

**(2013) 08 MAD CK 0231**

**Madras High Court**

**Case No:** Writ Petition No's. 15657 and 21684 of 2013 and M.P. No. 1 and 2 of 2013

Guru Nanak College

APPELLANT

Vs

Assistant Provident Fund  
Commissioner and Others

RESPONDENT

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**Date of Decision:** Aug. 6, 2013

**Citation:** (2013) 139 FLR 696 : (2013) 4 LLJ 21

**Hon'ble Judges:** D. Hariparanthaman, J

**Bench:** Single Bench

**Advocate:** H. Karthik Seshadri, for the Appellant; K. Gunasekar, SCGSC, for the Respondent

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### **Judgement**

@JUDGMENTTAG-ORDER

D. Hariparanthaman, J.

The petitioner is an aided private College, imparting higher education in Arts and Science subjects. The College has been functioning for the past 40 years. The respondent Provident Fund authority passed an order dated 4.1.2013 u/s 7-A of the Employees Provident Fund and Miscellaneous Provisions Act (hereinafter called as "Act") directing the petitioner to pay contribution from June 1985 to March 2010, amounting to Rs. 39,63,563/-. The petitioner filed a Review Petition u/s 7-B of the Act against the order dated 4.1.2013 and the Review Petition was dismissed by the order dated 6.3.2013.

2. The petitioner filed an appeal in A.T.A. No. 411(13) of 2013 against the aforesaid orders dated 6.3.2013 and 4.1.2013 before the Employees Provident Fund Appellate Tribunal u/s 7-I of the Act.

3. The petitioner also obtained an interim order dated 18.7.2013 in A.T.A. No. 411(13) of 2013 staying the operation of the order dated 4.1.2013.

4. After passing the aforesaid order dated 4.1.2013 the respondent Department also passed another order dated 21.5.2013 u/s 14-B of the Act, levying damages of Rs. 43,01,234/-. The respondent Department also issued a show cause notice dated 21.5.2013 u/s 7-Q of the Act as to why the amount of Rs. 34,29,413/- shall not be recovered towards interest for the belated payment of contribution.

5. It is stated that there was no final order passed on the interest. While so, the Assistant Commissioner passed a coercive order dated 5.6.2013 u/s 8-F of the Act for the recovery of Rs. 77,30,647/- representing the damages and interest. The order was communicated to the Corporation Bank at Velachery, Chennai-42 and the Enforcement Officer was directed to obtain Demand Draft for the amount from the Bank account of the writ petitioner.

6. The petitioner filed an appeal in A.T.A. No. 380(13) of 2013 against the order dated 21.5.2013 relating to damages. But the Tribunal passed an order dated 18.7.2013 directing the petitioner to deposit the interest part with the respondent authority within a period of four weeks of the order, as a condition to grant stay of the order relating to damages.

7. This order dated 18.7.2013 passed by the Appellate Tribunal is challenged by the writ petitioner in W.P. No. 21684 of 2013.

8. The very same petitioner filed W.P. No. 15657 of 2013 questioning the order dated 5.6.2013. While admitting the Writ Petition No. 15657 of 2013, this Court granted an interim order of stay.

9. The respondent authority filed a counter affidavit relitigating the allegations, in W.P. No. 15657 of 2013.

10. Today, when Writ Petition No. 21684 of 2013 came up for admission, with the consent of the learned counsel for both parties, both Writ Petitions are taken up for final disposal.

11. Heard both sides.

12. It is stated by the learned counsel for the petitioner that though the petitioner questioned the order dated 4.1.2013 relating to the contribution payable by the petitioner by filing an appeal in A.T.A. No. 411(13) of 2013, the petitioner remitted the entire contribution amount.

13. It is also admitted by both sides that there is no appeal provided under the Act against the levy of interest on the belated payment of contribution.

14. The issue relating to contribution is now pending before the appellate Tribunal in A.T.A. No. 411(13) of 2013. Unless the issue of contribution is decided, the petitioner cannot be directed to pay interest. In fact, the Tribunal also granted interim stay of the operation of the order dated 4.1.2013 relating to payment of contribution by the writ petitioner.

15. In the circumstances, the Tribunal is not correct in passing the order dated 18.7.2013 in A.T.A. No. 380(13) of 2013 to deposit the interest as a condition to grant stay relating to the order levying damages on the petitioner. Hence, I have no hesitation to quash the order dated 18.7.2013 in A.T.A. No. 380(13) of 2013, which is impugned in Writ Petition No. 21684 of 2013. Hence, Writ Petition No. 21684 of 2013 is allowed.

16. Further, as stated above, the issues relating to contribution and damages are pending in appeals in A.T.A. No. 418(13) of 2013 and A.T.A. No. 380(13) of 2013 before the appellate Tribunal. Till the appeals are decided, the respondent authority is not fair to take coercive action.

17. Further, as mentioned above, the Tribunal also granted stay of the operation of the order dated 4.1.2013. If the said order is stayed, there is no basis to claim interest as well as damages.

18. Unless the appeal is dismissed, the respondent Department cannot seek to take coercive action for interest and damages. Hence, I have no hesitation to set aside the order dated 5.6.2013. Accordingly, Writ Petition No. 15657 of 2013 is also allowed. While allowing both the Writ Petitions, I hereby direct the appellate Tribunal to dispose of both the appeals, viz., A.T.A. No. 380(13) of 2013 and A.T.A. No. 411(13) of 2013, within a period of six months from the date of receipt of a copy of this order. No costs. The connected Miscellaneous Petitions are closed.