



W.P.(MD)No.20338 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:22.04.2021

CORAM:

THE HONOURABLE MR. JUSTICE P.D.AUDIKEVALAU

W.P.(MD)No.20338 of 2014
and
M.P.(MD).No.1 of 2014

M/s. Sri Rama Vilas Service Limited,
represented by its Vice President (Operations)
Rajan Thottam,
Thiruvadaimaruthur Road,
Kumbakonam,
V.Kasirajan.

... Petitioner

vs.

The Assistant Provident Fund Commissioner
(Compliance),
"Sree Complex" 'D' Block,
No.18, Madurai Road,
Trichy 620 008.

... Respondent

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Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records



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connected with the order Ref.Enf.D3/TN/TR/217-C/SRO-TRY/2014, dated 10.10.2014 and the subsequent order Ref.TN/SRO-TRY/APFC/COM/2014, dated 20.11.2014 refusing the review its earlier order and quash the same and consequently direct the respondents to permit the petitioner to cross examine the Enforcement Officer on the basis of the reports dated 11.06.2013 and 25.11.2013.

For Petitioner : Mr. Sai Prasad
for Mr. C.Muthusaravanan

For Respondent : Mr. Dharmaraja
for Mr. V.S.Karthi

ORDER
(through video conference)

Heard Mr. Sai Prasad, Learned Counsel for the Petitioner, Mr. Dharmaraj, Learned Counsel for the Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner is an establishment covered by the provisions of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred as 'EPF Act' for short). In furtherance to an



inspection conducted on 23.05.2012, the then Enforcement Officer at Kumbakonam, viz., Thiru. P.Balakrishnan, had submitted a report dated 11.06.2013. The Respondent took into account the contents of that report and an enquiry against the Petitioner under Section 7-A of the EPF Act is conducted. In the course of that enquiry, the Petitioner made an application to the Second Respondent invoking Section 7-A(2) of the EPF Act, to cross-examine the said Enforcement Officer, Thiru. P.Balakrishnan, who had submitted reports dated 11.06.2013 and 25.11.2013. The Respondent rejected that request by Order No. Enf.D3/TN/TR/217-C/SRO-TRY/2014 dated 10.10.2014 on the specious plea that as that Enquiry Officer had been transferred to Coimbatore, the Respondent has no jurisdiction to direct him to appear for the hearing. The Petitioner was required to submit a questionnaire so that the doubts raised could be cleared through the present incumbent in the post of Enforcement Officer, Kumbakonam. An application for review dated 24.10.2014 of that order made by the Petitioner was rejected by the Respondent by Order No. TN/SRO-TRY/APFC/COM/2014 dated 20.11.2014 confirming the earlier decision.



Aggrieved thereby, the Petitioner has filed this writ petition challenging the refusal of the Respondent to permit the Petitioner to cross-examine the said Thiru. P.Balakrishnan, the then Enforcement Officer, Kumbakonam.

3. It is trite law that any administrative action, which involves civil consequences, must be made consistently with the rule of natural justice, meaning thereby that the person concerned must be informed of the case with supporting evidence against him and he must be given a fair opportunity to meet the case before an adverse decision is taken. As the claim made by the Respondent against the Petitioner arises out of the inspection reports dated 11.06.2013 and 25.11.2013 submitted by the said Thiru. P.Balakrishnan, then Enforcement Officer, Kumbakonam, Petitioner is entitled to cross-examine the said official to disprove its correctness. The denial of opportunity to the Petitioner to cross-examine the said official in the enquiry would amount to violation of the principles of natural justice and the purpose of conducting the enquiry itself becomes a meaningless exercise.



4. At this juncture, it would be appropriate to refer to the dictum laid down by the Hon'ble Supreme Court of India in ***Food Corporation of India -vs- Provident Fund Commissioner*** [(1990 (1) SCC 68)], where it has been held as follows:-

“9. It will be seen from the above provisions that the Commissioner is authorised to enforce attendance in person and also to examine any person on oath. He has the power requiring the discovery and production of documents. This power was given to the Commissioner to decide not abstract questions of law, but only to determine actual concrete differences in payment of contribution and other dues by identifying the workmen. The Commissioner should exercise all his powers to collect all evidence and collate all material before coming to proper conclusion. That is the legal duty of the Commissioner. It would be failure to exercise the jurisdiction particularly when a party to the proceedings requests for summoning evidence from a particular person.”



This decision highlights that the real focus has to be on identifying the workers for whom the contribution towards provident fund is collected by relevant evidence and ascertain the exact amount due in respect of each of them. Despite the aforesaid binding ruling, which the Petitioner has also quoted in the application for review, it is rather strange that the Respondent has ignored the same and refused to correct the error in the decision-making process, which cannot be countenanced. There is no gainsaying that the enforcement machinery under the Act should not be converted as a ploy just to fill up the coffers of the Employees Provident Fund Organization, where already several crores of rupees are reportedly lying unclaimed, losing sight of the beneficent objects of the labour welfare enactment.

5. Learned Counsel appearing for the Petitioner has also cited the decision of the Division Bench of this Court in *Srinivasan Associates Private Limited -vs- Regional Provident Fund Commissioner* [2019 (3) LLN 516 (DB)], where necessity of providing opportunity for



cross-examination of department official in enquiry under Section 7-A of the EPF Act, has been reiterated.

6. In view of the foregoing discussion, the impugned orders Ref.Enf.D3/TN/TR/217-C/SRO-TRY/2014 dated 10.10.2014, and No. TN/SRO-TRY/APFC/COM/2014 dated 20.11.2014 passed by the Respondent, which cannot be sustained, are set aside. The Respondent shall issue summons to the said Thiru. P.Balakrishnan, then Enforcement Officer, Kumbakonam, who has submitted the inspection reports dated 11.06.2013 and 25.11.2013, to appear for cross-examination by the Petitioner and inform the date of hearing to the Petitioner for the same under written acknowledgment. It is incumbent upon the Respondent to conduct proper enquiry providing effective opportunity to the Petitioner following the prescribed procedure in consonance with the principles of natural justice, and pass reasoned orders dealing with each of the contentions raised on merits and in accordance with law and communicate the decision taken.



7. In the result, the Writ Petition is ordered on the aforesaid terms.

Consequently, the connected Miscellaneous Petition is closed. No costs.

22.04.2021

Index: Yes/No
Internet: Yes/No
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Note: (i) Issue order copy by 18.06.2021.

(ii) In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

The Assistant Provident Fund Commissioner
(Compliance),
“Sree Complex” 'D' Block, No.18, Madurai Road,
Trichy 620 008.

Copy to

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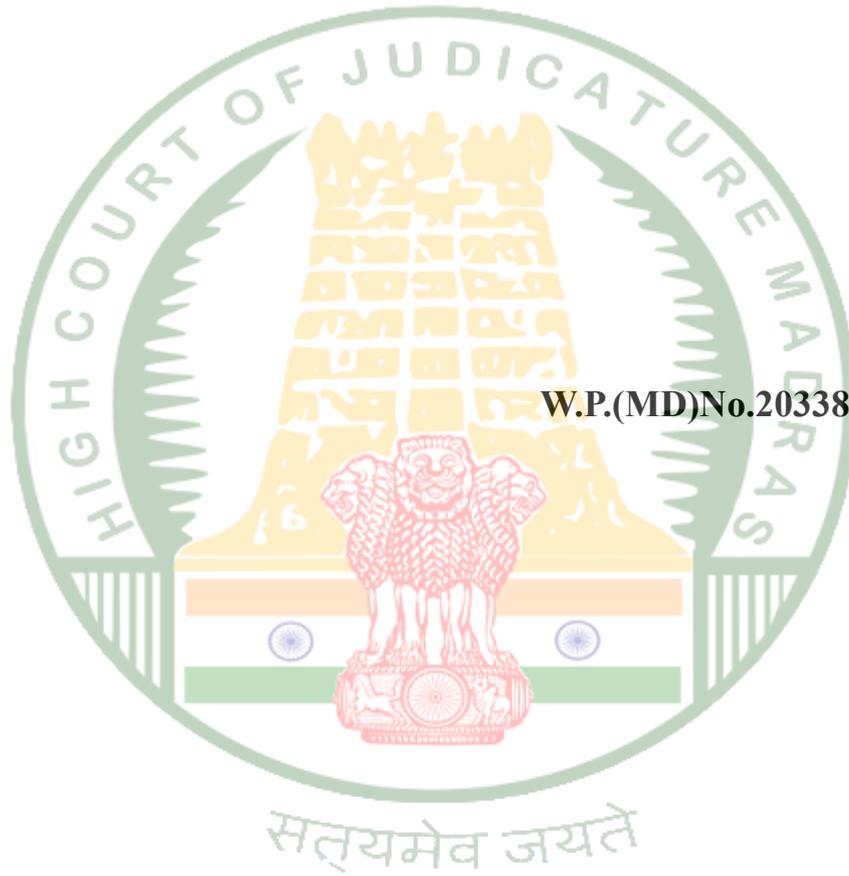
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P.D.AUDIKEVALAU,J.

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