



W.P.(MD) No.527 of 2016

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.02.2025

CORAM:

THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.(MD) No.527 of 2016

and

W.M.P.(MD) No.435 of 2016

The Assistant Provident Fund Commissioner
Employees' Provident Fund Organization
P.B.No.588, Sree Complex, 'D' Block
No.18, Madurai Road, Tiruchirapalli

... Petitioner

-VS-

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

2.P.Ramados (Died)
Transport Contractors
25, Nageswaran Sannathi Street
Kumbakonam-612 001
Thanjavur District Tamil Nadu State
through its Proprietor

3.R.Kannan
[R3 is impleaded vide Court order dated
20.07.2023 in W.M.P.(MD) No.14609 of 2023]

... Respondents



W.P.(MD) No.527 of 2016

WEB COPY **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 order passed by the first respondent in A.T.A.No.97(13)2008, dated 28.01.2011 and quash the same as illegal and consequently direct the second respondent to pay the contribution of Rs.3,43,599/- as proceedings in D3/TN/TR/43744/SRO-TR7/2007, dated 29.11.2007, within a time frame as fixed by this Court.

For Petitioner : Mr.I.Robert Chandrakumar

For Respondents : R1 – Court
R2 – Died
Mr.R.Paranjothi for R3

ORDER

This writ petition has been filed by the petitioner – Employees' Provident Fund Organisation (in short, “EPF Organisation”) aggrieved by an order, dated 28.01.2011, passed in A.T.A.No.97(13)2008, on the file of the Employees Provident Fund Appellate Tribunal (in short, “the Appellate Tribunal”), Camp Office at Coimbatore, allowing the appeal filed by the second respondent, on the ground that the notification, as required under Sub Section (4) to Section 1 of the Employees' Provident Funds and Miscellaneous



W.P.(MD) No.527 of 2016

WEB COPY

Provisions Act, 1952 (in short, “the Act, 1952”) was not issued and therefore, the provisions of the Act, 1952 have no application to the Establishment belonging to the second respondent.

2. During the pendency of this writ petition, the second respondent passed away and accordingly, the third respondent, being his legal representative, was brought on record.

3. The learned Appellate Tribunal allowed the application filed by the second respondent solely on the ground that there was no notification, as required under Sub-Section (4) to Section 1 of the Act, 1952 and therefore, the petitioner – EPF Organisation lacks jurisdiction to initiate proceedings under the Act, 1952.

4. Heard the learned counsel for the petitioner – EPF Organisation and the learned counsel appearing for the third respondent.

5. It is not in dispute that at the relevant point of time, the second respondent approached the petitioner – EPF Organisation seeking application of the provisions of Act, 1952 to his Establishment and accordingly, the



W.P.(MD) No.527 of 2016

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petitioner – EPF Organisation issued a proceedings, dated 13.06.2001, allotting EPF Code No.TN/TR/43744 to the Establishment belonging to the second respondent with effect from 01.05.2001 and accordingly, the second respondent acted upon the same and the provident fund contribution amounts have been remitted for the employees working in the Establishment belonging to the second respondent.

6. No doubt, the proceedings of the petitioner – EPF Organisation, dated 13.06.2001, contemplated issuance of a notification as required under Sub Section (4) to Section 1 of the Act, 1952. But, the Act, 1952 being a social welfare and beneficial legislation, the application of the provisions of the said Act cannot be curtailed on the ground of non-issuance of a notification, which is a ministerial and consequential act.

7. Admittedly, the second respondent himself approached the petitioner – EPF Organisation seeking application of the provisions of the Act, 1952 to his Establishment and accordingly, the same was accepted by the petitioner – EPF Organisation by issuing a proceedings dated 13.06.2001. Thus, the second respondent, having remitted the provident fund contributions and availed the benefits of the Act, 1952 in favour of his



W.P.(MD) No.527 of 2016

WEB COPY

employees, cannot now turn around and claim that the provisions of the Act, 1952 have no application to his Establishment for want of issuance of a notification as required under Sub-Section (4) to Section 1 of the Act, 1952. Thus, the second respondent cannot approbate and reprobate and take advantage of non-issuance of a notification under Sub-Section (4) to Section 1 of the Act, 1952. The said notification can be issued at any time having effect from 01.05.2001. Even if there is no such notification as on date, it is always open for the petitioner – EPF Organisation to issue such a notification even now. Therefore, the liability of the respondents 2 and 3 cannot be allowed to be washed away, on the technical ground of non-issuance of a notification as required under Sub-Section (4) to Section 1 of the Act, 1952. The learned Appellate Tribunal, while passing the impugned order, has not examined the matter on merits, but allowed the appeal only on the technical ground of non-issuance of a notification, as required under Sub-Section (4) to Section 1 of the Act, 1952.

8. In the light of the above, this Court is of the considered view that mere non-issuance of a notification as required under the statute is not fatal nor it goes to the root of the matter and it is a curable defect, which can be cured at any point of time.



W.P.(MD) No.527 of 2016

WEB COPY

9. In the light of the above, the impugned order cannot be sustained and the matter is required to be reconsidered by the Appellate Tribunal on merits.

10. At this juncture, it is brought to the notice of this Court that the jurisdiction to entertain the appeal against the orders passed by the Provident Funds Authority, under Section 7A of the Act, 1952, is now conferred upon the Central Government Industrial Tribunal-cum-Labour Court, situated at First Floor, B-Wing, No.26 Haddows Road, Shastri Bhawan, Chennai – 600 006.

11. In the light of the above, the impugned order, dated 28.01.2011, passed by the first respondent – Appellate Tribunal, is quashed and the matter is remanded back to the Central Government Industrial Tribunal-cum-Labour Court for deciding the matter in A.T.A.No.97(13)2008 afresh by duly affording an opportunity to both parties.

12. The petitioner – EPF Organisation is further directed to take steps for issuance of notification under Sub-Section (4) to Section 1 of the Act, 1952, pursuant to their proceedings dated 13.06.2001.



W.P.(MD) No.527 of 2016

WEB COPY

13. The third respondent is granted liberty to raise additional grounds before the Central Government Industrial Tribunal-cum-Labour Court, if he intends to do so.

14. The Central Government Industrial Tribunal-cum-Labour Court is further directed to dispose of the said appeal as expeditiously as possible, at any rate, within a period of six months from the date of receipt of a copy of this order.

15. Accordingly, this writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

24.02.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

Note to Office: Mark a copy of this order to the Central Government Industrial Tribunal-cum-Labour Court, situated at First Floor, B-Wing, No.26 Haddows Road, Shastri Bhawan, Chennai – 600 006.

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Page 7 of 9



W.P.(MD) No.527 of 2016

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



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W.P.(MD) No.527 of 2016

MUMMINENI SUDHEER KUMAR, J.

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