

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR
&
THE HONOURABLE MR. JUSTICE SHAJI P.CHALY
TUESDAY, THE 30TH DAY OF NOVEMBER 2021 / 9TH AGRAHAYANA, 1943
WP(C) NO. 25836 OF 2021

PETITIONER:

ADV. ARSHA SATHEESAN
AGED 37 YEARS, D/O V.R.SATHEESAN, TC 13/813-4, SECOND
FLOOR, SREEJAYA APARTMENTS, VADAYAKKADU JUNCTION,
VANJIYOOR P.O., THIRUVANANTHAPURAM.

BY ADV ADV. ARSHA SATHEESAN (Party-In-Person)

RESPONDENTS:

- 1 UNION OF INDIA
REPRESENTED BY ITS SECRETARY,
MINISTRY OF LABUR & EMPLOYMENT,
SHRAM SHAKTI BHAWAN, RAFI MARG, NEW DELHI-110 001.
- 2 EMPLOYEES PROVIDENT FUND ORGANISATION,
REPRESENTED BY CENTRAL PROVIDENT FUND COMMISSIONER,
EMPLOYEES PROVIDENT FUND ORGANISATION, HEAD OFFICE,
BHAVISHYA NIDHI BHAWAN, 14, BHIKAJI CAMA PLACE,
NEW DELHI-110 066.
- 3 ADDL. CENTRAL PROVIDENT FUND COMMISSIONER,
(CHENNAI), NO 37, ROYAPETTAH HIGH ROAD,
OPPOSITE SWAGAT HOTEL, CHENNAI, TAMIL NADU 600 014.

SRI.S.MANU, ASGI
SRI.JAISHANKAR V.NAIR, CGC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
30.11.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 30th day of November, 2021

S.Manikumar, C.J.

Instant writ petition is filed seeking the following reliefs:

- “i. Issue an appropriate Writ, order or direction in the nature of Mandamus to the 2nd and 3rd Respondents that all cases in which determination of dues are pending for more than 2 years from the date on which provisional dues were calculated should be initiated and concluded within a stipulated time.
- ii. Issue an appropriate Writ, order or direction in the nature of Mandamus to the 2nd and 3rd Respondent that during 7A proceedings, opportunity of being heard should be provided to the employees and persons who file the grievances.
- iii. Issue an appropriate Writ, order or direction in the nature of Mandamus to the 2nd Respondent to issue guidelines to prevent wide, unreasonable and arbitrary discretion for the Respondent officials to delay the initiation of 7A inquiry for determination of dues from employers.
- iv. Issue an appropriate Writ, order or direction in the nature of Mandamus to the 1st and 2nd Respondents to ensure greater transparency and accountability by

setting up complaints/grievance redressal cell against the undue delays in proceedings in violation of the guidelines.

v. Issue an appropriate Writ, order or direction in the nature of Mandamus to the 1st and 2nd Respondents to set up a time-bound mechanism to streamline the procedure in the following recommendations in Labour Committee reports-

- (a) A system regarding providing of information by the employee itself to the EPFO on joining a particular company - linking the Unique Identification Number (UIN) of employee with their mobile number and Aadhar number.
- (b) A foolproof solution to reduce the yawning gap between the initiation and conclusion of proceedings under Section 7A."

2. This writ petition is claimed to have been filed as a public interest litigation for and on behalf of more than 1800 employees in an organisation as well as many more who are working in other organisations in unorganized sectors who were denied of their rightful and lawful provident fund amount due to the arbitrary and unlawful inaction or illegal exercise of power on the part of the respondents.

3. It is stated that on 11.07.2019, grievance number RCHEN/E/2019/13268 was filed for non-payment of statutory provident fund contributions. The Enforcement Officer from Employees Provident Fund Organisation (shortly EPF Organisation) by inspection report dated 01.11.2019 calculated the provisional dues of Rs.73,79,474/- (Seventy-Three Lakhs Seventy-Nine Thousand Four Hundred and Seventy-Four Rupees) for a period of 6 months. A show cause notice has been issued to the establishment only on 07.01.2021. As on 15.11.2021, there is a delay of more than 2 years and the 7A inquiry is not yet initiated.

4. It is further stated that the Hon'ble Supreme Court in **Himachal Pradesh State Forest Corporation v. Regional Provident Fund Commissioner**, (2008) 5 SCC 756, held that the inaction on the part of the Commissioner to initiate 7A proceedings within a reasonable time has to be deplored.

5. It is pertinent to note that provisional dues were calculated only for 6 months, so assuming that the employer is continuing such default beyond the period of 6 months because of the inaction from the part of respondents, there is a huge loss for the employees amounting in crores from their Provident Fund accounts. There are circulars such as Exhibit P11 from 2nd respondent to the effect that the proceedings initiated under Section 7A of the Employees Provident Funds and Miscellaneous Provisions Act should be concluded within a specified time and normally all hearing under Section 7A cases should be completed within 3 months. Thus, EPF Organisation formulated guidelines and fixed time frame for completion of the 7A inquiry, but there are no guidelines for initiation of 7A proceedings.

6. Omnibus reliefs are sought for without furnishing any details or data with respect to the reliefs sought for. Moreover, the petitioner is seeking direction to the Central

Government to frame guidelines for the purpose of proceedings under Section 7A enquiry.

7. Petitioner has also not produced any document to indicate the pendency of cases in which determination of amount is due, nor produced any material to ascertain the reasons for the delay.

In that view of the matter, we have no hesitation to hold that the petitioner has not made out a case so as to grant the reliefs as are sought for in the writ petition. Needless to say, writ petition fails. Accordingly, it is dismissed.

Pending interlocutory applications, if any, shall stand closed.

Sd/-

S.Manikumar
Chief Justice

Sd/-

Shaji P.Chaly
Judge

vpv

APPENDIX OF WP(C) 25836/2021

PETITIONER EXHIBITS

Exhibit P1 TRUE COPY OF THE INSPECTION REPORT DATED 3.12.2019.

Exhibit P2 TRUE COPY OF THE SHOW CAUSE NOTICE DATED 7/1/2021.

Exhibit P3 TRUE COPY OF THE RTI APPLICATION EPFOG/R/E/21/04998 DATED 16.4.2021.

Exhibit P3(A) TRUE COPY OF THE REPLY IN EPFOG/R/E/21/04998 DATED 7.6.2021.

Exhibit P4 TRUE COPY OF THE REPLY IN PUBLIC GRIEVANCE MOLBR/E/2021/09255 DATED 13.4.2021.

Exhibit P5 TRUE COPY OF THE GRIEVANCE RCHE/2020/20453 DATED 19.10.2020.

Exhibit P6 TRUE COPY OF THE PUBLIC GRIEVANCE MOLBR/E/2020/18480 DATED 22.10.2020.

Exhibit P7 TRUE COPY OF THE PUBLIC GRIEVANCE MOLBR/E/2021/105455 DATED 27.2.2021.

Exhibit P8 TRUE COPY OF PAGES I-II, 5-7 OF THE 47TH REPORT OF STANDING COMMITTEE ON LABOUR IN 2018-19.

Exhibit P8(A) TRUE COPY OF PAGES I-II, 5-7, 14-20 OF THE 52ND REPORT IN 2018-19.

Exhibit P8(B) TRUE COPY OF PAGES I-II, 3-4 OF THE 23RD REPORT IN 2020-2021.

Exhibit P9 TRUE COPY OF THE RTI APPLICATION EPFOG/R/E/21/11423 DATED 29.8.2021.

Exhibit P9(A) TRUE COPY OF THE REPLY IN EPFOG/R/E/21 /11423 DATED 27.9.2021.

Exhibit P10 TRUE COPY OF THE RTI REPLY IN EPFOG/R/E/21/11463 DATED 27.9.2021.

Exhibit P11 TRUE COPY OF THE CIRCULAR NO C-I/3(28) 19/7A & 14B/22684 DATED 3.1.2018.

//TRUE COPY//

P.A. TO JUDGE