



W.P(MD)No.31342 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 04.07.2025
DELIVERED ON : 10.07.2025

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P(MD)No.31342 of 2024

A.Livingston

... Petitioner

Vs.

1.The District Manager,
Tasmac, Kanyakumari District,
Nagercoil.

2.The Assistant Employees Provident Fund
Commissioner,
Employees Provident Fund Organization,
(Ministry of Labour, Government of India),
District Office No.66 Water Tank Road,
Nagercoil-01,
Kanyakumari District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing to the respondents to pass the order to pay the work transport bill payment amount Rs.17,80,796/- with deposit amount Rs.3,00,000/- with 7.5% interest which was illegally attached by the TASMAC and to pass such further or other orders as this Court.



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For Petitioner : Mr.K.Ramamurthy

For R-1 : Mr.D.Sivanesan

For R-2 : Mr.M.Mahaboob Athiff

ORDER

The present writ petition has been filed by the Transport Contractor of the first respondent Corporation seeking a Mandamus to pay the work transport bill of Rs.17,80,796/- with deposit amount of Rs.3,00,000/- along with 7.5% interest which was illegally retained by the first respondent Corporation.

2. According to the petitioner, he was appointed as a Transport Contractor for the first respondent Corporation between 01.07.2006 and 31.05.2007. He had engaged temporary workers for loading, unloading and for transporting of the products of the first respondent Transport Corporation. Therefore, there was no contact between the labourer and the contractor and no records were maintained.



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3. It is further submitted that there is no clause in the contract between the petitioner and the first respondent Corporation, relating to payment of EPF amount. Therefore, the petitioner has not paid the EPF amount. However, the first respondent Corporation has illegally retained a sum of Rs.17,80,796/- towards the bill amount on the alleged non payment of the EPF dues. The first respondent Corporation is also illegally retaining the deposit amount of Rs.3,00,000/-. Hence, the present writ petition.

4. The first respondent Corporation has filed a counter affidavit contending that though the petitioner has contributed under the EPF Act from 2007 till 2012, he had not contributed for the period between 01.07.2006 and 31.05.2007. Since he had failed to contribute for that period, the second respondent had initiated proceedings against the TASMACH and the bank accounts of TASMACH were frozen. In such circumstances, the amount was retained from the transport bill of the writ petitioner. The EPF dues that have to be paid by the petitioner were recovered from the bank accounts of the TASMACH on 04.05.2011 and 05.05.2011 and penalty was also levied. The petitioner was informed about the same on 18.08.2011 and they were directed to pay the amount.



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5. It is further submitted on the side of the first respondent that, the petitioner had earlier filed W.P(MD)No.4281 of 2018 on the very same grounds and the said writ petition was dismissed as withdrawn and therefore, the present writ petition is not maintainable. Since statutory dues to be paid by the petitioner were not paid by him, the TASMAC had paid the same and retained the said amount from the transport bill. In such circumstances, there is no illegal retention of any amount.

6. The second respondent EPF Organization has filed a counter contending that, the petitioner having withdrawn the earlier writ petition, he had abandoned the cause of action and therefore, the present writ petition seeking the very same relief is not maintainable. It is further contended that the first respondent by his proceedings, dated 02.01.2017 had communicated to the petitioner with regard to payment of EPF dues. Without challenging the same, the present writ petition is not maintainable. The writ petition having been filed after an inordinate delay of 18 years, the same has to be dismissed on the ground of laches.



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7. It is further submitted on the side of the second respondent that, the petitioner has not remitted the dues for the period covering between 01.07.2006 and 31.05.2007. Merely because the petitioner got himself registered with the EPF Organization belatedly, his liability to pay the amount would not get erased. It has been further submitted that, the first respondent being the principal employer is having a coextensive liability along with the contractor. The principal employer has paid the statutory dues and he is now attempting to recover the same from the transport contract bill of the contractor. Therefore, the present writ petition is misconceived and the same is liable to be dismissed.

8. The petitioner had filed two rejoinders to these counter affidavits. In the rejoinder affidavit, it is submitted that the TASMACH Corporation has not credited the EPF amount under the code name of the petitioner or his Company, namely, M/s.Sun Enterprises. No receipt or document has been produced for the same. In such circumstances, there is no proof whatsoever that the first respondent has paid the EPF dues on behalf of the petitioner. On the other hand, TASMACH Corporation is illegally retaining the amount arising out of the transport contract bills of the petitioner.



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9. In the rejoinder, it is further submitted that the writ petition was withdrawn only for the purpose of participating in the tender. That would not in anyway affect the rights of the petitioner to seek disbursement of the amount illegally retained by the TASMAL Corporation.

10. Heard both sides and perused the materials available on record.

11. The present writ petition has been filed seeking a Mandamus as against the TASMAL Corporation to release the illegally retained amount of Rs.17,80,796/- along with deposit of Rs.3,00,000/-. However, it is the case of the TASMAL Corporation that, the said amounts have been retained by them, in view of the fact that the petitioner / contractor has not paid the EPF dues covering the period between 01.07.2006 and 31.05.2007.

12. In their counter affidavit, the TASMAL Corporation has categorically stated that, the EPF Organization had frozen their bank account for non payment of EPF dues and they were constrained to pay the EPF dues for the said period as the principal employer. This fact is also



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acknowledged by the EPF Organization in their counter. It is not the case of the petitioner that he had paid the EPF dues for the period covering between 01.07.2006 and 31.05.2007. In such circumstances, the TASMACH Corporation is legally bound to pay the EPF dues to the second respondent as a principal employer. Admittedly, employees were working under the petitioner / contractor and therefore, as the direct employer, the petitioner would be liable to pay the EPF dues. In such circumstances, the retention of the said amount cannot be found to be illegal.

13. With a similar prayer, W.P(MD)No.4281 of 2018 was filed and the same has been withdrawn. Whatever may be the reason for the withdrawal, when the said writ petition has been withdrawn without seeking any liberty, the present writ petition is not maintainable.

14. It is further contended on the side of the petitioner that, there is no contract between the petitioner and the TASMACH Corporation for payment of EPF dues by the contractor. None of the parties have placed on record the contract between the parties for the relevant period. In such circumstances, the petitioner is always at liberty to approach the competent civil Court for



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recovery of the retained amount, if it is otherwise permissible under law.

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15. In view of the above said deliberations, there are no merits in the present writ petition and the writ petition stands disposed off. There shall be no order as to costs.

10.07.2025

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

To

1.The District Manager,
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2.The Assistant Employees Provident Fund
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R.VIJAYAKUMAR, J.

BTR

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