



IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

Reserved on : 13.06.2025

Pronounced on : 18 .07.2025

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

S.A.No. 582 of 2009

1. The Commissioner
Provident Fund Organisation
Chennai – 600 014.
2. The Commissioner
Employees Provident Fund Office
Chennai – 600 014.
3. The Assistant Provident Fund Commissioner (Enforcement)
Chennai.
4. The Regional Provident Fund Commissioner
Coimbatore – 18.
5. The Assistant Provident Fund Commissioner
Coimbatore-18.

... Appellants/Appellants/Defendants

Vs.

1. M/s. NEPC Airlines
A Division of NEPC India Lt.,
Rep. by its Director
2. M/s. NEPC Textiles Ltd
Rep. by its Director



WEB COPY

3. M/s. NEPC Tea Garden
A Division of Agro Foods
Rep. by its Director ... Respondents/Respondents/Plaintiff

PRAYER: This Second Appeal is filed under Section 100 of Civil Procedure Code, against the Judgment and Decree dated 08.09.2006 made in A.S.No. 87 of 2006 on the file of the Principal Subordinate Judge, Coimbatore, thereby confirming the Judgment and Decree of the II Additional District Munsif at Coimbatore, in O.S.No. 2585 of 2004 on 22.02.2006.

For Appellants : Mrs. R.Meenakshi

For RR 1 to 3 : Mr. Sai Krishnan

JUDGMENT

The defendants in O.S.No. 2585 of 2004 on the file of the II Additional District Munsif Court at Coimbatore are the appellants herein.

2. O.S.No. 2585 of 2004 had been filed by the respondents seeking a Judgment and Decree restraining the defendants therein from recovering the due of Rs.90/- lakhs as employer and employee contribution from the



second and third plaintiffs by grant of permanent injunction and for costs of the suit. By Judgment dated 22.02.2006, the learned II Additional District Munsif at Coimbatore had decreed the suit.

3. The appellants herein / defendants in the suit then filed A.S.No. 87 of 2006 before the Sub Court at Coimbatore. By Judgment dated 08.09.2006, the Appeal Suit was dismissed with costs, necessitating the filing of the Second Appeal.

4. The Second Appeal had been admitted on 25.06.2009 on the following substantial question of law:-

"Whether the Civil Court has jurisdiction to decide the issue."

O.S.No. 2585 of 20024:

5. The plaintiffs NEPC Airlines, NEPC Textiles Ltd., and NEPC Tea Garden had filed the suit against the Commissioner, Provident Fund Organisation and other officials of the Provident Fund Office, seeking permanent injunction restraining the defendants from recovering an



alleged due of Rs.90/- lakhs as employer and employee contribution from the second and third plaintiffs.

6. In the plaint, it had been contended that the first plaintiff, a limited company was carrying on business in Airlines. The second plaintiff also a limited company was carrying on business dealing with textiles. The third plaintiff was maintaining Tea Garden and dealing with tea products. It had been stated that the Provident Fund Contribution had been effected with respect to the employees of the defendants. The share of the employers had also been made in the interest and welfare of the employees. It had been further stated that the Airline Division of the first plaintiff suspended its operation.

7. Thereafter, the plaintiff came to know about a notification of the Central Government under the Employees Provident Funds and Miscellaneous Provisions Act 1952 which was issued under Section 131(3)(b) dated 22.03.2001 that Provident Fund is applicable to establishments of Aircrafts or Airlines other than Aircrafts and Airlines controlled by Central and State Government with effect from 01.04.2001. It had therefore been contended that Aircrafts and Airlines were not



covered under the Provident Fund Act prior to the said notification
namely, 01.04.2001.

8. The first plaintiff had addressed a letter on 19.12.2001 calling upon the first defendant to refund the amount of employers share lying with the defendants. It had been stated that the third defendant had sent a reply rejecting the demand of the first defendant. A further letter was sent by the first plaintiff for refund of the share in the Provident Fund. It had been further stated that the defendants are not entitled to retain the amount lying in deposit. It had been further stated that the defendants are Government Officers representing the Central Government and functioning under the Ministry of Labour, Government of India. It was contended that they are bound by the notification issued by the Central Government. It had been stated that the defendants are taking arrangements to recover alleged dues from the second and third plaintiffs. It had been further contended that the dues had been crystallised to Rs.90/- lakhs. It is under those circumstances that the suit had been filed seeking a permanent injunction restraining the defendants from recovering the dues of Rs.90/- lakhs from the second and third plaintiffs.



WEB COPY 9. A written statement had been filed on behalf of the defendants wherein it had been stated that the first plaintiff was covered under Section 2(A) of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 with effect from 01.04.1997 at the request of NEPC Micon Ltd., dated 16.04.1997. It had been denied that the defendants had been unlawfully holding to the contributions made by the plaintiffs. It had been stated that the contributions had been made in accordance with the rules and regulations. It had been further stated that all the employees for whom the contributions have been made would get due credit in their accounts. It had been further stated that the plaintiffs were yet to pay a sum of Rs.2.46 lakhs on the dues upto 6/01. It had been stated that the application of the notification dated 22.03.2001 would not arise with respect to adjustment of remittance made by the plaintiffs. It had thus been stated that the suit should be dismissed.

10. On the basis of the pleadings, the following issues were framed by the trial Court:-

“(i) Whether the plaintiff is entitled to the relief of permanent injunction as sought?; and



(ii) *To what other reliefs are the parties entitled?"*

11. Thereafter, additional issues were also framed as follows:-

“(i) Whether the Civil Court has jurisdiction to examine the issues raised in the plaint?; and

(ii) Whether the first plaintiff was entitled to refund of the contribution deposited with the defendants.”

12. During the course of trial, on the side of the plaintiffs, one Padmanaban was examined as PW1 and Exs.A-1 to A-19 were marked. On the side of the defendants, one Devadas was examined as DW-1 and Exs. B-1 to B-8 were marked.

13. The learned trial Judge during the course of his discussion had examined Section 18 of the Provident Funds Act which stated that no suit would lie against an Inspector with respect to any act done in good faith. The learned trial Judge had also examined Section 9 CPC with respect to jurisdiction of the Civil Court and on the basis of the aforementioned provisions held that the Court was vested with jurisdiction.

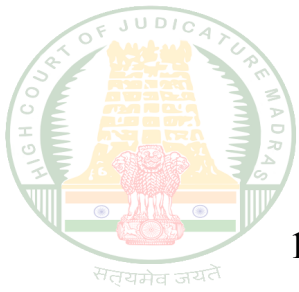


WEB COPY 14. With respect to the other issues raised, the learned trial Judge examined the notification issued by the Central Government which was brought into effect from 01.04.2001 and stipulated that Aircraft or Airlines owned or controlled by the Central and State Government would not be covered under the Provident Fund.

15. The learned Additional District Munsif was of the opinion that this would indirectly mean that prior to 01.04.2001 every Aircraft and every Airline would not be subject to Employees' Provident Funds. Holding as above, the suit was decreed as prayed for.

A.S.No. 87 of 2006 [Sub Court, Coimbatore]:

16. The defendants then filed the above Appeal Suit which came up for consideration before the Sub Court at Coimbatore. By Judgment dated 08.09.2006, the learned Sub Judge once again re-examined the entire issue and framed as points for consideration whether the Civil Court has jurisdiction to examine the issues raised in the plaint and whether the Appeal should be allowed or not.



17. The First Appellate Court relied on the very same reasonings as given by the trial Court and it could actually be stated that the Judgment is more or less replica of the observations made by the trial Court. The learned First Appellate Judge was also of the opinion that the Civil Court has jurisdiction to examine the issues raised and thereafter had also come to the conclusion that the plaintiff was entitled to the relief sought and had therefore dismissed the Appeal Suit and confirmed the Judgment and Decree of the trial Court.

S.A.No. 582 of 2009:

18. The defendants had then filed the present Second Appeal. The Second Appeal had been admitted on the following substantial question of law:-

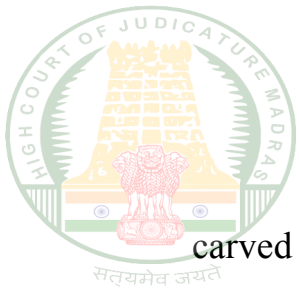
"Whether the Civil Court has jurisdiction do decide the issue."

19. The only issue raised by the learned counsel for the appellant is about the jurisdiction of the Court to examine the issues raised by the plaintiff.



WEB COPY 20. The suit had been filed by the three respondents, who could be called as group companies seeking a permanent injunction restraining the appellants herein / Officials of the Employees Provident Fund from recovering any due much less dues of Rs.90/- lakhs from the second and third respondents.

21. It is the case of the respondents that the Central Government had issued a notification dated 22.03.2001 wherein they had stated that Aircrafts or Airlines owned or controlled by the Central and State Government would not be covered under the Provident Fund Act with effect from 01.04.2001. The respondents have interpreted this notification to mean that prior to 01.04.2001, the respondents were not covered under the Employees Provident Fund. There could be no worse misleading interpretation given to the said notification. The notification only clarified that on and from 01.04.2001, the Aircraft and Airlines belonging to the Central and State Government would not covered under the Employees Provident Fund Scheme. This would never mean that prior to that particular date, no organisation running Aircrafts and Airlines would be covered under the Employees Provident Fund. The notification only



carved out an exception on and from 01.04.2001. All companies running Aircrafts and Airlines would continue to be covered under the Employees Provident Funds even after 01.04.2001. The Aircrafts and Airlines belonging to the State and Central Government alone would not be covered under the Employees Provident Fund scheme. This is the only logical interpretation which could be given for the notification. Both the Courts below had misdirected themselves on the interpretation of the notification.

22. For better appreciation, the notification is also extracted below:-

“The Employees' Provident Funds and Miscellaneous Provisions Act, 1952 – notification under Section 1(3)(b) New Delhi, dated the 22nd March 2001.

s.o.746 – In exercise of the powers conferred by clause (b) of sub-section 1 of the Employee's Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952) the Central Government hereby specifies the following establishments employing 20 or more persons as the class of establishments to which the said Act shall apply with effect from 1st April 2001, namely:-



WEB COPY

services;

(i) *an establishment engaged in rendering courier*

(ii) *an establishment of aircraft or airlines other than the aircraft of airlines owner or controlled by the Central or State Government.*

(iii) *an establishment engaged in rendering cleaning and sweeping services.”*

23. The Judgments relied on by both the trial Court are not at all applicable to the facts of this case.

24. Additionally, Section 7(A) of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 provides that the Central Provident Fund Commissioner or Additional Central Provident Fund Commissioner or Deputy Provident Fund Commissioner or Regional Provident Fund Commissioner or Assistant Provident Fund Commissioner may whenever there is a dispute regarding the applicability of the Act to an establishment decide such dispute and determine the amount due from any employer under the provisions of this Act. Section 7(A)(1)(a) and (b) are as follows:-

“7A. Determination of moneys due from employers.—[(1) The Central Provident Fund



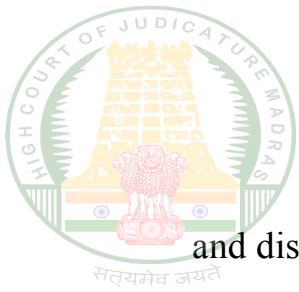
Commissioner, any Additional Central Provident Fund Commissioner, any Deputy Provident Fund Commissioner, any Regional Provident Fund Commissioner, or any Assistant Provident Fund Commissioner may, by order,—

(a) in a case where a dispute arises regarding the applicability of this Act to an establishment, decide such dispute; and

(b) determine the amount due from any employer under any provision of this Act, the Scheme or the 3 [Pension] Scheme or the Insurance Scheme, as the case may be,

and for any of the aforesaid purposes may conduct such inquiry as he may deem necessary]; ”

25. Section 7(B) provides for Review of orders passed under Section 7-A. Section 7(C) provides for determination of escaped amount. It had been provided in Section 7(D) that the Industrial Tribunal constituted by the Central Government under 7(A)(i) of the Industrial Disputes Act 1947 would be the Tribunal for the purpose of the Act. The procedure to be followed by the Tribunal had been given under Section 7(J) of the Act. It is thus clear that the issues raised in the plaint can only be examined by the Industrial Tribunal constituted by the Central Government under Section 7(A)(1) of the Industrial Disputes Act 1947. When a special Tribunal had been established to exercise the said issues



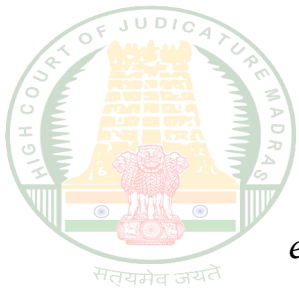
and disputes, the jurisdiction of the Civil Court stands barred.

WEB COPY

26. The relief sought in the plaint is for permanent injunction restraining the defendants from making any recovery of the dues from the second and third plaintiffs. A Civil Court can never enter into a discussion on those issues.

27. In *Union of India Vs. Narayan [1989 LAB.I.C. 854]*, this Court had held as follows with respect to Section 7(A) of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 with specific reference to the jurisdiction of a Civil Court to examine applicability of the provisions of the Act to an employer:-

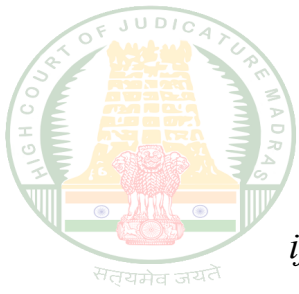
“Thus all the trappings of a judicial proceeding are grafted into the process of determination to be made under S.7A(1) of the Act. Even thereafter, if the employer feels aggrieved by the order it is open to him to challenge the same under Art.226 or 227 or both of the Constitution. The bar contained in sub-sec.(4) of S.7A of the Act has to be appreciated in the background of the object of the Act. The Act is a beneficial legislation and it is intended to serve interest of the employees. Even after the determination is made after holding a due



WEB COPY



enquiry under S.7A of the Act to the effect that the provisions of the Act are attracted and the employer is liable to deposit the amount as per the provisions of the Act, and such a determination in spite of the provisions contained in sub-Sec.(4) of S.7A of the Act, is held to be open to challenge by seeking relief in a civil Court either in the form of an injunction or declaration, it will be nothing but defeating the very Act itself inasmuch as the enforcement authority will not be able to enforce the Act, until the proceeding before a Civil Court attains finality; which, having regard to several stages including an appeal and further appeal have to be covered, before it attains finality, is possible only after a decade or two and by that time many of the employees would be either out of employment or have left the world for ever. Keeping this aspect in view and also the fact that an aggrieved employer has a remedy against the order passed under S.7A of the Act under Arts.226 and 227 of the Constitution, the Parliament in its wisdom has excluded the jurisdiction of a Civil Court and has issued statutory injunction that the order made under S.7A of the Act shall not be questioned in any Court of law. A party cannot be allowed to over-come or avoid such a statutory injunction by seeking a prayer in a Civil Court in such a manner so as to make it appear that apparently the order passed under S.7A of the Act is not challenged; though in effect and in substance the relief,



WEB COPY



if granted would result in nullifying the order passed under S.7A of the Act. Therefore having regard to the fact that, in the instant case, if the decree as prayed for is granted, it results in setting aside or nullifying the order passed under S.7A of the Act, Civil Court has no jurisdiction to grant such a relief.”

28. The reasoning given above is directly applicable to the facts of this case. Both the trial Court and the First Appellate Court had misdirected themselves in assuming jurisdiction when they had no jurisdiction to examine the issues raised and more specifically when the Industrial Tribunal constituted under the provisions of the Industrial Disputes Act alone had been notified as the competent Tribunal to examine the applicability of the provisions of the act.

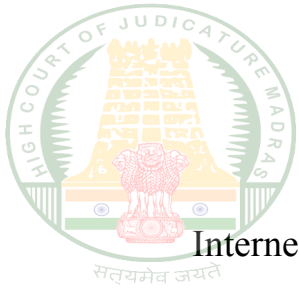
29. The substantial question of law is answered that the Civil Court has no jurisdiction to decide the issues raised in the suit.

30. In view of the above discussion, the Judgment and Decree passed by both the Courts below are set aside. The suit in O.S.No. 2585 of 2004 on the file of the II Additional District Munsif, Coimbatore stands dismissed. The Second Appeal stands allowed with costs right through.

Vsg

18.07.2025

Index :Yes/No



Internet: Yes/No

WEB COPY To

1. Principal Sub-Court, Coimbatore.
2. II Additional District Munsif Court at Coimbatore.



WEB COPY



18

C.V.KARTHIKEYAN, J.

vsg

Pre-Delivery Judgment made in

S.A.No. 582 of 2009

18.07.2025