(2011) 03 MAD CK 0171

In the Madras High Court

Case No : Writ Petition No. 1776 of 2011 and M.P. No. 1 of 2011

The Assistant Provident Fund Commissioner Employees' Provident Fund Organisation Regional Office — APPELLANT

Vs

Lason India Pvt. Ltd. and Employees' Provident Fund Appellate Tribunal — RESPONDENT

Date of Decision : 10-03-2011

Acts Referred:
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 7A, 7B, 7I

Citation : (2012) 4 LLJ 243

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : K. Ramu, for the Appellant;

Final Decision : Dismissed

Judgement

K. Chandru, J.—It is rather unfortunate that the Employees Provident Fund Organisation is before this Court challenging an order made by

the 2nd Respondent Tribunal in A.T.A. No. 794(13)/2007 dated 13.4.2010.

2. The controversy raised herein revolves around a very narrow campus. While the Employees'' Provident Fund Scheme 1952 in paragraph 26

provided for employees to pay over and above the wage limit fixed as contribution, it is for the Provident Fund Department to receive the amount

and keep it in the account of the said subscriber. In the present case, there is no controversy on the 1st Respondent, on the request of his

employees, having deducted the amount offered by such employees and also remitted the said amount to the Petitioner Employees Provident Fund

Organisation. But, after such amounts have been debited, the Petitioner had demanded administrative charges for attesting the said fund. When the

1st Respondent refused to comply with the request, the Petitioner passed an order purporting to be u/s 7A of the Employees Provident Fund Act

and Miscellaneous Provisions Act on 26.11.2007. By the said order, the Petitioner demanded the 1st Respondent to pay a sum of Rs.

3,31,047.70. When the amount was not forthcoming, they were also threatened with further coercive action including criminal prosecution.

Aggrieved by the conduct of the Petitioner, the 1st Respondent filed an appeal u/s 7I of the Employees Provident Fund Act before the 2nd

Respondent Tribunal. The 2nd Respondent Tribunal is a special judicial Tribunal created to go into any controversy arising out of an order passed

u/s 7A or 7B of the Act. The 2nd Respondent Tribunal, who entertained the appeal as ATA No. 794(13)/ 2007 and after notice to the Petitioner,

allowed the appeal. The Tribunal found that there is no writing of consent by the employer to provide administrative charges for the amount

collected from the employees over and above the wage limit fixed under the Act. Therefore, the Tribunal held that in the absence of any consent in

writing, the plea of implied consent pleaded by the Petitioner organization will not stand scrutiny of law. Aggrieved by the said order passed by the

Tribunal dated13.4.2010, the present Writ Petition has been filed.

3. Mr. K. Ramu, learned Counsel for the Petitioner stated that for the reasons best known the 1st Respondent has not paid the administrative

charges and disputed the said amount, which necessitated the Petitioner to pass an order u/s 7A of the Act.

4. Since the controversy revolves around Section 26(6) of the Employees'' Provident Funds Scheme, 1952, it is necessary to refer to the said

paragraph and it reads as follows:

26. Classes of employees entitled and required to join the fund:

6. Notwithstanding anything contained in this paragraph an officer not blow the rank of an Assistant Provident Fund Commissioner may, on the

joint request in writing, of any employee of a factory or other establishment to which this Scheme applies and his employer, enroll such employee

as a member or allow him to contribute on more than (rupees six thousand and five hundred) of his pay per month if he is already a member of the

Fund and thereupon such employee shall be entitled to the benefits and shall be subject to the conditions of the Fund, provided that the employer gives an undertaking in writing that he shall pay the administrative charges payable and shall comply with all statutory provisions in respect of such

employee.

(emphasis added)

5. A perusal of the said provision itself shows that the consent of the employer must be in writing and there is no scope for implied consent

adopted by the employer. Therefore, when there is a statutory claim requesting the parties to act in a particular manner, it shall be acted in that

manner and not in any other manner. The demand made by the Petitioner is unreasonable and the Tribunal has correctly allowed the appeal made

by the 1st Respondent and there is no case made out to interfere with the order passed by the Tribunal. Hence, the Writ Petition stands dismissed.

No costs. The connected Miscellaneous Petition is closed.

