



W.P.No.15567 of 2020 & batch

W.P.Nos.15567, 16503 & 16769 of 2020, 445 & 803 of 2021

WEB CODE: **DR. A.D. MARIA CLETE, J**

Today, the matter is listed under the caption “*for being mentioned.*”

Heard both sides.

2.It is brought to the notice of this Court that, in the common order passed in W.P. Nos. 15567, 16503 & 16769 of 2020 and W.P. Nos. 445 and 803 of 2021, dated 21.03.2025, in paragraphs 16 and 17, this Court discussed the case relating to W.P.No.445 of 2021, referred to the Judgment of this Court, and rendered findings in favour of the writ petitioner. It was specifically held therein that the reduction of damages by the Employees’ Provident Fund Appellate Tribunal was without authority.

3.In consequence of the above findings, the writ petition in W.P. No.445 of 2021 ought to have been allowed. However, due to an inadvertent clerical and accidental error, it has been recorded in the concluding portion of paragraph 17 that the writ petition is “*liable to be dismissed*” instead of “*liable to be allowed.*”



W.P.No.15567 of 2020 & batch

4.Further, in the concluding paragraph No.24 of the common

WEB COPY Judgment, it has been recorded as follows:

“24.In the result, Writ Petition Nos. 15567 of 2020, 16503 of 2020, 16769 of 2020, 445 of 2021 and 803 of 2021 will stand dismissed. However, there will be no order as to costs. Consequently, W.M.P. Nos. 19427 of 2020, 522 of 2021 and 866 of 2021 will also stand dismissed.”

This, too, is an accidental slip that has crept into the order and requires correction. Since the mistake is purely clerical in nature and does not involve any re-appraisal of evidence or reconsideration on merits, it does not amount to a review and is rectifiable under the inherent powers of this Court, analogous to the powers conferred by Section 152 of the Code of Civil Procedure, 1908.

5.Accordingly, the concluding portion of paragraph 17 of the common Judgment in W.P. No. 445 of 2021 shall stand corrected and be read as follows:



W.P.No.15567 of 2020 & batch

WEB COPY

“In the light of the above, the writ petition is liable to be allowed.”

Further, paragraph 24 of the common Judgment shall stand corrected and be read as follows:

“In the result, Writ Petition Nos. 15567 of 2020, 16503 of 2020, 16769 of 2020 and 803 of 2021 will stand dismissed, and Writ Petition No. 445 of 2021 alone stands allowed. The order of Tribunal dated 23.06.2020 in EPFA No.39/2017 is hereby quashed. However, there will be no order as to costs. Consequently, W.M.P. Nos. 19427 of 2020, 522 of 2021 and 866 of 2021 will also stand dismissed.”

6.Except for the above corrections, the rest of the common Judgment shall remain unaltered. Registry is directed to issue a fresh order copy to the parties after carrying out the aforesaid amendments.

05.11.2025

ay



WEB COPY



W.P.No.15567 of 2020 & batch

DR. A.D. MARIA CLETE, J
ay

W.P.Nos.15567, 16503 & 16769 of 2020,
445 & 803 of 2021

Dated: 05.11.2025



W.P.No.15567 of 2020 & batch

WEB COPY

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

RESERVED ON	17.02.2025, 03.03.2025 & 07.03.2025
PRONOUNCED ON	032125

PRESENT:

THE HONOURABLE DR. JUSTICE A.D. MARIA CLETE

W.P.Nos. 15567, 16503 & 16769 of 2020, 445 & 803 of 2021
and
WMP No.19427 of 2020, 522 & 866 of 2021

W.P.No. 15567 of 2020

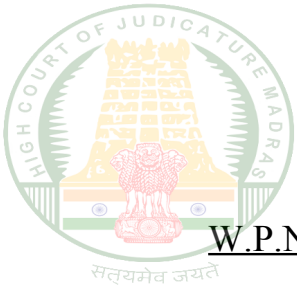
M/s. Uma Spinning Mills,
Rep. by its Managing Director,
Mr.S.Somasundaram,
Kalapaganur (PO), Kottampady,
Attur Taluk,
Salem District – 636 109

...Petitioner

Vs.

Asst. Provident Fund Commissioner (C&R),
Employees Provident Fund Organization,
Sub-Regional Office, S.J.Plaza,
Swarnapuri, Salem – 636 004.

...Respondent



W.P.No.15567 of 2020 & batch

W.P.No. 16503 of 2020

WEB COPY

R.Veruthammal

W/o. Late M.Rajendran (Beedi Roller)
No.16/2, Kalaignar Street, Kazhinjur,
Katpadi, Vellore – 632 006.

...Petitioner

Vs.

1.Regional Provident Fund Commissioner
Employees' Provident Fund Organisation,
Sub-Regional Office,
S-1, TNHB, Phase – III,
Sathuvachari,
Vellore – 632 009.

2. The Assistant Provident Fund Commissioner,
Regional Provident Fund Commissioner
Employees' Organisation,
Regional Office,
3, Rajaji Salai,
Chennai – 600 045.

3. Thiru.G.Murali,
Licensed Contractor,
100 No. Mark Beedi Manufacturing Industry,
Kazhinjur, Vellore – 632 006.

4. M/s. V.K.Abdul Jabbar Sahib Sons,
100 No. Mark Beedi Manufacturing Industry,
Virudampet, Vellore – 632 006.

....Respondents

W.P.No.16769 of 2020



W.P.No.15567 of 2020 & batch

The Assistant Provident Fund Commissioner,
Office of the Regional Provident Fund Commissioner,
Bhavishyanidhi Bhavan,
Dr.Balasundaram Road,
Coimbatore – 641 018. ...Petitioner

Vs.

M/s. Sethu Vidyalaya Nursery & Primary School,
No.205, East Sambandam Road,
R.S.Puram, Coimbatore – 641 002. ...Respondent

W.P.No. 445 of 2020

The Assistant Provident Fund Commissioner (C&R),
Employees Provident Fund Organization,
Sub-Regional Office, S.J.Plaza,
Swarnapuri, Salem – 636 004. ...Petitioner

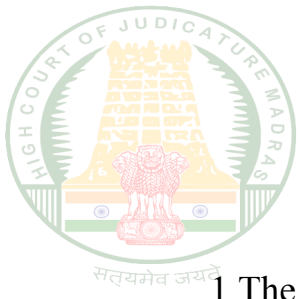
Vs.

M/s. T.K.Projects and Hotels (P) Ltd,
Hotel Ashwa Park,
Salem – 636 302. ...Respondent

W.P.No.803 of 2021

M/s. SLB Logistics Pvt. Ltd,
Rep. by its Authorised Signatory,
Unicorn House, 24 (Old No.322),
Thambu Chetty Street,
Chennai – 600 001. ...Petitioner

Vs.



W.P.No.15567 of 2020 & batch

1. The Assistant Provident Fund Commissioner (Compliance)

Employees Provident Fund Organisation,
Office of the Regional Provident Fund Commissioner,
37, Royapettah High Road,
Chennai – 600 014.

2. The Recovery Officer,

Employees Provident Fund Organisation,
Office of the Regional Provident Fund Commissioner
37, Royapettah High Road
Chennai – 600 014.

...Respondents

Prayer in W.P.No. 15567 of 2020

To issue a Writ of Certiorari or any other appropriate Writ or any Order or direction in the nature of a Writ of Certiorari, calling for records of impugned order dated 21-04-2020 in EPFA No.545 of 2017 passed by the Employees Provident Fund Appellate Tribunal (CGIT), Chennai to quash the same and pass such further or other order as this Hon'ble Court may deem fit and proper in the circumstances of the case.

Prayer in W.P.No. 16503 of 2020

To issue a Writ of Certiorarified Mandamus or nay other appropriate Writ or order or direction in the nature of Writ calling for the records connected with the impugned order dated 13-04-2017 issued by the 2nd respondent vide No.TN/VLR/18493-99/Gr.V(3)/Accounts/78 and quash the



W.P.No.15567 of 2020 & batch

same and further direct the 1st respondent to sanction actual minimum insurance amount of Rs.35,000/- towards Employees Deposit Linked Insurance Scheme and Rs.35,700/- towards the interest accrued at 12% per annum for the belated payment of insurance amount to the petitioner in accordance with law within the time frame as may be fixed by this Hon'ble Court and pass such further or other orders as this Hon'ble court may deem fit and proper in the circumstances of the case.

Prayer in W.P.No. 16769 of 2020

To call for the records relating to the proceedings of Hon'ble Tribunal dated 19.08.2014 in ATA No. 823(13) 2013 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. 445 of 2021

To call for the records relating to the proceedings of Hon'ble Tribunal order dt. 23.06.2020 in EPFA No. 39/2017 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.803 of 2021

To issue a Writ of Mandamus directing the first respondent to permit the petitioner to recover the employees share in terms of Para 32 of



W.P.No.15567 of 2020 & batch

Employees Provident Fund Scheme, 1952, pursuant to the representation of the Petitioner dated 23.12.2020 and pass further or other orders which this Hon'ble Court may deem fit and proper in the circumstances of the case.

Prayer in WMP No. 19427 of 2020

To stay all the recovery proceedings initiated by the Respondent based on his order bearing Ref. No. TN/SRO/SLM/COMP-1/47144/S3/2017 dated 11-12-2017 pending disposal of the above Writ Petition and pass such further or other orders as this Hon'ble Court may deem fit and proper.

Prayer in WMP No. 522 of 2021

To stay all further proceedings pursuant to the order passed by the Tribunal dated 23.06.2020 in EPFA No.39/2017 pending disposal of the above Writ Petition.

Prayer in WMP No.866 of 2021

To grant interim stay of operation of the recovery order of the Second Respondent dated 08.12.2020 in Proceedings No.TN/CHN-1/CC-1{Recy}/CP1/TN/1749881/D-11/ Reg/ 2020 in respect of the employees share 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:

10/33



W.P.No.15567 of 2020 & batch

WEB COPY
For Petitioner
in W.P.No.15567/2020
Advocates

: Mr.P.Thangaraj & M.Kamaraj,

For Respondent
in W.P.No.15567/2020

: Mr. P.K.Panneer Selvam, Advocate

For Petitioner
in W.P.No.16503/2020

: Ms. G.P.Arivuchudar, Advocate
For M/s. Law Square

For Respondents 1 & 2
in W.P.No. 16503/2020

: Mr.R.Thirunavukarasu, Advocate

For Respondent 3
in W.P.No. 16503/2020

: Dead, LR Petition steps not complete

For Respondent 4
In W.P.No.16503/2020

: Mr.S.Narasimhan, Advocate

For Petitioner
in W.P.No. 16769/ 2020

: M/s. R.Meenakshi, Advocate

For Respondent
in W.P.No. 16769/2020

Service not effected, notice taken.
: Mr.P.Saravana Sowmiyan, Advocate

For Petitioner
in W.P.No. 445/ 2021

: M/s. R.Meenakshi, Advocate

For Respondent
in W.P.No.445/2021

:M/s.P. Thangaraj & M.Kamaraj,
Advocates



W.P.No.15567 of 2020 & batch

For Petitioner
In W.P.No.803/2021

: Mr.Haroon Al Rasheed, Advocate
For M/s. AGAM Legal Advocates

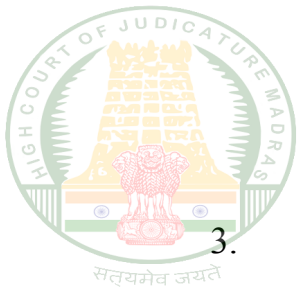
For Respondents 1 & 2
In W.P.No.803/2021

: Mr.T.R.Sundaram, Advocate

COMMON JUDGMENT

Heard

2. In W.P. No. 15567 of 2020, the Petitioner, a private spinning mill, has filed this writ petition challenging the order of the Employees' Provident Fund Appellate Tribunal in EPFA No. 545 of 2017, dated 21.04.2020. The Petitioner contests the order passed by the Respondent, the Assistant Provident Fund Commissioner, Salem, dated 11.12.2017, directing the recovery of Rs. 6,02,065/-. The recovery notice issued by the Respondent stated that no dues were recoverable from the Petitioner Mills for the period from April 2014 to October 2016. However, regarding the non-enrollment of workers during the same period, the Respondent held the Petitioner liable for the payment of Rs. 6,02,065/-. Aggrieved by this, the Petitioner filed an appeal before the EPF Tribunal, seeking to set aside the order passed under Section 7A.



W.P.No.15567 of 2020 & batch

3.

The Tribunal, after considering the submissions of the Petitioner

WEB.COM

Mill, concluded that the impugned order was a well-reasoned one and that the management was obligated to comply with it. Noting that the Petitioner Mill had already paid 35% of the assessed amount, the Tribunal issued the following order dated 21.04.2020:

“In view of the discussion held in preceding paragraphs it is held that the Impugned Order of the Respondent is a reasoned and justified, hence needs no interference. However, in compliance to the order of this Tribunal dtd. 02.08.2019, the Appellant has already remitted Rs.2,10,723/- (35%) vide DD No.006972 dtd. 13.08.2019 before the Respondent. Thus the Appellant is liable to remit the balance of the dues determined by the Respondent vide the Impugned Order.

In the result the Appeal stands dismissed.

The Appellant is hereby directed to remit Rs.3,91,342/- the balance of the dues determined in the Impugned Order No.TN/SRO/SLM/COMP-1/47144/S3/2017 dtd. 11.12.2017 before the Respondent within a period of three months from the date of receipt of the order, failing which the Respondent is at liberty to realize the same from the Appellant under the process of law.”

4.

The writ petition was admitted on 03.11.2020, and notice was issued to the Respondents. Pending disposal of the writ petition, this Court, in WMP No. 19427 of 2020, directed the Petitioner to deposit 50% of the outstanding balance, amounting to Rs. 3,91,342/-, into the appeal account



W.P.No.15567 of 2020 & batch

within four weeks. However, it remains unclear whether the Petitioner has complied with this direction.

5. The Petitioner contended that the company was a sick unit, having incurred an overall loss of Rs. 2.51 crores. Additionally, during the COVID-19 period, the Mill was not in operation. However, before the Tribunal, the Petitioner was unable to substantiate the claim that no opportunity was provided before the order under Section 7A was passed. In paragraph 5 of the impugned order, the Tribunal, after examining the records, found that a fair procedure had been followed and recorded its observations as follows:

“The material borne out from the discussion held in preceding paragraphs clearly discloses that the 7A Enquiry Authority found to have conducted the Enquiry affording sufficient opportunity to the Appellant as continued for almost one year. The Enquiry though commenced on 15.11.2016 (date fixed for first hearing of the parties) continued till 07.11.2017 when Sri Senthil Kumar, Manager, Sri Somasundaram, Managing Director on behalf of the Appellant and Sri.K.Shanmugham, Secretary of INTUC appeared before the Enquiry Proceeding. The Enforcement Officer on that day submitted that his report which was taken into record by the Enquiry Authority. It reveals that the Adjudicating



WEB COPY



W.P.No.15567 of 2020 & batch

Authority has taken into consideration all the facts on record including the relevant documents, as well as the submission of both the parties, the Appellant and the Enforcement Officer. The Adjudicating Authority, the APFC found to have been satisfied with the report of the EO. While the complaint of Salem Mavatta Desia Panchalai Thozilalar Sangam was not taken into consideration, since withdrawn, the very report of Enforcement Officer regarding the non-enrolment of the workers as employees was taken cognizant of. The Adjudicating Authority found to have verified and examined the Dues Statement for the relevant period which was prepared by the EO for recovery. Being fully satisfied the Dues Statement was accordingly accepted by the Adjudicating Authority. The final order was passed by the Adjudicating Authority vide Impugned Order dtd. 07.11.2017.”

6. Regarding the Petitioner's plea on its financial condition and the argument that some employees were no longer in service or could not be identified, the Tribunal rejected these contentions. In paragraphs 8 and 9 of the impugned order, the Tribunal recorded its findings as follows:

“8. The peculiarity of the instant Appeal is that when the Inspection was proceeded with by the Enforcement Officer of the Respondent based on the complaint filed by Salem Mavatta Desia Panchalai Thozhilalar Sangam alleging non-extension of the statutory benefit by the Employer-Appellant’s Establishment towards its eligible 63 numbers of employees went in vain as the complaint was withdrawn due



WEB COPY



W.P.No.15567 of 2020 & batch

to some obvious cause as much as the allegation was found incorrect. But at the same time, it came to notice of the Enforcement Officer during his inspection regarding non-enrolment of some eligible employees showing them to be Casual Employees even though, were paid with wages regularly for the above period from April 2014 to October, 2016. The Enforcement Officer submitted his report with his views to enrol those employees as regular employees.

9. *It further appears that the Appellant was found to have been afforded with sufficient opportunities to represent its case. The Appellant entered appearance through its Authorised Representatives such as the Managing Director, the Manager, etc. Though they appeared on several occasions failed to make any counter case with regard to the findings of the Enforcement Officer. On the other hand, the Appellant accepted that some of the employees were not enrolled as not regular employees but Casuals."*

Based on the above findings, the Tribunal concluded that the Petitioner could not evade its statutory obligation to deduct and remit the statutory contributions for the assessed period. It further held that the impugned order passed by the Respondent was correct.

7. The counsel for the Petitioner referred to the judgment of the Supreme Court in *Food Corporation of India v. Provident Fund Commissioner & Others*, reported in 1990 (1) SCC 68, and relied on the



W.P.No.15567 of 2020 & batch

following passage from paragraph 9:

WEB COPY

“ It will be seen from the above provisions that the Commissioner is authorised to 'enforce attendance in person and also to examine any person on oath. He has the power requiring the discovery and production of documents. This power was given to the Commissioner to decide not abstract questions of law, but only to determine actual concrete differences in payment of contribution and other dues by identifying the workmen. The Commissioner should exercise all his powers to collect all evidence and collate all material before coming to proper conclusion. That is the legal duty of the Commissioner. It would be failure to exercise the jurisdiction particularly when a party to the proceedings requests for summoning evidence from a particular person..”

8. The learned counsel also cited another decision of the Supreme Court in *Pawan Hans Limited & Others v. Aviation Karmachari Sanghatana & Others*, reported in 2020 (13) SCC 506, where certain reliefs were granted to a defaulting subscriber. A perusal of the judgment reveals that the Supreme Court, in that case, sought to explore a workable solution and, failing that, granted relief in the peculiar facts and circumstances of the matter. However, such an order was passed in the exercise of the Supreme Court's powers under Article 142 of the Constitution. In the present case, no such power is available to this Court, and upon examination, no infirmity or



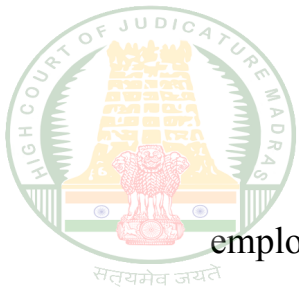
W.P.No.15567 of 2020 & batch

illegality is found in the impugned order passed by the Tribunal.

WEB COPY Accordingly, the writ petition is liable to be dismissed.

9. In W.P. No. 16503 of 2020, the Petitioner, a widow of the late Rajendran, who was employed as a Beedi roller under the Beedi manufacturer (Respondent No. 4) and its licensed contractor (Respondent No. 3), has filed this writ petition challenging the order passed by the 2nd Respondent dated 13.04.2017. Through this order, the Petitioner's representation dated 27.03.2017, seeking an insurance benefit of Rs. 35,000/- along with penal interest at 12% for the delay in settlement, was disposed of. Notice in the writ petition was issued on 24.11.2020.

10. The impugned order informed the Petitioner that her husband had passed away on 09.02.2008. However, the EPF and other related contributions for the period from 01.02.2008 to 08.02.2008 had not been received in his EPF account. As the department had not obtained any confirmation of his death, a clarification was sought, and the claim was subsequently returned. The Petitioner was further informed that EDLI benefits are applicable only in cases where the death occurs during



W.P.No.15567 of 2020 & batch

WEB COPY

employment. However, her husband's employer failed to provide proof that he had passed away while in service. Therefore, the delay in settling the claim was not attributable to the EPFO but was due to the lack of necessary clarification and documents from the employer.

11. Regarding the quantum of benefits, the entitlement is linked to the average balance in the deceased member's EPF account. As per Paragraph 22 of the EDLI Scheme, 1976, if the average balance exceeds Rs. 35,000/-, the payable amount shall be Rs. 35,000/- plus 25% of the amount exceeding Rs. 50,000/-, subject to a maximum ceiling of Rs. 60,000/-. However, in the case of the Petitioner's husband, the average balance was Rs. 23,874/-, making her ineligible to receive Rs. 5,000/-. There is also no provision for the payment of interest when the minimum balance is Rs. 3,50,000/-. The worksheet detailing the calculation of the amount was enclosed with the impugned order dated 13.04.2017.

12. It is evident that the Petitioner submitted her representation nearly nine years after the death of her husband on 09.02.2008, and the department promptly responded to it. Furthermore, even before this Court, the Petitioner



W.P.No.15567 of 2020 & batch

WEB COPY

challenged the order dated 13.04.2017 by filing the present writ petition only on 18.11.2020, after an inordinate delay of three years and seven months. In the affidavit filed in support of the writ petition, the only reason cited for the delay was severe financial constraints. However, the Petitioner has neither provided a satisfactory explanation for the prolonged delay in approaching the EPFO nor justified the delay in filing the writ petition before this Court. Given these circumstances, this is not a fit case for granting any relief to the Petitioner. The impugned order has adequately explained the calculation of the insurance amount. The writ petition is liable to be dismissed on the grounds of delay and laches.

13. In W.P. No. 16769 of 2020, the Petitioner, the Assistant Provident Fund Commissioner, Coimbatore, has filed this writ petition challenging the order passed by the EPF Tribunal in ATA No. 823(13) 2013, dated 19.08.2014, wherein the Tribunal allowed the appeal filed by the Respondent. Notice in this writ petition was issued on 06.08.2021. In the impugned order, the Tribunal recorded the following observations in paragraphs 8 and 9:

“8. *In view of the facts and recording made by the respondent*



WEB COPY

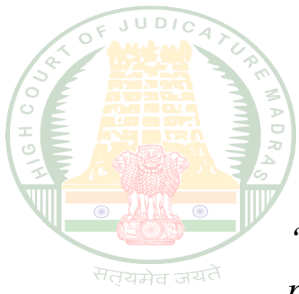


W.P.No.15567 of 2020 & batch

in the impugned order it is made clear that, there was no willful default committed by the appellant in remitting the P.F.dues; hence the penal damages should be more or less compensatory in nature. The appeal preferred by the appellant to this extent has succeeded. After hearing the arguments and counter arguments, this tribunal has come to the decision that the respondent has failed to prove on record that the appellant establishment has willfully defaulted in remitting the provident fund contributions hence the penal provision in the damages has to be ignored and has to consider to invoke the compensatory clause. Hence, keeping in view the reasons and circumstances in which the default in remittance of PF dues occurred, ends of justice be met by restricting the damages leviable to 5% of the actual amount of damages levied in the impugned order. Hence I order accordingly.

9. The Ld. Advocate for the Appellant as made a statement in the open court that the appellant is willing to liquidate outstanding revised determined amount in the impugned order, in instalments. The request of the Appellant is allowed. Accordingly, the Appellant is hereby directed to remit the outstanding revised determined amount in 12 instalments be payable by the 7th October and the subsequent instalments be payable by the 7th day of every calendar month. Hence I order accordingly. Copy of the order be sent to the parties. The file to be consigned to the record room.”

14. If the Petitioner department was aggrieved by the aforesaid order, it ought to have approached this Court within a reasonable time. However, in paragraph 10 of the affidavit, the following reasons were cited for the delay in filing the present writ petition:



W.P.No.15567 of 2020 & batch

WEB COPY

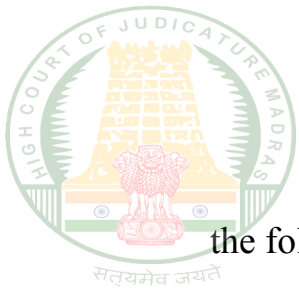
“It is submitted that the documents were handed over to the earlier panel counsel for the petitioner. Due to ill health, he did not file the writ petition challenging the order of tribunal in time. The same was come to know recently. Immediately, the petitioner received the back bundle and entrusted the case to the present counsel. If the delay is not condoning, the poor employees will be put into irreparable loss and hardship.”

15. This Court, in a batch of writ petitions, by its order dated 07.03.2025 in *The Regional Provident Fund Commissioner, Coimbatore & Another v. M/s. Thaishola Estate & 15 Others*, dismissed those cases on the grounds of delay and laches. In paragraph 22 of the said order, the Court observed as follows:

“Thus, on the short ground of unexplained delay and laches, all the writ petitions are liable to be dismissed. Accordingly, all the WMPs are dismissed.”

Hence this Writ Petition is also liable to be dismissed on the same ground of delay and laches.

16. In W.P. No. 445 of 2021, the Petitioner, the Assistant Provident Fund Commissioner, Salem, has filed this writ petition challenging the order passed by the EPF Tribunal in EPFA No. 39 of 2017, dated 23.06.2020. The Tribunal, while partly allowing the appeal filed by the Respondent, granted

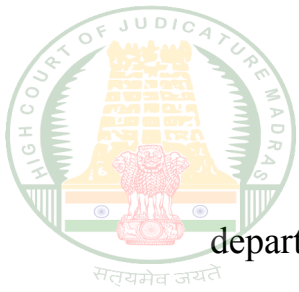


W.P.No.15567 of 2020 & batch

the following relief in the operative portion of its order:

WEB COPY *“The Appellant is directed to deposit the modified amount of (40%) i.e. Rs.55,675/- (Rupees Fifty five thousand Six hundred and Seventy five only) in place of Rs.1,39,188/- vide impugned Order No. CB/SLM/SRO/PDC/1413351/S-1/14B-PROCEEDING/2018 dtd. 19.07.2017 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.”*

17. In the writ petition, notice was ordered on 08.01.2021. The respondent was duly served and appeared through counsel. The primary ground raised in the writ petition was that the Tribunal lacks the power to reduce the damages to 40% without first setting aside the impugned order. In support of this contention, several judgments of this Court and the Hon'ble Supreme Court were cited. However, in a batch of writ petitions, including W.P. No. 1239 of 2020 and connected cases in *Central Board of Trustees, EPF, Coimbatore vs. Teknoturf Info Services Pvt. Ltd.*, this Court had set aside similar orders and categorically held that the Tribunal has no jurisdiction to reduce the quantum of damages. While arriving at this conclusion, the Court undertook a comprehensive analysis of all the judgments cited by both sides and ultimately allowed the case filed by the



W.P.No.15567 of 2020 & batch

department. In paragraph 53 of the said order, the Court observed as follows:

WEB COPY

“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.”

In the light of the above, this Writ Petition is liable to be allowed.

18. In W.P.No.803 of 2021, the writ petitioner, a private company, has filed the present writ petition seeking a direction to permit the recovery of the employees' share in accordance with paragraph 32 of the Employees' Provident Fund Scheme, pursuant to the representation dated 23.12.2020 submitted to the department. In the said representation dated 23.12.2020, the petitioner has stated as follows:

“Only on legal advice we got to know that for the EPF enrolment if there are 20 or more employees are engaged then the establishment needs to be enrolled under the EPF Act, 1952. It was only in the said circumstances till recently



WEB COPY



W.P.No.15567 of 2020 & batch

we did not obtain the provident fund code number. Recently when the Department was approached for enrolment of employees on voluntary basis, an enquiry was contemplated and based on inspection of records, it has been brought to our notice that with effect from 1.4.2015, the establishment ought to have been recovered under the provisions of EPF Act and contributions had to be remitted for the employees from the said date.”

19. The representation submitted by the petitioner was responded to by the respondent Commissioner on 19.01.2021. In the said reply, certain conditions were imposed upon the petitioner, stipulating that the petitioner's request for installment payments would be considered only upon acceptance of those conditions. The reply letter further stated as follows:

“With reference to your request on whether the contributions for the period from 4/2015 to 3/2018 can be deducted from the member’s salary, it is informed that as per Para 36 of the EPF scheme it is the duty of the employer to enroll all the eligible members from the DOJ to deduct & remit the PF contributions in respect of all the eligible employees. As such it is your responsibility to remit the dues in respect of the employees for the assessment period.

With reference to your request for considering 4 employees as excluded employees, it is informed that the request should have been placed before the 7A authority during the course of 7A enquiry. Since the assessment has been made by the 7A authority in respect of all employees including the 4 employees mentioned above, question of treating the said employees as excluded at this juncture is not possible It may please be noted that



W.P.No.15567 of 2020 & batch

WEB COPY

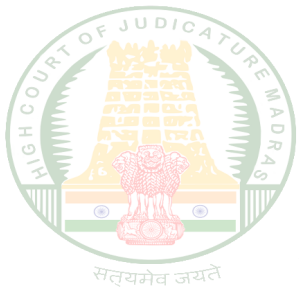
this is without prejudice to the outcome of the writ petition no.802 & 803 of 2021 pending before the Hon'ble High Court of Madras."

20. The Petitioner filed the present W.P. even before the receipt of the reply dt. 19.1.2021. After the receipt of the reply, they have not chosen to amend the prayer in the W.P and therefore, one portion of the prayer i.e. consideration of the representation dt. 23.12.2020 by the department does not survive. In any event, the W.P was admitted on 20.1.2021. Pending the W.P. an order of status quo was granted for two weeks and the Respondent was directed to file a counter affidavit. The Respondent has filed a counter affidavit dt. 31.1.2023. The Petitioner's counsel also filed a written submission.

21. In support of their argument, the Petitioner's counsel relied on the Supreme Court's judgment in *District Exhibitors Association v. Union of India*, reported in 1991 (3) SCC 119. In paragraphs 20 and 21 of that judgment, the Court observed:

"20.

In the instant case for the period from 1st October, 1984 up to the date of the impugned Notification the employer has paid the



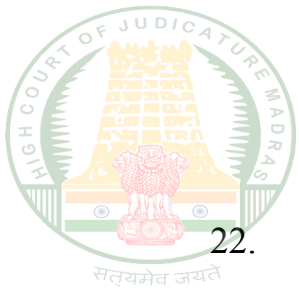
WEB COPY



W.P.No.15567 of 2020 & batch

full wages to the employees since during that period, there was no scheme applicable to his establishment. By retrospectively applying the scheme, could he be asked to pay the employees contribution for the period antecedent to the impugned notification. We think not. The Act and the Scheme neither permit any such payment nor deduction. He cannot be saddled with the liability to pay the employees' contribution for the retrospective period, since he has no right to deduct the same from the future wages payable to the employees.

21. Mr. Vikram Mahajan, learned counsel for the Central Government submitted that it may be possible for the employers to make deduction from subsequent wages of the workmen with the consent in writing of the Inspector as required under the third proviso to para 32(1) of the Scheme. This submission cannot be accepted since the third proviso could be taken advantage of by the employer only where no deduction has been made from the wages of the employees due to accidental mistake or clerical error when the scheme is operative. Such deduction which has not been made by accidental mistake or clerical error, could be made from the subsequent wages with the consent in writing of the Inspector concerned. The case with which we are concerned is not covered by the third proviso. It is not the case of any body that the employer could not make deduction from the wages of the employees by accidental mistake or clerical error. The employer indeed could not have made the deduction prior to the impugned notification dated 30th April, 1986 since the Scheme was not then applicable. The Scheme has been given retrospective effect w.e.f. 1st October, 1984. The employer therefore, cannot take the benefit of the third proviso to para 32(1) for deducting the employees contribution in their wages payable in future.”



W.P.No.15567 of 2020 & batch

22.

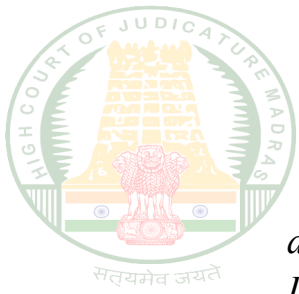
Para 32(1) of the EPF Scheme reads as follows:-

“Recovery of a member’s share of contribution – (1) the amount of a member’s contribution paid by the employer or a contractor shall, notwithstanding the provisions in this Scheme or any law for the time being in force or any contract to the contrary be recoverable by means of deduction from the wages of the member and not otherwise:

Provided that no such deduction may be made from any wage other than that which is paid in respect of the period or part of the period in respect of which the contribution is payable:”

23. In this case, the non-coverage of the workmen since 2015 was not due to any clerical mistake or error. This position was acknowledged by the Petitioner in their representation, as previously noted. Therefore, the Petitioner cannot benefit from their own lapse in failing to cover the workmen under the provisions of the Employees' Provident Funds (EPF) Act and in not making the necessary deductions from their wages. The Respondent's counsel also cited the judgment of the Andhra Pradesh High Court in *Nazeena Traders (P) Ltd. & Ors. v. Regional Provident Fund Commissioner*, AIR 1965 AP 200, where it was held:

“(53) It is abundantly clear from these provisions that the liability to contribute to the provident Fund is created the moment the scheme is applied to a particular establishment. It



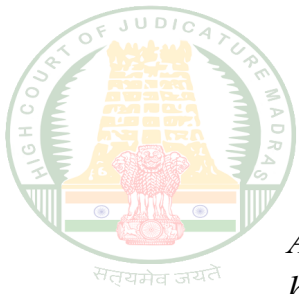
W.P.No.15567 of 2020 & batch

WEB COPY

does not depend upon the vigilance of the Provident Fund Department and the issue of notice. The relevant paragraphs of the scheme call upon the employer to obtain particulars from the workmen and submit a return to the Provident Fund Commissioner following the procedure prescribe therefor as also to remit monthly, the contributions to the provident Fund. These provisions also disclose that no option is left to the employee to become or not to become a member of fund. he has a right to become a member and that he is bound to become one. It is a statutory mandate for the employer to require his employees to become members and for the employee to obey it.

That being the correct position, the amount the scheme is put into operation, the liability of the employer to make the requisite contributions springs into being. It is the notification extending the provisions of the scheme to an establishment per se that attracts his liability and not that the service of notice on the employer that has this effect. In fact, if we were assent to the theory propounded on behalf of the petitioners, it is not even the service of notice that imposes the liability to contribute but it is the enrolment of the workmen as members of the Fund that attaches the liability. If the obligation to contribute is to rest on the employees becoming members of the Provident Fund, it will be permitting the employer to select his own time to apply the scheme to himself, to fix the time from which his liability should start and to make advantage of his own default. If he chooses not to comply with the terms of the statute even after the receipt of notice, he does not incur any liability in this regard.

We cannot read an intendment in the several provisions of the



W.P.No.15567 of 2020 & batch

WEB COPY

Act which gives such a latitude to the employer or leave it to his choice as to the time from which he should contribute to the fund. In our opinion, it is absolute and unqualified liability and does not depend either on the vigilance or detection of the department concerned or upon the will of the department concerned or upon the will of the employer to make the workmen members or not or as to when they should be made members. The employers cannot be permitted to defeat the provisions of the Act by their own default. It should be remembered that this is a beneficent legislation and should be construed liability so as to confer benefits on the employees to the maximum extent. It was enacted as a measure of social justice”.

Given the circumstances, this case does not warrant granting any relief to the Petitioner. Consequently, the writ petition is deemed without merit and is therefore subject to dismissal.

24. In the result, Writ Petition Nos. 15567 of 2020, 16503 of 2020, 16769 of 2020 and 803 of 2021 will stand dismissed, and Writ Petition No. 445 of 2021 alone stands allowed. The order of Tribunal dated 23.06.2020 in EPFA No.39/2017 is hereby quashed. However, there will be no order as to costs. Consequently W.M.P. Nos.19427 of 2020, 522 of 2021 and 866 of 2021 will also stand dismissed.



W.P.No.15567 of 2020 & batch

21.03.2025

WEB COPY

ay

Index: Yes / No

Speaking Order / Non-speaking Order

Neutral Citation : Yes / No

To

1. Regional Provident Fund Commissioner
Employees' Provident Fund Organisation,
Sub-Regional Office,
S-1, TNHB, Phase – III,
Sathuvachari,
Vellore – 632 009.

2. The Assistant Provident Fund Commissioner (C&R),
Employees Provident Fund Organization,
Sub-Regional Office, S.J.Plaza,
Swarnapuri, Salem – 636 004.

3. The Assistant Provident Fund Commissioner,
Office of the Regional Provident Fund Commissioner,
Bhavishyanidhi Bhavan,
Dr.Balasundaram Road,
Coimbatore – 641 018.

4. The Assistant Provident Fund Commissioner,
Regional Provident Fund Commissioner
Employees' Organisation,
Regional Office,
3, Rajaji Salai, Chennai – 600 045.

5. The Assistant Provident Fund Commissioner (Compliance)

31/33



W.P.No.15567 of 2020 & batch

Employees Provident Fund Organisation,
Office of the Regional Provident Fund Commissioner,
37, Royapettah High Road,
Chennai – 600 014.

6.The Recovery Officer,
Employees Provident Fund Organisation,
Office of the Regional Provident Fund Commissioner
37, Royapettah High Road
Chennai – 600 014.



WEB COPY



W.P.No.15567 of 2020 & batch

DR. A.D. MARIA CLETE, J

ay

Pre-Delivery Judgment made in
W.P.Nos. 15567, 16503 & 16769 of 2020,
445 & 803 of 2021 and
WMP No.19427 of 2020, 522 & 866 of 2021

21.03.2025