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W.A.(MD)NO.1543 OF 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.02.2025

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

AND

THE HON'BLE MR.JUSTICE M.JOTHIRAMAN

W.A.(MD)No.1543 of 2021 AND

C.M.P.(MD)No.6354 of 2021

Ashoka Lodge,
Rep. by its Managing Director,
R.Selvakumar,
93, Abraham Pandithar Street,
Thanjavur – 613 001.

... Appellant / Petitioner

Vs.

1. The Employees Provident Fund Appellate Tribunal,
Scope Minar,
Core-II, 4th Floor,
Laxmi Nagar District Centre,
New Delhi – 110 092.

2. The Assistant Provident Fund Commissioner,
E.P.F. Organisation,
Sub-Regional Office,
18, Shree Complex,
Madurai Road, Trichy – 8.

... Respondents / Respondents

Prayer: Writ Appeal filed under Clause 15 of Letters Patent, to
set aside the order dated 24.03.2021 made in W.P.(MD)No.8094 of
2010 on the file of this Court and allow the writ appeal.



For Appellant : Mr.S.Karthik

WEB COPY For R-2 : Mr.N.Dilip Kumar

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J U D G M E N T

(Order of the Court was delivered by G.R.SWAMINATHAN, J.)

Heard the learned counsel appearing for the appellant and the learned Standing counsel appearing for EPF.

2. The appellant is a lodge running their business in Abraham Pandithar Street. Another establishment in the name and style of Ashoka Hotel (Boarding) was also run in the very same street. In the appellant establishment, 7 persons were employed. Ashoka Hotel(Boarding) on the other hand was already a covered establishment. The second respondent herein clubbed the appellant establishment with Ashoka Hotel(Boarding) and passed order under Section 7(A) of the Act. The appellant was called upon to pay a sum of Rs.1,22,036/-.

3. Aggrieved by the same, the appellant filed ATA No.632(13) of 2005 before the appellate Tribunal. The Tribunal confirmed the



order passed by the authority and dismissed the appeal vide order dated 31.03.2010. Challenging the same, W.P.(MD)No.8094 of 2010 was filed. The learned single Judge vide order dated 24.03.2021 dismissed the writ petition in the following terms:-

“8. Admittedly Ashoka Lodge is run by a partnership firm from the year 1967 and it is functioning at 93, Abraham Pandithar Road, Thanjavur-1. Thereafter, Ashoka Lodge (Boarding) started a restaurant in the year 1967 by another partnership firm at 79, Abraham Pandithar Road, Thanjavur-1. Few partners are common for both the partnership firm. Both establishments were maintaining separate books of accounts, having separate registrations under the Income Tax Act and the employees were separate and they were not inter-transferable between the two establishments. Ashoka Lodge (Boarding) was independently covered under the provisions of the EPF Act and Ashoka Lodge (Boarding) was closed on 07.09.1999. Since Ashoka Lodge has never employed 20 or more persons, it is not covered under the provisions of the EPF Act and Ashoka Lodge is still functioning. While so, the second respondent issued a summon dated 09.07.2004 under Section 7-A of the EPF Act to the petitioner to determine the PF contribution amount for the period



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from September 2001 to April 2004. The petitioner gave a reply dated 04.01.2005 denying the coverage under the EPF Act. The petitioner produced the attendance registers, wages registers, balance sheets, Day books and ledgers, at the time of personal hearing before the second respondent. The second respondent passed the order dated 19.01.2005 holding that both the above two establishments got unity of management, financial nexus and same objective and hence, the petitioner was liable to pay Rs.1,22,036/- towards arrears of contribution amount. On appeal, the same was confirmed by Appellate Tribunal, vide order dated 31.03.2010.

9. On a perusal of the records, it would reveal that the adjudicating authority viz., the EPF authority elaborately considered the issue after hearing the petitioner and on a perusal of the materials, arrive at conclusion that the partners of both entities are one and the same and they are functioning within close proximity and functioning in the same street and all the factual disputes are fairly considered by the original authority and the same was confirmed by the appellate authority.

10. For the reasons aforesaid, the concurrent conclusions arrived at by the authorities below, being essentially in the nature of facts and the inference



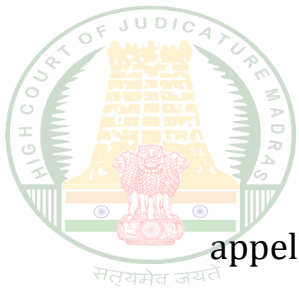
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drawn upon the same being legitimate inferences, this Court is of the considered opinion that no interference is warranted with the well considered findings rendered by the authorities below. Accordingly, the writ petition fails and the same is dismissed. No costs. Consequently, the connected Miscellaneous Petitions are also dismissed.”

Challenging the same, this appeal has been filed.

4. We are more than satisfied that the principles regarding clubbing were rightly applied to the factual matrix obtaining in this case. As correctly submitted by the learned Standing counsel for the EPF, when on this aspect two authorities as well as the learned single Judge have sustained the stand of the authority, this Division Bench may not interfere with the said factual finding. However, one aspect in our view deserves consideration. Ashoka Hotel is said to have been wound up in the year 1999 itself. The appellant establishment is not running as on date. Considering the special facts and circumstances, the issue can be given a quietus. The learned counsel for the appellant states that a sum of Rs.91,531/- was already deposited. This amount can be adjusted by the second respondent. The



appellant is directed to pay the balance amount of Rs.31,000/- within a period of two weeks from the date of receipt of a copy of this order.

Upon receipt of the said payment, the second respondent shall close the impugned proceedings. The appellant will not be called upon to pay the consequential interest under Section 7Q of the Act or damages under Section 14(B) of the Act. This writ appeal is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

(G.R.SWAMINATHAN, J.) & (M.JOTHIRAMAN, J.)
24th February 2025

NCC : Yes / No
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