

(2011) 04 MAD CK 0209

Madras High Court

Case No: Writ Petition No. 12213 of 2006

S. Loganathan
(deceased) L. Indirani

APPELLANT

Vs

The Assistant
Commissioner,
Employees Provident
Fund Organisation and
The Management of
Sree Rajeswari Mills

RESPONDENT

Date of Decision: April 21, 2011

Citation: (2011) 04 MAD CK 0209

Hon'ble Judges: K. Chandru, J

Bench: Single Bench

Advocate: S.T. Varadarajulu, for the Appellant; M. Jayaraman, for R1 and K.A. Ravindran, for R2, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

K. Chandru, J.

This writ petition has been filed by the original Petitioner viz., S. Loganathan seeking a direction to the Respondent to settle the Provident Fund amount accumulated in his account in E.P.F. No. TN/238/1058, Management of M/s. Sree Rajeswari Mills, Gudiyatham.

2. The original Petitioner was, at the relevant point of time, working under the second Respondent Mill. Subsequently, his service was terminated. He wanted to his Provident fund amount to be settled and he obtained certificate from the Government Labour Officer, Vellore and forwarded the application. However, the first Respondent insisted that the application should be signed by the employer. The original Petitioner was unable to

get the signature from the Management as requested by the first Respondent. Since he was unemployed for more than 4 years from the date of filing of this writ petition, as per Para 68 of Employees Provident Funds Scheme, 1952 he is entitled to withdraw the Provident Fund amount accumulated in his credit. He also sent representation dated 3.4.2006 along with indemnified bond for settlement of his Provident fund amount. Since the first Respondent has not passed any order on the said representation, the present writ petition came to be filed.

3. The writ petition was admitted on 27.4.2006. In the mean time, the original Petitioner died on 19.10.2009 and his legal heir is brought on record. On notice from this Court, the first Respondent filed counter affidavit dated Nil-6-2009.

4. The only stand of the first Respondent was that the deceased Petitioner's application was not attested by the second Respondent and particulars and details regarding non-contributory days of the deceased Petitioner was not available. As per para 72(5) (a) and 72(5) (d), it is the duty of the employer to get the claim application duly filled in, attested and then to forward it to the Provident Fund Commissioner. Since the claim application was not received, this Court should direct the second Respondent to forward the claim application of the deceased Petitioner to the first Respondent after duly attested and thereafter, the claim will be settled within 30 days.

5. It is seen from Para 72 of Employees Provident Funds Scheme, 1952 that if the applicant is unable to send the claim application through the employer or duly attested by him, for any reason whatsoever, he may forward it to the Commissioner and wherever necessary, the Commissioner may forward such application to the employer and the employer shall be required to return it within five days of its receipt. The claims complete in all respects submitted along with the requisite documents shall be settled and benefit amount paid to the beneficiaries within 30 days from the date of its receipt by the Commissioner. In the present case, the Petitioner got signature from the Government Labour Officer, Vellore who is the Gazette officer and forwarded the application to the first Respondent. Thereafter, it is the duty of the department to get the application attested by verification from the Management who is responsible for P.F dues. Especially when the first Respondent has empowered with substantial provision to enforce their order under the provisions of the Act, it is surprise to hear from the first Respondent that this Court should direct the second Respondent to forward the said application. The department has got execution wing under their control and even for recovery of dues, they have the power to arrest the employer and attach their properties. Without invoking their power, the first Respondent has made the Petitioner to wait for settlement of his Provident Fund dues for 5 years. In such circumstances, the Petitioner is entitled to get damages for the delayed payment and the same may be deducted from the salary of the Commissioner for deficiency in service. Hence, this Court is not inclined to accept the stand of the first Respondent.

6. In the result, the writ petition is allowed and the first Respondent is directed to get the application duly attested by the second Respondent and settle the Provident Fund dues of the Petitioner-worker to his legal heir within 4 weeks from the date of receipt of the copy of this order. No costs.