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W.A.(MD)NO.1089 OF 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.02.2025

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

AND

THE HON'BLE MR.JUSTICE M.JOTHIRAMAN

W.A.(MD)Nos.1089 of 2018 & 32 of 2019

AND C.M.P.(MD)No.9056 of 2024

W.A.(MD)No.1089 of 2018

Regional Provident Fund Commissioner,
Employees Provident Fund Organization,
N.G.O.B.Colony,
Tirunelveli.

... Appellant / Petitioner

Vs.

1. M/s.Seyadu Beedi Company,
Salai Street,
Sindupoondurai,
Tirunelveli Junction,
Tirunelveli – 627 001.

2. The Presiding Officer,
E.P.F.Appellate Tribunal,
New Delhi.

... Respondents / Respondents

Prayer: Writ Appeal filed under Clause 15 of Letters Patent, to call for the records relating to the order dated 23.06.2017 passed by this Court in W.P.(MD)No.3822 of 2009 on the file of this Court and set aside the same and allow the writ appeal as prayed for.



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For Appellant : Mr.K.Muralisankar

For R-1 : Mr.P.Chandrabose

For R-2 : Mr.S.Arunachalam

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W.A.(MD)No.32 of 2019

District Beedi Workers' Union,
Rep. By its President,
6-A-1, Parasakthi Building,
Madurai Road,
Tirunelveli – 627 001.

... Appellant / Petitioner

Vs.

1. The Presiding Officer,
E.P.F.Appellate Tribunal,
New Delhi.

2. M/s.Seyadu Beedi Company,
Salai Street,
Sindupoondurai,
Tirunelvlei Junction,
Tirunelveli – 627 001.

3. The Regional Provident fund Commissioner,
N.G.O.B.Colony,
Tirunelveli.

... Respondents / Respondents

Prayer: Writ Appeal filed under Clause 15 of Letters Patent,
to set aside the order of the learned Judge dated 23.06.2017 in W.P.
(MD)No.11733 of 2010 and allow the writ petition as prayed for.



For Appellant : Mr.S.Arunachalam

For R-2 : Mr.P.Chandrabose

For R-3 : Mr.K.Muralishankar

* * *

COMMON JUDGMENT

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

Both these writ appeals arise out of the order dated 23.06.2017 made in W.P.(MD)Nos.3822 of 2009 and W.P.(MD)No.11733 of 2010. W.P.(MD)No.3822 of 2009 was filed by the Regional Provident Fund Commissioner, Employees Provident Fund Organisation, Tirunelveli. W.P.(MD)No.11733 of 2010 was filed by the District Beedi Workers' Union, rep. by its President, Tirunelveli.

2. In both the writ petitions, the order dated 25.03.2009 passed by the E.P.F.Appellate Tribunal, New Delhi in ATA No.68C(13) 2003 was questioned. Both the writ petitions were dismissed by the learned single Judge. Challenging the same, the Regional Provident Fund Commissioner, Tirunelveli filed W.A.(MD)No.1089 of 2018. The District Beedi Workers Union, Tirunelveli filed W.A.(MD)



No.32 of 2019. Shri.M.Rajangam, President of the District Beedi Workers Union, Tirunelveli submitted complaint dated 16.07.2001 before the Regional Provident fund Commissioner, Tirunelveli alleging that certain workers employed by M/s.Seyadu Beedi Company, Sinduppoondurai, Tirunelveli have not been enrolled as members in EPFO. Para 26-B of the Employees' Provident Funds Scheme, 1952 reads as follows:-

“Resolution of doubts – If any question arises whether an employee is entitled or required to become or continue as a member, or as regards the date from which he is so entitled or required to become a member, the decision thereon of the Regional Commissioner shall be final.”

3. Since the authority was obliged to hear the alleged employer, notice was issued to M/s.Seyadu Beedi Company also. The said Beedi Company took the stand that the so called non-enrolled members are actually self-employed and independent Beedi rollers. One Syed Ahamed used to supply raw materials to them and after rolling Beedies, the said persons sold the same to



M/s.Rajan Traders. Seyadu Beedi Company is only a purchaser of Beedies from Rajan Traders. The said company has nothing to do or relationship with the persons for whom the complaint was lodged by the District Beedi Workers Union. After conducting a detailed enquiry, the Regional Provident Fund Commissioner vide order dated 01.07.2003 decided that the so called self-employed Beedi manufacturers ultimately supplied the beedies in whatever terms to Seyadu Beedi Company through Rajan Traders or similar firms or agencies are employees of M/s.Seyadu Beedi Company and they are eligible to be enrolled as E.P.F.members.

4. Since adjudication had already been made in Para 26-B of Employees' Provident Funds Scheme, 1952 against an establishment, an order under Section 7A of the EPF&MP Act was passed by the Assistant Provident Fund Commissioner, Tirunelveli on 17.08.2004. The said authority determined that a sum of Rs.2,09,23,923/- was payable as contribution under Section 7A of the Act. Aggrieved by the order made under para 26-B, on 01.07.2003, the establishment (Seyadu Beedi Company) filed ATA No.680(13)2003



before the Employees Provident Fund Appellate Tribunal, New Delhi.

5. Feeling aggrieved that this appeal was not being processed, the establishment filed W.P.(MD)No.1166 of 2004 before the Madurai Bench of Madras High Court. In the said writ petition, the establishment questioned not only the adjudication made under Para 26-B dated 01.07.2003 but also the consequential order passed under Section 7A of the EPF&MP Act dated 17.08.2004. The establishment sought quashing of both the orders. The said writ petition was disposed of by directing the Tribunal to take up the appeal and give a disposal within three months after giving notice to both the parties and also on merits. Paragraph 6 of the said order reads as follows:-

“6. Under these circumstances, ends of justice will be met if the following directions are given:- (a) The petitioner shall deposit a sum of Rs.20,00,000/- within a period of four weeks from the date of receipt of a copy of this order to the credit of the appeal No.TN/TI/ATA No.680(13)2003/legal/2007. (b) Once



deposit is made and intimated to Tribunal by a written communication of both the parties, the Tribunal shall take up the Appeal in TN-TI-ATA No. 680(13)2003/legal/2007 and dispose of the same on merits within a period of three months after giving notice to both the parties and also on merits without insisting any pre-deposit. The Tribunal shall report compliance to this Court. The writ petition will stand disposed of accordingly. No costs.”

6. Pursuant to the aforesaid direction, the Tribunal took up the appeal filed by the establishment and allowed the same on 25.03.2009. Challenging the same, the writ petitions were filed by the Regional Provident Fund Commissioner as well as the District Beedi Workers Union. As already mentioned, both the writ petitions were dismissed by the learned single Judge on 23.06.2017.

7. The learned counsel for the appellants pointed out that as per the unamended provision, any adjudication made by the authority under Para 26-B of the Scheme was final. It is true that a finality clause cannot bind the civil Court or the writ Court. But



then, the appellate Tribunal is creature of the very same status which had incorporated the finality clause. The Tribunal should not have gone into the correctness of the order made under Para 26-B of the Scheme.

8. Even though the appellants herein / writ petitioners argued before the learned single Judge that the Tribunal was incompetent to decide this issue, the learned single Judge brushed aside and rejected the said argument on the ground that this Court in W.P.(MD)No. 1166 of 2004 had specifically directed the Tribunal to dispose of the appeal and therefore, the petitioners cannot contend that the appeal before the Tribunal was not legally maintainable.

9. With utmost respect to the learned single Judge, we have to observe that if the Tribunal was otherwise incompetent to decide the appeal, then the writ Court cannot confer jurisdiction by giving direction to dispose of the appeal.

10. In this view of the matter, the order passed by the learned single Judge is set aside. The order passed by the Tribunal which



was impugned in W.P.(MD)Nos.3822 of 2009 and 11733 of 2010 is also set aside.

11. As rightly pointed out by the learned counsel for the establishment, the establishment cannot be left without remedy. They have been contesting the case right from the inception. Hence, in the interest of justice we grant liberty to the first respondent to mount a fresh challenge not only to the order dated 01.07.2003 made under Para 26B of the Scheme but also the order dated 17.08.2004 made under Section 7A of the Act. If any such challenge is mounted within a period of next two months, it will be entertained without reference to limitation or laches. The contention of both the parties are left open. These writ appeals are allowed. No costs. Consequently, connected miscellaneous petition is closed.

(G.R.SWAMINATHAN, J.) & (M.JOTHIRAMAN, J.)

4th February 2025

NCC : Yes / No

Index : Yes / No

Internet : Yes/ No

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