subordinate to the State Government, as may be specified in the notification; and

(b) where the appropriate Government is a State Government, by such officer or authority subordinate to the



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State Government as may be specified in the notification.

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14. Section 20 and 21 of the Act relates to the power of the Central Government to give directions as well as to make rules, which are as under :-

“20. Power of Central Government to give directions -

The Central Government may, from time to time, give such directions to the Central Board as it may think fit for the efficient administration of this Act and when any such direction is given, the Central Board shall comply with such direction.

21. Power to make rules – (1) The Central Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

(a) the salary and allowances and other terms and conditions of service of the Presiding Officer and the employees of a Tribunal;

(b) the form and the manner in which, and the time within which, an appeal shall be filed before a Tribunal and the fees payable for filing such appeal;

(c) the manner of certifying the copy of the certificate, to be forwarded to the Recovery Officer under sub-section (2) or section 8C; and

(d) any other matter which has to be, or may be,



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prescribed by rules under this Act.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.”

15. A harmonious and conjoint reading of Sections 19, 20 and 21 clearly reveal that while the powers are vested with the Central Government/State Government insofar as any act is concerned, however, the Central Government/State Government, as the case may, be sub-delegate the said power upon the Board or any other authority to do certain tasks, if it thinks fit that it is for the efficient administration of the Act and that when such directions are given, the Central Board shall comply with the said direction. However, without such sub-delegation of power, the Board would not be clothed with the necessary power than the power available u/s 5-A of the Act insofar as management of the fund and maintenance of accounts are



concerned.

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16. Administration of the fund, which is vested in the Board is being carried on by the subordinates, viz., the Assistant Provident Fund Officer and other authorities higher up the hierarchy. However, as aforesaid, the Assistant Provident Officer or the Employees Provident Officer, as the case may be, being the original authority u/s 7-A of the Act, is a quasi-judicial authority, who adjudicates the issue with regard to payment of contribution towards the fund. The said authorities rendering quasi-judicial function, any order passed by them, which is challenged before the Tribunal, the original authority, in the absence of specific authorisation by the Central Government, is not permitted to question the same.

17. In the same stretch, a clear and unambiguous reading of Section 5-A, 19, 20 and 21 would reveal that while the duty cast upon the Board of Trustees is the maintenance of the fund and submissions of accounts to the Comptroller and Auditor General, it is only the Central Government/State Government, which is the appropriate authority to question any order that may be passed by the Assistant Provident Commissioner and the Board of Trustees, being a mere custodian and maintenance agent of the fund, is not clothed with



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any power to question the order passed by the Tribunal, in the absence of any specific authorisation granted to it by the Central Government. Therefore, the Board of Trustees also stand on a similar footing as the Assistant Provident Fund authority, who is the original authority u/s 7-A of the Act.

18. It is clear from Section 19 and 20 that only if direction and permission is given by the Central/State Government, do the Board of Trustees assume jurisdiction and power to question the order passed by the Tribunal and in the absence of any specific direction or permission granted by the Central Government/State Government, the Board of Trustees would also be not vested with any jurisdiction to question the order passed by the Tribunal.

19. In the present case, it is not the case of the petitioner that the Central Government/State Government, as the case may be, has given any specific authorisation/permission to the Board of Trustees, viz., the petitioner herein to question the order passed by the Tribunal. In the absence of such power being granted to the Board of Trustees, viz., the petitioner herein cannot subsume and assume the power of the Central Government and question the order passed by the Tribunal as the Board of Trustees have no jurisdiction to question the order of the Tribunal. In the absence of such a power, the writ



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petition filed at the instance of the Board of Trustees is akin to the writ petition filed by the Assistant Provident Fund Commissioner and the same cannot be held to be maintainable.

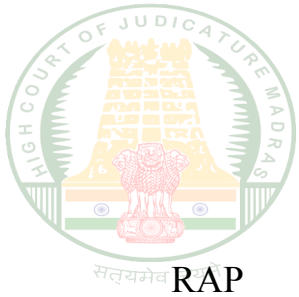
20. One other aspect which is necessary to be pointed out here is the fact that the petition has been filed by the original authority representing the Board of Trustees. This Court has already held that the original authority cannot question the order passed by the Tribunal and that being the admitted position, the original authority will have no power to file the petition on behalf of the Board of Trustees. If at all the Board of Trustees is aggrieved by the order of the Tribunal, upon permission/authorisation being granted by the Central Government, the Board of Trustees have to file the petition and through sub-delegation the Board of Trustees cannot direct the original authority to file the petition. In the case on hand, the Board of Trustees have not obtained any permission and, therefore, they would not have any jurisdiction to assail the order passed by the Tribunal and further they cannot sub-delegate the filing to the original authority. Therefore, the challenge made to the order of the Tribunal by the petitioner herein is an act without jurisdiction and, therefore, the writ petition deserves to be dismissed by confirming the order passed by the Tribunal.



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WEB COPY 21. It has come to the knowledge of this Court that the order passed by the original authority u/s 7-A and the order passed by the Tribunal u/s 7-L of the Act are not being communicated to the employers/employees/Original Authority so as to enable them to work out the further remedy in the manner known to law either before the Tribunal or before this Court. In such view of the matter, once an order is passed either by the original authority or on appeal by the Tribunal, the original authority and the Tribunal, upon final disposal of the issue, is directed to communicate a copy of their order to the employer/employees so as to enable them to work out their remedy in the manner known to law.

22. Accordingly, for the reasons aforesaid, these writ petitions are dismissed, confirming the respective impugned orders passed by the Tribunal along with a direction to the original authority/Tribunal to communicate a copy of their orders to the employer/employees/Original Authority, enabling them to work out their remedy in the manner known to law. There shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.



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13.03.2025

RAP

Index : Yes / No

Speaking order / Non-speaking order

NCC:Yes/No

To

The Presiding Officer,
Employees' Provident Fund Appellate Tribunal,
4th Floor, Core 2, Scope Minar,
Laxmi Nagar, New Delhi – 110 092.



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M.DHANDAPANI, J.

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