BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.03.2025

CORAM:

THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.(MD)No.4254 of 2018

The Regional Provident Fund Commissioner,
Employees Provident Fund Organization,
Regional Office,
Lady Dock College Road,
Madurai District. ... Petitioner

Vs.

1.The Presiding Officer,
The Employees Provident Fund Appellate Tribunal,
Scope Minor, Core II, 4th Floor,
Lakshmi Nagar, New Delhi.

2.Shri P.Sureshkumar,
Partner of P.R.P.Exports,
M/s.P.R.P.Exports, Therkutheru,
Melur Taluk, Madurai District. ... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned order passed by the 1st respondent dated 24.09.2013 in ATA No.378(13)2012 and quash the same as illegal, unconstitutional and consequently direct the 2nd respondent to pay the contribution of Rs.10,00,78,623/- vide proceedings of the petitioner dated 09.04.2012 in No.M-4/TN/MDU/57422/Enf-C/MDU/RO/2012 within a time frame as may be fixed by this Court.

For Petitioner	:	Mr.K.Muralisankar
For Respondents	:	Mr.B.Prasannavinoth for R1
		No Appearance for R1

ORDER

This Writ Petition has been filed seeking Writ of Certiorarified Mandamus, calling for the records in connection with the order dated 24.09.2013 passed in A.T.A.No.378(13)/2012 and to quash the same. The impugned order is dated 24.09.2013, whereas the present Writ Petition has been filed on 26.02.2018. It is after lapse of about five years.

2. Through the impugned order, the learned appellate Tribunal set aside the order dated 09.04.2012 passed by the petitioner herein. Through the said order dated 09.04.2012, the respondent No.2 herein was made liable to pay an amount of Rs.10,00,78,623/- towards PF contribution. The said order dated 09.04.2012 was interfered with by the appellate Tribunal on the ground that the petitioner herein passed the said order dated 09.04.2012 basing upon assumption and doubts without establishing the liability of the respondent No.2.

3. Heard Mr.K.Muralisankar, learned counsel for the petitioner and Mr.B.Prasannavinoth, learned counsel for the respondent No.2.

4. This Court, after having heard the learned counsel on either side at length and perusing the entire material on record, does not see any reason to deviate from the view taken by the learned Tribunal and the reasoning assigned therein. A perusal of the order dated 09.04.2012 passed by the petitioner herein under Section 7-A of "the Employees' Provident Fund & Miscellaneous

Provisions Act, 1952" (hereinafter referred to as "the Act 1952") itself discloses that the said order was passed not based upon the material before it nor based upon any enquiry report. But the said order was passed on mere suspicion and doubt about the stand of the respondent No.2 herein. The learned Appellate Tribunal, having taken note of the basis on which the order dated 09.04.2012 came to be passed, has examined the matter thoroughly and concluded that the petitioner herein passed an order dated 09.04.2012 basing upon assumption and doubts in stead of examining the matter in detail either through its Inspectors or by personally inspecting the premises of the respondent No.2 or by calling for further information from the respondent No.2. The relevant portion from the order passed by the learned Tribunal at paragraph No.5 is extracted hereunder for better appreciation:

> *"5. Heard the Ld. Counsels for the parties and examined all the records, pleadings and documents filed by the parties. It is noted that the Commissioner in the impugned Order has held that, on verification of records and written submissions submitted by the Appellant that the employees*

engaged under head of Burner expenses, Crane expenses, Excavate expenses, Lath expenses, Machinery expenses, Taurs tippers expenses, Dumper expenses, Tamrock Machine expenses, wire saw machine expenses as excluded employees as they are getting more that Rs.6500/-. In page 20 and 21 of the impugned order dated 9.4.2012 the Commissioner made the averments that, there are fluctuation and sudden increase of employees for the works did by the skilled workers in various sophisticated machineries and further alleged that it is impossible to get many number of skilled employees in the town like Madurai, and doubted whether they are skilled workers to handle the sophisticated machineries. The said doubt raised by the Respondent is not base on any materials, or any report. If the Commissioner has any doubt before passing the order he can sent his officials (or) himself may have personally visited the site of the Appellant quarries and the factory and he might have cleared his mind. The Commissioner and his officials are having every right under the EPF Act, to clear the said doubt by way of inspection or by exercising the powers conferred on him under Section 7-A (2) of the Act. But the Commissioner did not do so. Further, the Commissioner cannot decide and pass orders under doubt. The Commissioner has not directed the appellant to produce the documentary proof for having the 4500 *sophisticated machineries, at the time of enquiry. Before passing the orders if he requested the appellant we could have very well produced the proof for the same. As stated above the Commissioner by himself (or) with his Enforcement Officers may have ascertained the fact by inspecting the various sites of the appellant and thereby he may have come out of his doubt. Further, the Commissioner arbitrary without any materials and evidences and on assumption distinguished as new employees and experienced employees. Without any materials and valid reasons and particulars of documents simply and badly the Commissioner alleged that the wages for the excluded employees were forged. It is quite natural the sophisticate imported machineries can be activated only by the skilled persons and for the said skilled worker ordinarily they will not come for the work below Rs. 15000/- salary. Once the appellant filed the catalogue of showing the deployment of the highly advanced sophisticated machineries in the quarry and the factory, the Commissioner could have ascertain this fact and clear his mind before passing the order and should not pass the order under doubt. The year wise value of the machineries in the appellant as on 31.3.2010-Rs. 90 Crores, as on 31.03.2011-Rs. 250 Crores, as on 31.3.2010-Rs 262 Crores and as on 31.3.2011 Rs 305 Crores. There are all reflect in their Accounts Ledgers and Profit and Loss*

Account for the year 2008 to 2011 produced before the Respondent. Without going through the said records the Respondent passed the doubted order. The Commissioner by himself or through his Enforcement Officers may have ascertain the deployment of the advanced machineries and could have directly enquired with the said skilled employees about their nature of employment and the salaries received by them. The Commissioner could have summoned some of the employees and ascertained these facts."

5. During the course of hearing, nothing is brought to the notice of this Court by the learned counsel for the petitioner to deviate from the view taken by the learned Tribunal. This Court while exercising certiorari jurisdiction will not re-appreciate the entire evidence available on record but the scope of certiorari are very limited. In case if any findings of the appellate Tribunal are perverse or based on no evidence or in ignorance of the relevant evidence and also in case, if the said order is passed without any authority, this Court will examine the matter in detail and can interfere with the said findings. But in the instance case, none of the said circumstances exists. On the other hand, this Court has convinced that the order dated 09.04.2012 under Section 7-A of the Act 1952 was passed on mere suspicion and the petitioner herein ought to have further enquired into the matter while making the respondent No.2 herein liable for such huge sum of Rs.10,00,78,623/-. In the circumstances, this Court does not see any reason to interfere with the impugned order passed by the learned Appellate Tribunal.

6. Be that as it may, during the course of hearing, it is brought to the notice of this Court that the entire Granite business in the State of Tamil Nadu come to an end by virtue of a policy decision taken by the Government of India and the respondent No.2 establishment was closed as early in the year 2013, but the present Writ Petition has been filed in the year 2018. Thus, the delay in filing the present Writ Petition is also one of the reason for refusing to interfere with the impugned order. In case, if the impugned order is interfered with at this stage and the matter is reopened at this length of time, it would cause great prejudice to the respondent No.2 herein as admittedly, the respondent No.2 establishment was closed in the year 2013.

7. In the light of the above, this Court does not find any error or illegality in the impugned order warranting interference of this Court while exercising certiorari jurisdiction. Accordingly, this Writ Petition is dismissed. There shall be no order as to costs.

17.03.2025

Neutral Citation: Yes / No
Index : Yes / No

vsm

To

The Presiding Officer,
The Employees Provident Fund Appellate Tribunal,
Scope Minor, Core II, 4th Floor,
Lakshmi Nagar, New Delhi.

MUMMINENI SUDHEER KUMAR, J.

vsm

W.P.(MD)No.4254 of 2018

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