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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2025

CORAM :

THE HONOURABLE MR. JUSTICE **M. DHANDAPANI**

W.P.No.27421 of 2015
and
M.P.No.1 of 2015 & W.M.P.No.15138 of 2020

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

Vs.

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

2.M/s.Sivet College,
Velachery Main Road,
Gowrivakkam,
Chennai – 600 073. ... Respondents

Prayer : Writ Petition filed under Article 226 of Constitution of India pleased 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.2 (13) 2012 dated 10.10.2013 and quash the same.

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For Petitioner : M/s.Dwarakesh Prabhakaran

For Respondents : Tribunal [R1]
Mrs.R.S.Lakshmi Priya
for M/s.Gupta & Ravi [R2]

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ORDER

This Writ Petition has been filed seeking for a Writ of Certiorari, to call for the records of the 1st respondent relating to the impugned order of the first respondent in ATA No.2 (13) 2012 dated 10.10.2013 and quash the same.

2. When the matter is taken up for consideration today, learned counsel appearing for the 2nd respondent brought to the notice of this Court that similar issue has been raised in W.P.No.27422 of 2015 and this Court, vide order dated 17.03.2025 had dismissed the writ petition holding that the Board of Trustees are not empowered to challenge the order of the Tribunal in the absence of specific authorisation/permission of the Central/State Government as the case may be. Learned counsel appearing for the petitioner fairly concedes with the same.

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3. This Court perused the order passed in W.P.No.27422 of 2015, wherein, this Court has held as under :-

> "*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.*
>
> *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*

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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 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

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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, the petitioner 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 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

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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.

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

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their remedy in the manner known to law."

4. The aforesaid decision is squarely applicable to the facts of the present case. Accordingly, applying the ratio laid down above, the writ petition is dismissed, confirming the impugned order passed by the 1st respondent/Tribunal. There shall be no order as to costs. Consequently, the connected writ miscellaneous petitions are closed.

17.03.2025

Index : Yes / No
Speaking order / Non-speaking order
NCC:Yes/No
sp

To

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

2.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.

sp

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