IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 14.07.2025

CORAM

THE HONOURABLE Mr. JUSTICE P.DHANABAL

W.P. No.23034 of 2022
and
W.M.P. No.22050 of 2022

M/s. Employees Provident Fund Organization,
represented by its Regional Provident Fund Commissioner,
Sub-Regional Office,
Ambattur,
R-40, A-1, TNHB Shopping cum Office Complex,
Mugappair Road, Mugappair East,
Chennai-600 037. .. Petitioner

vs.

M/s. Marvel Integrated Facility Services,
represented by its Proprietrix,
Ms. Munusamy Sumathi .. Respondent

PRAYER: The Writ petition filed under Article 226 of the Constitution of India seeking to issue a Writ of Certiorari calling for the records of the Central Government Industrial Tribunal cum Labour Court (CGIT) culminating in the impugned order EPFA 245/2019 dated 09.03.2022 to the petitioner and to quash the same.

For Petitioner : Mr. Krishna Dath for
Mr. M.S. Viswanathan

For Respondent : Mr.Manohar Gupta for
M/s. Gupta & Ravi.

ORDER

This Writ petition has been filed as against the order passed by the Central Government Industrial Tribunal-cum-Labour Court in E.P.F.A. No.245 of 2019 dated 09.03.2022 and to quash the same.

2. In fact, the respondent has filed an industrial dispute against the order passed by the Assistant Provident Fund Commissioner under Section 7(Q) and 14B of the Employees Provident Fund Act dated 15.10.2019, wherein the Assistant Provident Fund Commissioner passed separate orders for non-payment of the contributions within the prescribed time and thereby awarded interest for a sum of Rs.82,558/- and damages of Rs.1,45,945/- and the same was challenged before the Appellate Authority i.e., the Central Government Industrial Tribunal-cum-Labour Court, Chennai and the same was allowed by setting aside the order passed by the Assistant Provident Fund Commissioner. Aggrieved by the said order, the department has filed this petition.

3. The learned counsel for the petitioner would submit that the 1st respondent is covered under EPF and MP Act, and is a chronic defaulter and

had committed default in payment of EPF dues deducted from the salary of the employees from August 2015 to December 2018 and belatedly deposited after a delay of more than 1000 days to minimum 40 days. The 1st respondent was supposed to deposit the deducted contribution from the wages of the employees within 15 days of the following month as stipulated under Para 38 of the Employees Provident Fund Scheme. For the above said default made by the 1st respondent, the petitioner issued summons to the respondent under Section 14B of the EPF & MP Act dated 24.04.2019 and directed to appear for hearing on 14.05.2019. The 1st respondent appeared before the petitioner for enquiry and he was given an opportunity to put forth his reply and documentary evidence in support of them having paid the dues in time as stipulated under the Act. On the conclusion of the hearing, the 1st respondent admitted the default. After giving sufficient opportunity to the 1st respondent, the impugned orders have been passed. At the time of passing order, all the relevant rules and schemes have been taken into account. Therefore, the orders passed by the Assistant Provident Fund Commissioner, are in order. Thereafter, the 1st respondent filed an appeal before the Central Government Industrial Tribunal / Labour Court and the same was erroneously allowed by the Appellate Authority. The 1st respondent committed default for the period from August 2015 to December 2018. There is a delay for more than 1000 days to minimum 40 days and the summons issued under Section 14B of EPF & MP Act contained complete scheme provisions and period of default made in remittance of dues and thereby, the 1st respondent was directed to appear for hearing on 14.05.2019 and thereafter only, the Authority has passed the order. Therefore, already opportunity was given to the 1st respondent. But the Appellate Authority without considering the above said aspects, simply allowed the appeal on the ground that no opportunity was given to the 1st respondent. Even if the Appellate Authority considered that opportunity was not given, the Appellate Authority ought to have remanded back the matter to the Assistant Provident Fund Commissioner for deciding the case afresh after affording opportunity, but without doing the same, erroneously had allowed the appeal and set aside the order passed by the Assistant Provident Fund Commissioner. Therefore, the order passed by the Appellate Authority is liable to be set aside.

4. The learned counsel appearing for the respondent would submit that the Authority, while passing the order under Section 7Q and 14B of the EPF & MP Act, without affording opportunity to the respondent, passed the

impugned orders and confirmed the quantum of the amount. The respondent was engaged in the business of providing various customized services to its clients. The respondent also covered under the provisions of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 and has been prompt in deducting the contribution from the employees' salary and remitting the same along with employer's contribution. While so, a Show Cause Notice dated 24.04.2019 was issued by the appellant calling him to show cause as to why interest and damages under Section 7Q and 14B of the Employees Provident Fund and Miscellaneous Provisions Act should not be levied against the respondent for belated remittance of contributions for the period from August 2015 to December 2018. The respondent orally denied the allegations and averments made in the Show Cause Notice. There is no *mensrea* on the part of the respondent. Therefore, levying damages does not arise. The Show Cause Notice is issued to the employer in respect of the contribution and administrative charges and levied damages of Rs.1,45,945/- under Section 14B of the EPF and MP Act without application of mind. Therefore, the order was passed without providing opportunity to the respondent. Therefore, the Appellate Authority has set aside the order passed by the Assistant Provident Fund Commissioner. Therefore, the Writ petition is liable to be dismissed.

5. Heard both sides and perused the entire materials available on record.

6. In this case, there is no dispute that the respondent company is covered under the provisions of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 and the contributions were paid belatedly. According to the petitioner, since there was a delay in payment of contribution amount, they initiated proceedings under Section 7Q and 14B of the Act for interest and damages respectively. The respondent also appeared before the Authority and thereafter only, the Assistant Provident Fund Commissioner passed the order. The respondent has also not denied his appearance before the Assistant Provident Fund Commissioner. However, according to the respondent, after his appearance, no opportunity was given to him for presenting his case before the Authority.

7. On perusal of records, it is seen that notice was issued on 24.04.2019 by fixing a date for hearing on 14.05.2019. The respondent also

appeared on 14.05.2019. Thereafter order was passed on 15.10.2019. Admittedly, in the order passed under Section 7Q of the EPF Act, the Authority has not discussed about the assessment of dues and only in a single tabular column, the amount was arrived and there is no reference as to how the amount was arrived. Similarly, in the order passed by the Authority under Section 14B of the EPF Act also, there was no reference about the assessment dues. Without any discussion, straight away the Authority arrived at the calculation. Moreover, in the orders, either under 7Q of the Act or 14B of the Act, there is no reference about the opportunity given to the respondent. The learned counsel for the respondent would submit that without any *mensrea,* the Authority has passed the order unde Section 14B of the At.

8. At this juncture, it is relevant to refer the judgment of Hon'ble Supreme Court in ***Hindustan Times Limited vs. Union of India (UOI) and Ors reported in AIR 1998 SC 688*** and later the Hon'ble Supreme Court in ***Horticulture Experiment Station, Gonikoppal, Coorg vs. The Regional Provident Fund Organization's*** *case,* clarified that for deciding damages under Section 14B, *mensrea* has no relevance. As per 32A of the EPF Scheme, before the levying the damages, the employees are to be given

opportunity. In this case, no opportunity was given to the respondent. Therefore, the Appellate Authority has set aside the order passed by the Assistant Provident Fund Commissioner. However, without remanding back the matter for fresh consideration, after giving opportunity to the respondent, set aside the order. Therefore, it is appropriate to direct the Assistant Provident Fund Commissioner, to dispose the matter after affording opportunity to the respondent before passing order under Section 7Q and 14B of the EPF & MP Act.

9. This Writ petition is allowed and the order passed by the Central Government Industrial Tribunal-cum- Labour Court in EPFA No.245 of 2019 dated 09.03.2022 is confirmed in respect of setting aside of the order passed by the Assistant Provident Fund Commissioner on the ground of non-providing of opportunity to the respondent. However, the Appellate Authority failed to remand back the matter for fresh consideration after giving opportunity to the respondent.

10. Accordingly, the Writ petition is ***partly allowed and*** the matter is

remanded back to the Assistant Provident Fund Commissioner. The Assistant Provident Fund Commissioner is directed to dispose of the proceedings within a period of **3 months** from the date of receipt of a copy of this order. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

14.07.2025

Index : Yes/No.
Speaking order/non-speaking order
mjs

To

The Presiding Officer,
Central Government Industrial Tribunal cum Labour Court (CGIT) /
Employees Provident Fund Appellate Tribunal,
Chennai.

P. DHANABAL, J.,

mjs

W.P. No.23034 of 2022

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