

WP(MD)No.9855 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 08.09.2025

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

WP(MD)No.9855 of 2019
and
WMP(MD)No.7738 of 2019

Noorul Islam Centre for Higher Education,
Kumaracoil, Thuckalay,
Kanyakumari District – 629 180
Rep. by its President
A.P.Majeed Khan

: Petitioner

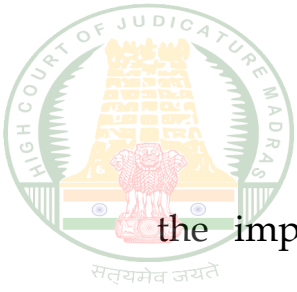
Vs.

1.The Regional Provident Fund Commissioner,
Employees Provident Fund Organization,
Sub Regional Office,
66, Water Tank Road,
Nagercoil – 629 001,
Kanyakumari District.

2.K.Velayudhan Nair

: Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India
seeking issuance of a Writ of Certiorari calling for the records relating to



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the impugned order of the first respondent under Para 26B of the Employees Provident Fund Scheme, 1952, in No.TN/NGL/29372/C-(31)/Enf/2019 dated 21.02.2019 and quash the same.

For Petitioner : Mr.S.Bharathy Kannan

For Respondents: Mr.N.Dilip Kumar
for R.1

Mr.V.M.Bala Mohan Thampi
for R.2

ORDER

This writ petition is filed by the petitioner as against the order passed by the first respondent dated 21.02.2019, under Para 26B of the Employees Provident Fund Scheme, 1952.

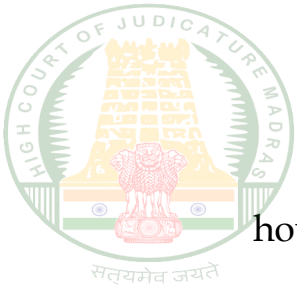
2.The petitioner establishment is covered under the Employees Provident Fund Act. As against the petitioner establishment, the second respondent, an employee, has lodged a complaint before the Provident Fund Authority on 01.08.2017 that he has served in the petitioner establishment from 01.07.1997 and has left the service on 01.06.2016,



however, he was not covered under EPF. Therefore, he sought for EPF benefits. Based on this complaint, a preliminary enquiry was conducted by the Authority and an inspection was also made in the petitioner establishment. Thereafter, the matter has been referred to the first respondent / Regional Provident Fund Commissioner under Para 26B of the EPF Scheme, 1952. The first respondent, after conducting an enquiry, has passed the impugned order, dated 21.02.2019, holding that the second respondent employee is entitled to be enrolled and is entitled for the benefits with effect from 1997. The first respondent has also arrived at the quantum liable to be paid by the petitioner establishment. Aggrieved over the same, the petitioner establishment has filed this writ petition.

3.Learned Counsel for the petitioner has attacked the impugned order on the following grounds:-

- The second respondent employee was engaged only on consolidated pay with effect from 2009, however, without any basis and records, the first respondent has arrived the period from 1997.
- The quantum has been arrived as per Section 7A of the EPF Act,



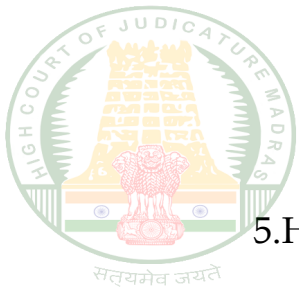
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however, the order has been passed under Para 26B of the EPF Scheme. Therefore, the right of appeal before the Tribunal has been curtailed.

- The second respondent is an excluded employee, however, without any basis, the quantum has been arrived by the first respondent.

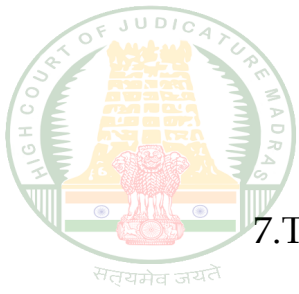
4.Learned Counsel for the first respondent submitted that on the second respondent's complaint, the Authority under the Act has conducted a preliminary enquiry, verified with the establishment and also inspected the establishment through squad. A detailed enquiry was conducted and during the enquiry, the second respondent has produced four identity cards, issued by the petitioner establishment. It shows the date of joining as 01.07.1997 and the identity cards were periodically renewed. The fourth identity card was issued when the establishment attained the status of Deemed to be University. Based on these identity cards, the Authority has directed the petitioner establishment to produce the relevant records from the year 1997 upto 2009, however, they have failed to produce the same. Therefore, an adverse inference was drawn as against the establishment.



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5.He further submitted that the Authority has been empowered under Para 26B of the EPF Scheme to fix the quantum payable by the establishment under Section 7A of the EPF Act. Therefore, there is no error in the order passed by the first respondent arriving at the quantum.

6.He further submitted that the petitioner establishment in a similar manner has denied the contribution under the EPF Act to another employee, namely, D.Swaran Victrops Nagson. A similar order has been passed by the Authority and it was challenged by the petitioner establishment before the Tribunal and it was rejected. The Tribunal's order was challenged by the petitioner establishment by way of a writ petition before this Court in WP(MD)No.4532 of 2011 and by order dated 07.01.2021, this Court has remanded the matter back to the Tribunal. In the meantime, the petitioner establishment has paid the contribution, arrived by the authority, for the employee, D.Swaran Victrops Nagson. According to the learned Counsel, the petitioner establishment is in the habit of engaging employees under the guise of consolidated employee and denying the contribution to the employees.



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7.This Court considered the rival submissions made on either side

and perused the materials placed on record.

8.The petitioner establishment was initially started as an Engineering College and later, it has been recognized as a Deemed to be University. One Velayuthan Nair / second respondent has served as an employee in the petitioner establishment. The petitioner establishment has also issued identity card to the second respondent. Four identity cards have been placed by the second respondent before the Authority. The first identity card was issued in the year 1997, mentioning the date of joining / appointment as 01.07.1997. The petitioner establishment took a plea that the identity card has been issued inadvertently. However, in all the four identity cards, the date of joining / appointment is mentioned as 01.07.1997. Therefore, the Authority has directed the petitioner to produce the relevant records, however, the same was not produced.

9.It appears that one D.Swaran Victrops Nagson has also been engaged in a similar manner and was denied the benefits. On his



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complaint, a similar enquiry was conducted and contribution was fixed by the Authority. It was challenged before the Tribunal and before this Court.

It is reported that the contribution awarded by the Authority has been settled to that employee.

10.The main contention of the petitioner establishment is that the quantum has been arrived under Section 7A of the EPF Act, however, the order has been passed under Para 26B of the EPF Scheme, denying the appellate remedy. This Court finds it as a valid ground and on this aspect, this Court is inclined to interfere. The petitioner establishment is at liberty to prefer an appeal as against the determination of quantum, as provided under Section 7I of the EPF Act, within a period of four weeks from the date of receipt of a copy of this order. If any appeal is filed within this time limit and on deposit of the entire contribution amount arrived by the Authority, the Tribunal shall entertain the appeal without insisting on the limitation. It is reported that the petitioner establishment has already deposited a part amount. The second respondent employee is permitted the withdraw the entire deposited amount.



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Accordingly, this writ petition stands partly allowed. No costs.

Consequently, connected miscellaneous petition is closed.

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To

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B.PUGALENDHI, J.

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