
(2011) 04 MAD CK 0422

In the Madras High Court

Case No : W.P (MD) No. 3192 of 2006 and W.P.M.P (MD) No. 3459 of 2006

S.N. Selvaraj

APPELLANT

Vs

The Assistant Provident Fund Commissioner, The Recovery
Officer and Enforcement Officer Employee Provident Fund
Organisation

RESPONDENT

Date of Decision : 21-04-2011

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14(1),
14(1A), 14A(1), 14AA, 7A

Citation : (2011) 04 MAD CK 0422

Hon'ble Judges : D. Hariparanthaman, J

Bench : Single Bench

Advocate : T. Lajapathi Roy, for the Appellant; V.S.V. Venkateswaran, for EPF, for the Respondent

Final Decision : Dismissed

Judgement

D. Hariparanthaman, J.—The Assistant Provident Fund Commissioner initiated proceedings u/s 7A of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (in short hereinafter referred to as "the Act") to determine the money dues from the Petitioner towards non-payment of the provident fund amount for the period from September 2001 to October 2004.

2. Ultimately, the first Respondent passed an ex-parte order dated 17.02.2005, directing the writ Petitioner to pay a sum of Rs. 98,956.55 u/s 7A of the Act.

3. The Petitioner sent an application dated 21.03.2005, to set aside the ex-parte order and to decide the matter after hearing him. Without disposing the aforesaid application seeking to set aside the ex-parte order, the first Respondent issued impugned notice dated 17.03.2006 under Sections 14(1), 14(1A), 14-A(1) and 14AA of the Act and paragraph 76(b)/(d) of the Employees' Provident Funds Scheme 1952 for recovery of the aforesaid amount.

4. The Petitioner has filed the present writ petition to quash the aforesaid notice on the ground that without disposing the application dated 21.03.2005 seeking to set aside the ex-parte order, the first Respondent is not correct in taking recovery proceedings.

5. The Petitioner has relied on Section 7A(4) of the Act. In this regard, Section 7A(4) is extracted hereunder:

7-A(4) Where an order under Sub-section (1) is passed against an employer ex-parte, he may, within three months from the date of communication of such order, apply to the officer for setting aside such order and if he satisfies the officer that the show-cause notice was not duly served or that he was prevented by any sufficient cause from appearing when the inquiry was held, the officer shall make an order setting aside his earlier order and shall appoint a date for proceeding with the enquiry:

Provided that No. such order shall be set aside merely on the ground that there has been an irregularity in the service of the show-cause notice if the officer is satisfied that the employer had notice of the date of hearing and had sufficient time to appear before the officer.

Explanation.-Where an appeal has been preferred under this Act against an order passed ex-parte and such appeal has been disposed of otherwise than on the ground that the Appellant has withdrawn the appeal, No. application shall lie under this Sub-section for setting aside the ex-parte order.

6. The submissions of the learned Counsel for the Petitioner has some force. When the Petitioner has filed an application u/s 7A(4), to set aside the ex-parte order, without disposing of the same, the first Respondent is not correct in taking coercive steps and hence the impugned notice is set aside and the first Respondent is directed to keep in abeyance the impugned notice dated 17.03.2006, till they dispose the application dated 21.03.2005 filed u/s 7A(4) of the Act, to set aside the ex-parte order dated 17.02.2005.

7. The first Respondent is directed to dispose of the application dated 21.03.2005 filed u/s 7A(4) of the Act, by the Petitioner within a period of six weeks from today after giving opportunities to the Petitioner.

8. The writ petition is disposed of, with the above terms. Consequently, connected miscellaneous petition is also closed. No. costs.