

W.P.No.8698 of 2021

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

RESERVED ON : 29.04.2025
PRONOUNCED ON : 29.05.2025

PRESENT:

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

W.P.No. 8698 of 2021
and
W.M.P.No. 9235 of 2021

M/s. Mandala Apparels Pvt. Ltd
No.1, All India Press Compound,
Kennedy Nagar,
Puducherry – 605 001
Rep. by its Managing Director ...Petitioner

Vs.

The Regional Provident Fund Commissioner – II
No.101, 100 Ft. Road,
Sree Venni Commercial Complex,
Chollan Nagar, Olandaikerapalayam,
Puducherry – 605 004. Respondent

Prayer in W.P.

To issue a writ of Certiorari calling for the records of the Respondent and quash its order dated 15.05.2019 in proceedings No.TN/PDY/RO/PDC/PC/1538/Enf-2/PROC/2019 (Damages) passed in terms of Section 14B of the EPF Act and pass such further or other orders which this Hon'ble Court may deem fit and proper in the circumstances of the case.



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Prayer in W.M.P.

To grant stay of the order of the Respondent dated 15.05.2019 in proceedings no.TN/PDY/RO/PDC/PC/1538/Enf-2/PROC/2019 (Damages) pending disposal of the writ petition and pass such further or other orders which this Hon'ble Court may deem fit and proper in the circumstances of the case.

Appearance of Parties:

For Petitioner : Mr.Haroon Al Rasheed, Advocate
For T.S.Gopalan & Co., Advocates

For Respondent : Mr.P.K.Panneer Selavam, Advocate

J U D G M E N T

Heard.

2.The petitioner, an apparel company, has filed the present writ petition challenging the order dated 15.05.2019 passed by the Regional Provident Fund Commissioner-II, Puducherry. By the said order, the Commissioner imposed damages amounting to Rs. 8,23,075/- under Section 14B of the Employees' Provident Funds and Miscellaneous Provisions Act. Although the petitioner contended that the delay in remittance was unintentional and due to financial losses, the authority rejected the explanation, noting that salaries had been paid to employees during the relevant period and, therefore, the delay in deduction and remittance of statutory dues could not be condoned.



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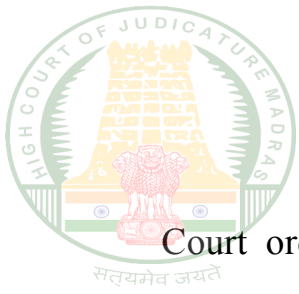
3.Although the petitioner received the impugned order as early as 2019, they chose to file the present writ petition challenging the same only on 31.03.2021. In the affidavit filed in support of the writ petition, the petitioner has set out the reasons for the delay in paragraphs 7 and 8, which read as follows: –

“7. I state as the Petitioner ceased to operate and since it was facing litigations before the DRT and Income-tax authorities, it was unable to challenge the order by way of an appeal under Section 7(1) of the Act.”

“8.I state the Petitioner is conscious that this Hon’ble Court does not have power to condone the delay under article 226 of Constitution of India. However, this Hon’ble Court can exercise its extraordinary jurisdiction under Article 226 to call for the records of the Respondent and issue a writ on satisfaction that the order of the Respondent is not in consonance with the established principles of law enunciated by the Hon’ble Supreme Court as well as in the various judgments of this Hon’ble Court are furnished herein below: -

1.Employees State Insurance Corporation Vs. HMT , 2008 (I) LLJ 814”

4.When the writ petition was listed for admission on 01.04.2021, this



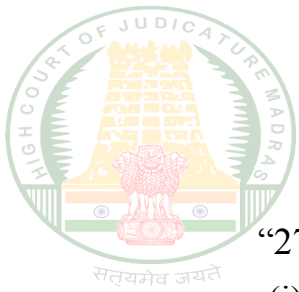
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Court ordered notice of motion and directed the respondent not to initiate

coercive action. The interim order was subsequently extended by orders dated 22.04.2021, 07.06.2024, 28.06.2024, 09.07.2024, 26.07.2024, and 01.08.2024.

Pursuant to notice, the respondent filed a counter affidavit (dated Nil, September 2023), raising a preliminary objection regarding maintainability. It was contended that the petitioner had an alternative statutory remedy of appeal before the EPF Appellate Tribunal, with a prescribed limitation period of 60 days. The petitioner, having failed to avail the said remedy and having filed the writ petition after a delay of 683 days, could not now seek relief under Article 226, and therefore the writ petition was liable to be dismissed.

5.Counsel for the petitioner placed reliance on the Full Bench judgment of this Court in **Sun Pressings (P) Ltd. v. The Presiding Officer, Employees' Provident Fund Appellate Tribunal, Core II, New Delhi, reported in 2024 (1) Writ LR 801**, and sought relief in terms of the principles laid down therein. On the issue of maintainability and alternative remedy, reliance was also placed on the decision of the Supreme Court in **Radha Krishnan Industries v. State of Himachal Pradesh, reported in (2021) 6 SCC 771**, particularly paragraph 27, which reads as follows: –



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“27. The principles of law which emerge are that :

(i) The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well;

(ii) The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person; (2003) 2 SCC 107 PART C

(iii) Exceptions to the rule of alternate remedy arise where (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged;

(iv) An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law;

(v) When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion; and

(vi) In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition.



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However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with.”

6.Per contra, counsel for the EPFO relied on the decision of the Supreme Court in **Assistant Commissioner (CT), LTU, Kakinada v. GlaxoSmithKline Consumer Health Care Limited**, reported in (2020) 19 SCC 681, which, according to him, squarely answers the issue involved in the present case. In support of his contention, he referred to the following passages from paragraphs 15 and 18 of the judgment, which read as follows: –

“15.From the aforesaid decisions, it is clear as crystal that the Constitution Bench in Supreme Court Bar Assn. v. Union of India, (1998) 4 SCC 409, has ruled that there is no conflict of opinion in Antulay case [A.R. Antulay v. R.S. Nayak, (1988) 2 SCC 602] or in Union Carbide Corpn. case [Union Carbide Corpn. v. Union of India, (1991) 4 SCC 584] with the principle set down in Prem Chand Garg v. Excise Commr., AIR 1963 SC 996. Be it noted, when there is a statutory command by the legislation as regards limitation and there is the postulate that delay can be condoned for a further period not exceeding sixty days, needless to say, it is based on certain underlined, fundamental, general issues of public policy as has been held in Union Carbide Corpn. case [Union Carbide Corpn. v. Union of India, (1991) 4 SCC 584]. As the pronouncement in Chhattisgarh SEB v. Central Electricity Regulatory Commission, (2010) 5 SCC 23, lays down quite clearly that the policy behind the Act emphasising on the constitution of a special adjudicatory forum, is meant to expeditiously decide the grievances of a person who



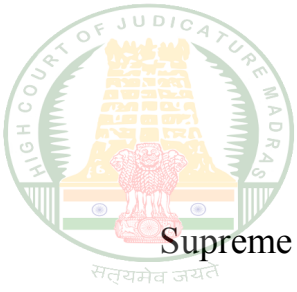
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may be aggrieved by an order of the adjudicatory officer or by an appropriate Commission. The Act is a special legislation within the meaning of Section 29(2) of the Limitation Act and, therefore, the prescription with regard to the limitation has to be the binding effect and the same has to be followed regard being had to its mandatory nature. To put it in a different way, the prescription of limitation in a case of present nature, when the statute commands that this Court may condone the further delay not beyond 60 days, it would come within the ambit and sweep of the provisions and policy of legislation. It is equivalent to Section 3 of the Limitation Act. Therefore, it is uncondonable and it cannot be condoned taking recourse to Article 142 of the Constitution.”

“18. Suffice it to observe that this decision is on the facts of that case and cannot be cited as a precedent in support of an argument that the High Court is free to entertain the writ petition assailing the assessment order even if filed beyond the statutory period of maximum 60 days in filing appeal. The remedy of appeal is creature of statute. If the appeal is presented by the assessee beyond the extended statutory limitation period of 60 days in terms of Section 31 of the 2005 Act and is, therefore, not entertained, it is incomprehensible as to how it would become a case of violation of fundamental right, much less statutory or legal right as such.”

7. Accordingly, learned counsel for the EPFO submitted that the writ petition is liable to be dismissed. He further relied on the judgment of the



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Supreme Court in **Horticulture Experiment Station, Gonikoppal, Coorg v.**

Regional Provident Fund Organization, reported in (2022) 4 SCC 516,

wherein the Court considered the scope of levy of damages under Section 14B of the EPF Act. It was held that unintentional delay on the part of the employer is not a valid ground to avoid liability and that the presence of *mens rea* is not a prerequisite for the imposition of damages under the said provision.

8.In light of the foregoing, the writ petition is held to be misconceived and is accordingly dismissed. Consequently, the connected W.M.P. is 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

To

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DR. A.D. MARIA CLETE, J

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Pre-Delivery Judgment made in
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