

W.P.No.7381 of 2021 & batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS
(Special Original Jurisdiction)

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RESERVED ON : 29.04.2025
PRONOUNCED ON : 29.05.2025

PRESENT:

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

W.P.No. 7381, 7825, 7829, 7831 of 2021 and 31252 of 2022
and

W.M.P.Nos. 7889, 8345, 8347, 8350 of 2021

1. The Regional Provident Fund Commissioner,
Employees Provident Fund Organisation,
Sub-Regional Office, S.J.Plaza,
Swarnapuri,
Salem – 636 004.

...Petitioner in WP No.7381/21, 7825/21,
7829/21 & 7831 of 2021 and
Respondent in WP No. 31252 / 2022

2. M/s. The Erode District Cooperative
Spinning Mills Ltd,
Kolathupalayam,
Dharapuram Taluk,
Tirupur District – 638 661.
Rep. by its Liquidator

.... Petitioner in WP No. 31252/2022

Vs.

1. M/s. Sri.V.Balaji Spinning Mills India Pvt. Ltd
RSF No. 135/5, Kiliampatti Road,
Mullamparappu, N.G.Palayam P.O.
Erode 638 115.

....Respondent in WP No.7381/2021



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2. M/s. Erode District Cooperative Spinning Mills Ltd
Kolathurpalayam, Dharapuram Taluk,
Tirupur District – 638 661.
Tamil Nadu
Rep. by its Administrator.

....Respondent in WP No. 7825/2021

3. M/s. S402 Yercaud Hill Tribe Large
Sized Multi Purpose Co-operative Society,
Rep. by its President,
Jarinakadu, Yercaud
Salem District.

...Respondent in WP No. 7829/2021 & 7831/2021

Prayer in W.P.No. 7381 of 2021

To call for the records relating to the proceedings of the Employees Provident Fund Appellate Tribunal order dated 24.10.2019 in EPFA No.536 of 2017 and quash the order passed therein by issue of a Writ of Certiorari or any other appropriate writ, order or direction in the nature of writ and pass such further or other orders as this Hon'ble Court deems fit.

Prayer in W.P.No. 7825 of 2021

To call for the records relating to the proceedings of the Employees Provident Fund Appellate Tribunal order dated 23.03.2020 in EPFA No. 165 of 2017 and quash the order passed therein by issue of a Writ of Certiorari of any other appropriate writ, order or direction in the nature of writ and pass such further or other orders as this Hon'ble Court deems fit.

Prayer in W.P.No. 7829 of 2021



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To call for the records relating to the proceedings of the Employees Provident Fund Appellate Tribunal order dated 24.10.2019 in EPFA No. 476 of 2017 and quash the order passed therein by issue of a Writ of Certiorari of any other appropriate writ, order or direction in the nature of writ and pass such further or other orders as this Hon'ble Court deems fit.

Prayer in W.P.No. 7831 of 2021

To call for the records relating to the proceedings of the Employees Provident Fund Appellate Tribunal order dated 22.04.2020 in EPFA No.229 of 2018 and quash the order passed therein by issue of a Writ of Certiorari of any other appropriate writ, order or direction in the nature of writ and pass such further or other orders as this Hon'ble Court deems fit

Prayer in W.P.No. 31252 of 2022

To issue a Writ or any other Order or Direction more particularly in the nature of Writ of Certiorari calling for the records made in EPFA No.165/2017/A.T.A.No.134(13)/2012 dated 23.03.2020 passed by the Hon'ble Central Government Industrial Tribunal Cum Labour Court, Chennai and quash the same and to pass such further or other Orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

Prayer in WMP No. 7889 of 2021 (in W.P.No.7381 of 2021)

To stay all further proceedings pursuant to the order passed by the Employees provident fund Appellate Tribunal dated 24.10.2019 in EPFA No.536 of 2017 pending disposal of the above Writ Petition.

Prayer in WMP No. 8345 of 2021 (in W.P.No. 7825 of 2021)



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To stay all further proceedings pursuant to the order passed by the Employees provident fund Appellate Tribunal dated 23.03.2020 in EPFA No.165 of 2017 pending disposal of the above Writ Petition.

Prayer in WMP No. 8347 of 2021 (in W.P.No. 7829 of 2021)

To stay all further proceedings pursuant to the order passed by the Employees provident fund Appellate Tribunal dated 24.10.2019 in EPFA No.476 of 2017 pending disposal of the above Writ Petition.

Prayer in WMP No. 8350 of 2021 (in W.P.No. 7831 of 2021)

To stay all further proceedings pursuant to the order passed by the Employees provident fund Appellate Tribunal dated 22.04.2020 in EPFA No.229 of 2018 pending disposal of the above Writ Petition.

Appearance of Parties:

For Petitioner

(in all WPs except

WP.No.31252/2022) : M/s. R.Meenakshi, V.Mohanapriya,
M.Suganya &A.Nambirajan, Advocates

For Petitioner in

WP No. 31252/2022 &

For Respondent in

WP No. 7825/2021 : M/s. Elanchezhian, K.Hemakarthikeyan,
L.P.Balajiram, S.Aalgu Sangeetha, &
M.E.Manirathnam, Advocates

For Respondent : No Appearance

In WP No. 7381/2021



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For Respondent : Mr.M.R.Raghavan, Advocate
in WP Nos. 7829/2021
and 7831/2021

For Respondent
in WP No.31252/2022 : Mr.Vishnu Ramu, Advocate

COMMON JUDGMENT

Heard.

2.Since all the writ petitions arise from orders passed by the EPF Tribunal in different appeals, but involve common questions of law, they were heard together and are being disposed of by this common judgment.

W.P.No.7825 of 2021 and W.P.No. 31252 of 2022

3.Both writ petitions challenge the order dated 23.03.2020 passed by the EPF Appellate Tribunal in EPFA No. 165 of 2017 (ATA No. 134(13)/2012), whereby the Tribunal allowed the appeal filed by the Erode Co-operative Spinning Mills and directed them to deposit 30% of the levy imposed by the Provident Fund Department under order dated 29.06.2004, within a period of two months. Aggrieved by this direction, the Regional Provident Fund Commissioner, Salem (RPFC), filed the present writ petition in W.P. No. 7825

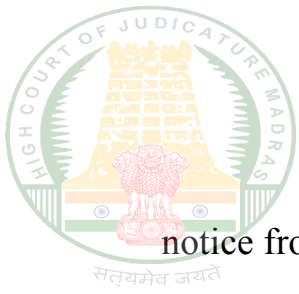


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4.The stand of the RPFC was that the respondent mill came under the purview of the EPF Act with effect from 01.12.1990. However, it failed to remit the statutory contributions within the prescribed time, and the remittances for the period from October 1995 to June 2003 were made belatedly. Consequently, a show cause notice dated 29.06.2004 was issued proposing the levy of interest and damages. A personal hearing was afforded to the mill on 14.07.2004, and it was also informed that failure to remit the dues would result in initiation of recovery proceedings along with interest at the rate of 12% per annum.

5.The Co-operative Mill initially challenged the show cause notice-cum-levy order by filing W.P. No. 8427 of 2004 before this Court. Upon dismissal of the writ petition, they preferred Writ Appeal No. 2012 of 2011. By order dated 08.12.2011, the Division Bench disposed of the appeal, granting liberty to the mill to pursue its remedy before the EPF Appellate Tribunal. Accordingly, an appeal was filed in ATA No. 134(13)/2012 before the EPF Tribunal, New Delhi, which was later transferred to the Central Government Industrial Tribunal (CGIT), Chennai, and renumbered as EPFA No. 165 of 2017. Upon receipt of



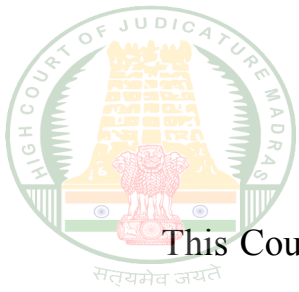
W.P.No.7381 of 2021 & batch

notice from the Tribunal, the RPFC filed a counter. After hearing both sides, the

Tribunal passed the impugned order dated 23.03.2020. The writ petition filed by the RPFC challenging this order was listed along with two other connected writ petitions and was admitted on 26.03.2021.

6.The Co-operative Mills contended that a liquidator had already been appointed and that the Mill had been declared a relief undertaking by the Government under G.O.Ms. No. 139, Handloom, Textiles and Khadi Department, dated 05.07.1995. Further notifications extending the relief status were issued on 18.07.1996, 17.07.1997, 18.07.1998, 15.07.1999, 18.07.2000, 18.07.2001, and 16.09.2002. On this basis, they sought to set aside the Tribunal's direction to deposit 30% of the levy amount. The Mill filed W.P. No. 31252 of 2022, and when it came up for admission on 23.11.2022, notice was accepted by the standing counsel for the RPFC. The matter was then referred to the National Lok Adalat scheduled for 14.12.2024; however, as no settlement could be reached, it was posted back for final hearing.

7.The issue raised in these two writ petitions is no longer *res integra*.



W.P.No.7381 of 2021 & batch

This Court, in a batch of writ petitions beginning with **W.P. No. 1239 of 2020**,

by order dated 20.03.2025 (as modified on 09.04.2025), has already held as

follows:

“51. Regarding the levy of interest under Section 7Q, damages under Section 14B, and the applicability of Regulation 32A of the EPF Scheme, a Division Bench of this Court, in its decision in Writ Appeal No. 1382 of 2014 dated 27.06.2023, in Assistant Provident Fund Commissioner v. Employees Provident Funds Appellate Tribunal & Anr., has held as follows:

“8. A reading of Section 7-Q of the EPF Act, 1952 makes it clear that interest will have to be paid by the Employer. The word used in Section 14- B of the Act, 1952 is 'may' and the discretion exercised by the EPFO Authority cannot be mechanically interfered with by the Tribunal, unless reasons given by the Authority are proper. In the light of Section 7L, the Tribunal is empowered to reduce or completely waive the damages that may be passed by the Original Authority. In this case, the Tribunal has exercised its discretion and passed the order. We have already made an observation in W.A.No.2349 of 2022 dated 06.06.2023 that after introduction and amendment of Section 7I of the Act, the power of the Tribunal cannot be curtailed, as an appeal can be filed before the Tribunal against the Board's decision. Section 7I of the Act reads as follows:

"7-I. Appeals to Tribunal - "(1) Any person aggrieved by a notification issued by the Central Government, or an order passed by the Central Government or any authority, under the proviso to sub-section (3), or sub-section (4), of section 1, or section 3, or sub-section (1) of section 7A, or section 7B [except an order rejecting



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an application for review referred to in sub-section (5) thereof], or section 7C, or section 14B, may prefer an appeal to a Tribunal against such notification or order.

(2) Every appeal under sub-section (1) shall be filed in such form and manner, within such time and be accompanied by such fees, as may be prescribed."

9. It is pertinent to point out here that as per the provisions of the EPF Act, 1952, the interest on the PF contribution is mandatory. At the same time, in respect of levy of damages, it is left to the discretion of the Authority to decide the percentage of amount payable by the Employer. Of course, such percentage will have to be decided based on the facts and circumstances of each case. The schedule rate mentioned in Regulation 32-A is only the Upper Limit and it does not mean that the Authority or the Tribunal will have to mechanically apply it".

52. In light of these legal prepositions, the learned counsel for the EPF Department sought to have the Tribunal's orders set aside, arguing that they exceeded the legal limits applicable to the Appellate Tribunal. However, Mr. P. Thangaraj, learned counsel for the petitioner in W.P. No. 18099 of 2020, representing a private party, contended that the portion of the Tribunal's order which declined full relief should be set aside. He argued that the Tribunal exercises power under Section 7L of the EPF Act and not merely under the provisions of the EPF Scheme. Furthermore, he submitted that the petitioner in that writ petition, a cooperative spinning mill, was entitled to relief from this Court, as the Tribunal had failed to grant complete relief. In support of his argument, he relied on two judgments of this Court—one by a Division Bench and another by a Full Bench—which are as follows:



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“a. RH 153, Ramanathapuram District Co-operative Spinning Mills Ltd Vs. Central Board of Trustees of Employee’ Provident Fund Organisation, W.A.(MD) Nos. 228 to 230 and 365 of 2011 dt. 7.3.2014

b. Sun Pressings (P) Ltd Vs. The Presiding Officer, Employees’ Provident Fund Appellate Tribunal, Core-II, New Delhi & Ors. reported in 2024 (1) Writ LR 801”

53. However, the reasoning put forth by the learned counsel for the EPF Department does not support the exercise of discretion by this Court in reducing the levy of interest and damages. If the Tribunal itself lacked such authority, this Court, under Article 226, cannot interfere on the ground of alleged non-exercise of discretion by the Tribunal. In the present case, the Tribunal, in all the impugned orders, applied certain legal principles—many of which were subsequently disapproved—and interfered with the authority’s orders without providing any specific justification. In essence, all the impugned orders are based on identical reasoning and do not contain any case-specific rationale. At best, the orders appear mechanical, applying legal principles erroneously. For these reasons, the impugned orders are liable to be set aside.”

8. In view of the above, W.P. No. 7825 of 2021 filed by the Regional Provident Fund Commissioner is allowed, and the impugned order dated 23.03.2020 passed by the Tribunal in EPFA No. 165 of 2017 is set aside. Consequently, W.P. No. 31252 of 2022 filed by the Co-operative Spinning Mills stands dismissed. W.M.P. No. 8345 of 2021 is also dismissed. There shall be no order as to costs.



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W.P.No. 7829 and 7831 of 2021

9.In both writ petitions, the petitioners are the Regional Provident Fund Commissioner. The first writ petition challenges the order dated 24.10.2019 passed by the EPF Tribunal in EPFA No. 476 of 2017, while the second writ petition challenges the order dated 22.04.2020 passed by the Tribunal in EPFA No. 229 of 2018. The contesting respondents in both matters are multi-purpose co-operative societies. Notice of motion in both writ petitions was ordered on 26.03.2021, along with another connected writ petition.

10.In the first writ petition, the respondent society challenged the levy of damages before the Tribunal in EPFA No. 476 of 2017. While the Tribunal upheld the levy, it granted partial relief by reducing the quantum to 60% through its order dated 27.10.2019. The operative portion of the said order reads as follows: –

“Accordingly the Respondent could have exercised its discretion and imposed lesser amount to what has been prescribed under 32A. Accordingly, the Impugned Order for levying damage under 14B though found to be correct, the dues determined is not proper and justified in the given facts and circumstances of the case. So far as the Impugned Order under 7Q, remains unchanged as not appealable.



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8. In the result, the dues determined under 7Q while warrants no interference, as much as the Appellant has already remitted the during the course of 14B proceedings, any order need not be passed in this regard. The dues determined under 14B need modification. Accordingly, the dues determined in the Impugned Order under 14B is modified by reducing it to 60%.

The Appeal is allowed in part.

The Appellant is directed to deposit the modified amount of (60%) i.e. Rs.1,48,590/- (Rupees One lakh Forty eight thousand Five hundred Ninety only) in place of Rs.2,47,650/- vide Impugned Order No. TN/SLM/SRO/PDC/25798/SAL-05/14B-PROCEEDING dtd. 16.09.2014, before the Respondent within a period of one month from the date of receipt of this order, failing which the Respondent is at liberty to recover the same under the process of law.”

11.In the second writ petition, the EPF Tribunal, while entertaining an appeal filed by the same respondent society, again granted relief in respect of damages levied under Section 14B. By its order dated 22.04.2020 in EPFA No. 229 of 2018 (signed on 24.04.2020), the Tribunal reduced the damages to 35%.

The operative portion of the said order reads as follows: –

“The Appellant while did not raise any dispute with regard to the levy of dues towards damage by the Adjudicating Authority under 14B, an order of partial waiver, was prayed by the Learned Counsel for the Appellant during the course of argument in the light of M/s.K.Streetlite Electric Corporation Vs. RPFC, Haryana, 2001 4 SCC 449.

10.In the result, the Impugned Order for levying damage under



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14B though found to be correct, the dues determined therein cannot said to be proper and justified in the given facts and circumstances of the case and needs modification. Accordingly, the dues determined in the Impugned Order under 14B is modified by reducing it to 35%.

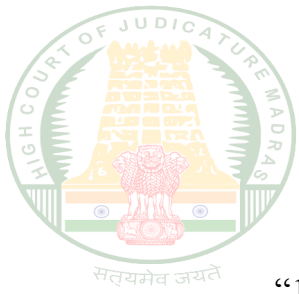
The Appeal is allowed in part.

11.The Appellant is directed to deposit the modified amount Rs.42,049/- (Rupees Forty two thousand Forty nine only) (35%) of the dues determined in the Impugned Order No.CB/SLM/SRO/PDC/25798/SLM-5/14B-PROCEEDING/2016 dtd. Nil 05/2016 before the Respondent within a period of one month from the date of receipt of this order, failing which the Respondent is at liberty to recover the same under the process of law.”

12.Both orders passed by the Tribunal are liable to be quashed, as the Tribunal has no authority to unilaterally reduce the quantum of damages levied by the statutory authorities based solely on its own *ipse dixit*. This Court has already settled the issue in a batch of writ petitions beginning with **W.P. No.**

1239 of 2020 (cited supra), wherein it was held in paragraph 50 as follows: –

“50. The Supreme Court, in its decision in Horticulture Experiment Station, Gonikoppal, Coorg v. Regional Provident Fund Organization, reported in 2022 (4) SCC 516, held that the levy of damages is an essential consequence of non-payment of EPF dues and that the question of invoking mens rea as a necessary element for imposing a penalty does not arise. It is pertinent to refer to the following passage from paragraphs 13 to 17, which states as follows:



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“13. Taking note of the exposition of law on the subject, it is well- settled that mens rea or actus reus is not an essential element for imposing penalty or damages for breach of civil obligations and liabilities.

14. The judgment on which the learned counsel for the appellant(s) has placed reliance i.e. Employees State Insurance Corporation(supra), the Division Bench in ignorance of the settled judicial binding precedent of which a detailed reference has been made, while examining the scope and ambit of Section 85B of the Employees State Insurance Corporation Act, 1948 which is pari materia to Section 14B of the Act 1952 placing reliance on the judgment of Division Bench of this Court in Dilip N. Shroff (supra) held that for the breach of civil obligations/liabilities, existence of mens rea or actus reus to be a necessary ingredient for levy of damages and/or the quantum thereof.

15. It may be noticed that Dilip N. Shroff(supra) on which reliance was placed has been overruled by this Court in Union of India and Others v. Dharmendra Textile Processors and others (supra). For the aforesaid reasons, the view expressed by this Court in Employees State Insurance Corporation (supra) may not be of binding precedent on the subject and of no assistance to the appellant(s).

16. Learned counsel for the appellant(s) further placed reliance on the judgment of this Court in Mcleod Russell India Ltd. (supra), wherein the question emerged for consideration was as to whether the damages which has been charged under Section 14B of the Act 1952 would be recoverable jointly or severally from the erstwhile as well as the current managements. At the same time, the judgment relied upon in Assistant Provident



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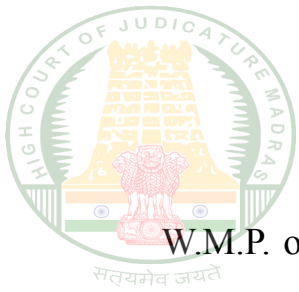
Fund Commissioner, EPFO and Another (supra) was decided placing reliance on the judgment of this Court in Mcleod Russell India Ltd. (supra), which may not be of any assistance to the appellant(s).

17. Taking note of three-Judge Bench judgment of this Court in Union of India and Others v. Dharmendra Textile Processors and others (supra), which is indeed binding on us, we are of the considered view that any default or delay in the payment of EPF contribution by the employer under the Act is a sine qua non for imposition of levy of damages under Section 14B of the Act 1952 and mens rea or actus reus is not an essential element for imposing penalty/damages for breach of civil obligations/liabilities.”

13. In view of the above, both writ petitions are liable to be allowed. Accordingly, W.P. Nos. 7829 of 2021 and 7831 of 2021 stand allowed, and the impugned orders are set aside. Consequently, W.M.P. Nos. 8347 and 8350 of 2021 are dismissed. There shall be no order as to costs.

W.P.No. 7381 of 2021

14. The writ petition has been filed by the Regional Provident Fund Commissioner challenging the order dated 24.10.2019 passed by the EPF Tribunal in EPFA No. 536 of 2017, whereby the Tribunal granted relief to the respondent by modifying the quantum of damages to 50%. The writ petition was admitted on 08.04.2021, and notice was ordered in the accompanying



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W.M.P. on the same day. Although the respondent was duly served, they have

not entered appearance, either in person or through counsel.

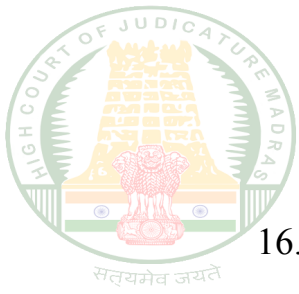
15.The operative portion of the impugned order, wherein relief was granted to the respondent, reads as follows: –

“Accordingly, the Impugned Order for levying damage under 14B though found to be correct, the dues determined is not proper and justified in the given facts and circumstance of the case. So far the impugned order for recovery of interest remains unchanged as the Appeal under 7Q is not maintainable in the eye of law.

9. In the result, the dues determined under 7Q while warrants no interference as not appealable. The dues determined under 14B needs modification. The dues determined in the Impugned Order is reduced to 50% and modified accordingly.

The Appeal is allowed in part.

The Appellant is hereby directed to deposit the entire dues under 7Q of Rs.4,09,724/- (Rupees Four Lakhs Nine thousand Seven hundred Twenty four only) vide Impugned Order No. TN/SRO/SLM/PDC/96258/ED-1/7Q-PROCEEDING/2015 dtd. 29.06.2015 and further directed to deposit the modified amount of (50%) i.e. Rs.3,40,343/- (Rupees Three Lakhs Forty thousand Three hundred Forty three only) in place of Rs.6,80,687/- vide Impugned Order No.TN/SLM/SRO/PDC/96258/ED-1/14B-PROCEEDING/2015 dtd. 29.06.2015 before the Respondent within a period of two months from the date of receipt of this order, failing which the Respondent is at liberty to recover the same under the process of law.”



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16.The exercise of discretion by the Tribunal in the impugned order is unsupported by any legal reasoning. As noted earlier, in W.P. Nos. 7829 of 2021 and 7831 of 2021, similar orders passed by the very same Tribunal have already been set aside. In line with those decisions, the present writ petition is also liable to be allowed. Accordingly, W.P. No. 7381 of 2021 stands allowed, and the impugned order is set aside. Consequently, W.M.P. No. 7889 of 2021 stands dismissed. There shall be no order as to costs.

17.In the result, W.P. Nos. 7381 of 2021, 7825 of 2021, 7829 of 2021, and 7831 of 2021 are allowed. W.P. No. 31252 of 2022 stands dismissed. Consequently, W.M.P. Nos. 7889 of 2021, 8345 of 2021, 8347 of 2021, and 8350 of 2021 are also dismissed. There shall be no order as to costs.

29.05.2025

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NCC : Yes / No

Index : Yes / No

Speaking Order / Non-speaking Order



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To

1.The Regional Provident Fund Commissioner,
Employees Provident Fund Organisation,
Sub-Regional Office, S.J.Plaza,
Swarnapuri, Salem – 636 004

2.EPF Appellate Tribunal (Central Govt. Industrial Tribunal)
Shastri Bhavan,
Haddows Road,
Chennai – 600 006.



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W.P.No.7381 of 2021 & batch

DR. A.D. MARIA CLETE, J

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Pre-Delivery Judgment made in
W.P.No. 7381, 7825, 7829, 7831 of 2021
and 31252 of 2022
and W.M.P.Nos. 7889, 8345,
8347, 8350 of 2021

29.05.2025