

(2011) 04 MAD CK 0406

Madras High Court

Case No: Writ Petition (MD) No. 11291 OF 2008 and M.P. (MD) No. 2 of 2008

The Management Tamil Nadu
State Transport Corporation
(Madurai) Limited

APPELLANT

Vs

Regional Provident Fund
Commissioner and The Presiding
Officer, Employees Provident
Fund

RESPONDENT

Date of Decision: April 25, 2011

Acts Referred:

- Employees Provident Fund Appellate Tribunal (Procedure) Rules, 1997 - Rule 7, 7(2)
- Employees Provident Funds and Miscellaneous Provisions Act, 1952 - Section 14B

Hon'ble Judges: D. Hariparanthaman, J

Bench: Single Bench

Advocate: Rajnish Pathiyil, for the Appellant; V.S.V. Venkateshvaran, for R1, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

D. Hariparanthaman, J.

The Petitioner is a transport corporation fully owned by the Tamil Nadu Government and it operates passengers service in and around Dindigul District. There are also other transport corporations operating passengers service in other districts and those corporations are also owned by the Tamil Nadu Government. The Government directed the transport corporations during 1995 not to remit the contributions to the first Respondent and to keep the contribution in a separate accounts as the State is going to frame a separate beneficial scheme to employees of the corporations. In these circumstances, the transport corporations including the Petitioner did not remit the provident fund contribution during the period between December 1995 and October 1996. It is also not in dispute that later an

exemption was obtained for a separate scheme and a separate scheme was operating from 01.09.1998 and no contribution is remitted to the first Respondent.

2. The first Respondent directed the Petitioner to remit the amount and they were bound to remit the contribution until they got the exemption. In these circumstances, they remitted the amount belatedly. In view of the belated payment, the first Respondent initiated proceedings u/s 14B of the Employees Provident Funds (Miscellaneous Provisions) Act. That resulted in passing of the order, dated 16.12.1998 by the first Respondent levying damages at Rs. 21,71,842/. The afore-said damages constitutes 37% of the contribution that was belatedly paid.

3. The other transport corporations also suffered with similar orders imposing the damages at the rate of 37% of the contribution that were paid belatedly. The other corporations filed appeal before the second Respondent. The second Respondent in all those appeals directed those transport corporations to approach the Central Board of Trustees by order, dated 28.07.1998. Accordingly, those corporations approached the Board of Trustees, but the Board of Trustees declined to entertain their grievances stating that the Board of Trustees has no jurisdiction to decide the same. The Board of Trustees has stated that only in the case of sick companies they could interfere in the matter of damages, otherwise they could not. Hence, the Corporations filed review petitions before the Tribunal and the Tribunal allowed their review petitions by an order dated 01.02.2000 and reduced the liability from the rate of 37% to 17% of contribution as damages.

4. As far as the Petitioner is concerned, the Petitioner, instead of approaching the Tribunal, approached this Court by filing W.P. No. 20632 of 1998. This Court in that writ petition directed the Petitioner to approach the Central Board of Trustees. Accordingly, the Petitioner approached the Board, but the Board declined to entertain the grievance as in the case of others. In these circumstances, the Petitioner approached the Tribunal. But the Tribunal refused to entertain the appeal on the ground that Rule 7(2) of the Employees' Provident Fund Appellate Tribunal (Procedure) Rule, 1997 provides that the prescribed period of limitation of 60 days can be extended by another 60 days by the Tribunal in case "sufficient reasons" are disclosed. Since the Statute prescribed the limitation, there is no question of entertaining the appeal after the expiry of the period of limitation was the reasoning given by the Tribunal by the order dated 18.08.2005. Now, the Petitioner has filed the present writ petition to quash the afore-said order.

5. The learned Counsel for the Petitioner submits that the genuine prosecution of the matter by the Petitioner before this Court should be excluded in calculating the period of limitation as prescribed under Rule 7 of the Employees' Provident Fund Appellate Tribunal (Procedure) Rule, 1997. Further more, the Petitioner submits that when the other transport corporations in similar circumstances as narrated above were levied only 17% of contribution towards the levy of damages, the same rate should also be imposed on the Petitioner and not the higher rate.

6. The learned Counsel for the Petitioner also relies on the Allahabad High Court judgment made in Writ-C No. 62147 of 2009, dated 07.01.2010 (M/s. General Sales and Service v. Union of India through Secretary) in support of his submissions.

7. On the other hand, the learned Counsel for the Respondent department has strenuously contended that there is no infirmity in the order of the Tribunal, since the Statute prescribes the period of limitation.

8. I have considered the submissions made on either side.

9. In the above-cited Allahabad High Court Judgment, the Allahabad High Court has held that the period that was spent before a Court that has no jurisdiction, has to be excluded for calculating the limitation. If that principle is applied, it is agreed that the appeal was filed within the time. In these circumstances, I am of the considered view that the impugned order, dated 18.08.2005 is set aside and the second Respondent Tribunal is directed to take the appeal on file and dispose it on merits taking into account, particularly the earlier orders passed by the Tribunal in review applications referred to above, dated 01.02.2000, in the case of other transport corporations. The Tribunal is directed to pass orders in accordance with law, within a period of four months from the date of receipt of a copy of this order. The writ petition is disposed of accordingly. Consequently, connected miscellaneous petition is closed. No costs.