



W.P.No.9605 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.02.2025

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.9605 of 2011

And

M.P.No.1 of 2011

Tamil Nadu Electricity Board
Vellore Electricity Distribution Circle
Gandhi Nagar, Vellore 632 006.
rep. by its Superintending Engineer

... Petitioner

Vs.

1.The Presiding Officer,
Employees' Provident Fund Tribunal
(Ministry of Labour and Employment,
Government of India),
SCOPE MINAR, CORE II 4th Floor
Laxmi Nagar District Centre,
Laxmi Nagar, New Delhi – 110 092.

2.The Assistant Provident Fund Commissioner (C & R)
Employees' Provident Fund Organisation
Sub Regional Office, 31, Filterbed Road,
Vellore 632 001.

3.The Secretary,
AIATUC, Tamilnadu AITUC
Vellore District Centre,
No.25/14, 6th West Cross Street
Gandhinagar,
Vellore.

... Respondents



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Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records of the first respondent in ATA No.423 (13) of 2006 and quash its order dated 31.03.2010.

For Petitioner : Mr.Aravind Gopalan
for M/s.T.S.Gopalan and Co.

For Respondents : Mr.R.Thirunavukarasu for R1 & R2
Mr.K.M.Ramesh for R3
Senior Counsel
for M/s.V.Subramani

ORDER

The petitioner has filed this writ petition seeking issuance of Writ of Certiorari calling for the records of the first respondent in ATA No.423 (13) of 2006 and quash its order dated 31.03.2010.

2.The brief facts of the case is that the All India Trade Union Congress [in short 'AITUC'] made a representation/ complaint to the second respondent alleging that the Tamil Nadu Electricity Board, Vellore Electricity Circle is engaging many labourers through contractors and those labourers are not given any social security benefits such as provident fund or pension fund and the petitioner establishment disputed their liability to extend the contributory



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provident fund or pension fund for the contract labourers on the ground that such workers are not directly engaged by the establishment and hence they are not employees.

3. Therefore, an inquiry under Section 7A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 [hereinafter referred to as 'Act'] was initiated by the second respondent and thereafter an order dated 28.02.2005 was passed by the second respondent wherein it was held that the Act applies to TNEB, Vellore Electricity Circle insofar as the contract – employees engaged by them are concerned and the petitioner was directed to pay a sum of Rs.60,51,482.10 towards the provident fund, pension fund, deposit linked insurance fund schemes and administrative charges, in respect of the contract workers engaged by them.

4. Aggrieved by the same, the petitioner preferred review application before the second respondent, however, the second respondent vide order dated 27.09.2005 confirmed the original order. Hence, the petitioner preferred appeal before the first respondent vide impugned order dismissed the said appeal. Hence, this writ petition.



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5.The learned counsel appearing for the petitioner submitted that the members of the third respondent are not employees with the petitioner establishment and they are employees with the respective contractors and there is no employee and employer relationship between the petitioner establishment and the members of the third respondent. The learned counsel further submitted that as per Section 16 of the Act, the Act does not apply to the establishment belonging to or under the control of the Central Government or State Government and further submitted that the petitioner establishment provided all the relevant benefits to its employees and since the members of the third respondent are not employees of the petitioner establishment, the Act does not apply, however, the original authority as well as the appellate authority miserably failed to consider Section 16 of the Act and directed the petitioner establishment to make contribution to the members of the third respondent, which is not sustainable one.

6.Per contra, the learned counsel appearing for the respondents 1 and 2 and the learned Senior Counsel appearing for the third respondent submitted that Section 16 and Section 2(f) of the Act has to be read together. As per Section 2(f) of the Act, “employee” means



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any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an establishment and who gets his wages directly or indirectly from the employer, and includes any person, employed by or through a contractor in or in connection with the work of the establishment; engaged as an apprentice, not being an apprentice engaged under the Apprentices Act, 1961 (52 of 1961) or under the standing orders of the establishment. In the present case, though the members of the third respondent are employed through the respective contractors, the petitioner establishment being the principal employer, have to ensure that the contractor makes the contribution, if not, the principal employer namely the petitioner establishment has to make the contribution. Hence the petitioner giving interpretation to Section 16 of the Act is not permissible and Section 16 and Section 2(f) of the Act has to be read together.

7. Heard the arguments advanced on either side and perused the materials available on record.

8. Admittedly the members of the third respondent is working in



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the petitioner establishment through the respective contractors and provident fund contribution was not made in respect of the members of the third respondent either by the contractor or by the petitioner establishment. Thereby, the third respondent made representation/complaint before the second respondent and the second respondent passed order under Section 7A of the Act and the same was challenged before the first respondent and the first respondent confirmed the order passed by the second respondent.

9.The issue that arise for consideration in this writ petition is whether the Act is applicable to the petitioner establishment or not?

10.It is useful to extract hereunder Section 2(f) and Section 16 of the Act hereunder:

"2.(f) "employee" means any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an establishment and who gets his wages directly or indirectly from the employer, and includes any person,-

(i) employed by or through a contractor in or in connection with the work of the



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establishment;

(ii) engaged as an apprentice, not being an apprentice engaged under the Apprentices Act, 1961 (52 of 1961) or under the standing orders of the establishment;

16. Act not to apply to certain establishments -

(1) This Act shall not apply -

(a) to any establishment registered under the Co-operative Societies Act, 1912 (2 of 1912), or under any other law for the time being in force in any State relating to co-operative societies employing less than fifty persons and working without the aid of power; or

(b) to any other establishment belonging to or under the control of the Central Government or a State Government and whose employees are entitled to the benefit of contributory provident fund or old age pension in accordance with any Scheme or rule framed by the Central Government or the State Government governing such benefits; or

(c) to any other establishment set up under any Central, Provincial or State Act and whose employees are entitled to the benefits of contributory provident fund or old age pension in accordance with any scheme or rule framed under that Act governing such benefits;



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(2) If the Central Government is of opinion that having regard to the financial position of any class of establishments or other circumstances of the case, it is necessary or expedient to do so, it may, by notification in the Official Gazette, and subject to such conditions, as may be specified in the notification, exempt whether prospectively or retrospectively that class of establishments from the operation of this Act for such period as may be specified in the notification.

16A. Authorising certain employers to maintain provident fund accounts - (1) The Central Government may, on an application made to it in this behalf by the employer and the majority of employees in relation to an establishment employing one hundred or more persons, authorise the employer by an order in writing, to maintain a provident fund account in relation to the establishment, subject to such terms and conditions as may be specified in the Scheme :

Provided that no authorisation shall be made under this sub-section if the employer of such establishment had committed any default in the payment of provident fund contribution or had committed any other offence under this Act during the three years immediately



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preceding the date of such authorisation.

(2) Where an establishment is authorised to maintain a provident fund account under sub-section (1), the employer in relation to such establishment shall maintain such account, submit such return, deposit the contribution in such manner, provide for such facilities for inspection, pay such administrative charges, and abide by such other terms and conditions, as may be specified in the Scheme.

(3) Any authorisation made under this section may be cancelled by the Central Government by order in writing if the employer fails to comply with any of the terms and conditions of the authorisation or where he commits any offence under any provision of this Act:

Provided that before cancelling the authorisation, the Central Government shall give the employer a reasonable opportunity of being heard."

11.Perusal of Section 16 of the Act makes it clear that the Act shall not apply to any establishment belonging to or under the control of the Central Government or a State Government and whose employees are entitled to the benefit of contributory provident fund or



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old age pension. Perusal of Section 2(f) of the Act makes it clear that "employee" means any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an establishment and who gets his wages directly or indirectly from the employer, and includes any person employed through a contractor in or in connection with the work of the establishment. Hence, if the contractor fails to make the provident fund contribution, the principal employee has to ensure payment of provident fund contribution.

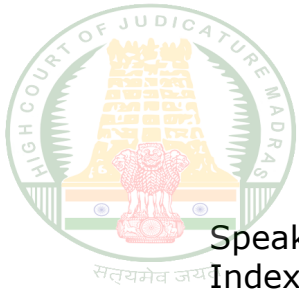
12.In the present case, the petitioner establishment cannot shift the burden to the contractors. It is the duty of the petitioner establishment to ensure that the provident fund contribution are made in respect of all the employees. The said fact was rightly appreciated by the original authority and appellate authority and hence the impugned order warrants no interference.

13.The writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Speaking Order/ Non Speaking Order
Index: Yes/ No
Internet: Yes/ No

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To

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Laxmi Nagar, New Delhi – 110 092.
- 2.The Assistant Provident Fund Commissioner (C & R)
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