

**IN THE HIGH COURT OF TELANGANA AT HYDERABAD**

**W.P.No.4542 OF 2024**

**Between:**

Ravi High School, Subash Nagar, Nizamabad

... **Petitioner**

**And**

Employees Provident Fund Organization & another

... **Respondents**

**JUDGMENT PRONOUNCED ON: 03.06.2024**

**THE HON'BLE MRS JUSTICE SUREPALLI NANDA**

1. Whether Reporters of Local newspapers : Yes  
may be allowed to see the Judgment?
2. Whether the copies of judgment may be : Yes  
marked to Law Reporters/Journals?
3. Whether Their Lordships wish to : Yes  
see the fair copy of the Judgment?

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**SUREPALLI NANDA, J**

**THE HON'BLE MRS JUSTICE SUREPALLI NANDA****W.P.No.4542 OF 2024****% 03.06.2024****Between:**

# Ravi High School, Subash Nagar, Nizamabad

**... Petitioner****And**

\$ Employees Provident Fund Organization &amp; another

**... Respondents**

&lt; Gist:

&gt; Head Note:

**! Counsel for the Petitioner** : Mr.A.Ravi Mahender**^ Counsel for Respondents** : Mr.G.Venkateswarlu

? Cases Referred:

(1) (2013) 16 SCC 1

**THE HON'BLE MRS. JUSTICE SUREPALLI NANDA****W.P. No.4542 OF 2024****ORDER:**

Heard Mr.A.Ravi Mahender, learned counsel appearing on behalf of the Petitioner and Mr.G.Venkateswarlu, learned standing counsel appearing on behalf of the Respondents.

**PRAYER:**

2. **The Petitioner approached the Court seeking prayer as under :**

"...to issue an appropriate Writ, Order or direction particularly one in the nature of Writ of Mandamus challenging the orders dated 30-01-2024 passed by Central Government Industrial Tribunal-cum-Labour Court, Hyderabad in IA No 1 & 2/2024 EPF Appeal No. CGIT (2017) 271/2018 and also *ex parte* orders dated 03-08-2017, No.TS/RO/NZB/Comp/7-A/34057/2017-18/2922, Review orders No.TS/RO/NZB/Compliance/7B/34057/2017/3038, dated 13-10-2017 and also consequential orders No. TS/RO/NZB/ENF(T1)/34057/2017-18/3065, dated 06.11.2017, Recovery certificate & demand notice RRC No. NZNZB1674/0034057/02/04/2018/501/35/3382 & 3383 both dated 02-04-2018 passed without hearing/notice by 1<sup>st</sup> respondent, is totally illegal, arbitrary, unjust, discriminatory, unreasonable, without

jurisdiction, opposed to public policy and violative of Articles 14, 21 of Constitution of India and also violative of principles of natural justice and call for the records and set aside them by remanding the Appeal and issue consequential directions: a) to furnish copies of enquiry Report, Salary register given by the then officer Mr. Nandan Singh, b) direct the 1<sup>st</sup> respondent to give opportunity to file Written statement/counter, documents and to lead oral evidence etc., if the authorities wants to proceed further after its remand, c) to direct the authorities to adjust attached money of Rs. 69,121.30 in the PF payments of the School and award costs and pass such other orders..."

**3. PERUSED THE RECORD.**

**The order impugned dated 30.01.2024 passed in I.A.Nos.1 and 2 of 2024 in EPF Appeal No.CGIT(2017)271/2018, in particular the relevant portion at para 8, reads as under :**

"Perusal of the record goes to reveal that Appellant has raised debatable issues which requires consideration in the present appeal. Therefore, Appeal is liable to be admitted. As far as plea of the Appellant regarding complete waiver of pre-deposit amount of 75% determined amount u/s.7-A is concerned. I am of the opinion that the impugned order pertains to the year 2017 and matter has been stayed since

last 5 years, therefore, in the facts and circumstances of the case there is no case made out for complete waiver of 75% of the pre-deposit condition. Therefore, in the interest of justice the appeal is admitted on the remittance of 30% of the determined amount u/s 7-A within six weeks from the date of passing the order and on the compliance of the said condition. Operation of the impugned order is stayed and Appeal admitted for consideration and hearing.

Put up on 22.03.2024 for hearing.

Ordered accordingly."

**4. The case of the Petitioner, in brief, as per the averments made by the petitioner in the affidavit filed in support of the present writ petition, are as follows:**

**i) The Petitioner on an earlier occasion approached the Court by filing W.P.No.1873/2018 with prayer as under :**

"Challenging the impugned order dated 03.08.2017 No.TS/RO/NZB/Comp/7A/34057/2017-18/2922 served copy on 09.08.2017 determined dues as Rs. 11,40,774/- towards Provident plus Pension plus Deposit linked insurance Fund Administrative charges for the period from 03/2015 to 11/2016 without hearing and without furnishing Inspection Report and Salary Register submitted by the then enforcement officer Mr T.N. Nandan Singh and rejected

Review Petition by a impugned order dated 13.10.2017 No.TS/RO/NZB/Compliance/7B/34057/2017/3038 served copy on 23.10.2017 without any notice/hearing and issued consequential *ex parte* Prohibitory orders dated 06.11.2017 No. TS/RO/NZB/ENF(T1)/34057/2017-18/3065 served copy on 13.11.2017 without notice or hearing and attached Bank Account No. 52088989607 of management Katipally Ravinder Reddy Education Society, lying with 4<sup>th</sup> respondent even without waiting to expire limitation to file Appeal (60 days), by the 1<sup>st</sup> Respondent and 3<sup>rd</sup> respondent is not hearing the Appeal nor passing any orders since 14.12.2017 to till today is totally illegal contrary to Law arbitrary unjust discriminatory unreasonable without jurisdiction opposed to Public Policy and violative of Articles 14, 21 of the Constitution of India and also violative of Principles of Natural Justice and call for the records and set aside the impugned orders dated 03.08.2017, 13.10.2017, 06.11.2017 and award costs alternatively remand the matter by directing to furnish inspection report and Salary register submitted by the then Enforcement officer Mr. T. N.Nandan Singh and to receive Written Statement with records apart from oral and documentary evidence etc, and direct the 2<sup>nd</sup> respondent to prove that the then Enforcement officer visited petitioner School on a particular date, time and seized Salary Register in their presence and employees were working in the school at relevant period 03/2015 to 11/2016 and received monthly salaries".

**ii) The said W.P.No.1873/2018 was disposed of by the order of this Court dated 04.07.2018 observing as under:**

“This Writ Petition is filed seeking writ of mandamus declaring the proceeding No.TS/RO/NZB/Com./7A/34057/2017- 18, dated 03.08.2017 issued by the 1<sup>st</sup> respondent as illegal and arbitrary.

Heard learned counsel for the petitioner and Sri B. Narsimha Sharma, learned Standing Counsel for 3<sup>rd</sup> respondent.

It is the case of the petitioner that against impugned orders dated 03.08.2017 and 13.10.2017 petitioner filed appeal US (SR) No.544/2017 before the 3<sup>rd</sup> respondent on 09.11.2017 along with Stay Petition under Section 7A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (for short 'the Act of 1952') but no orders are passed on the same. In pursuance to impugned orders, the respondents are taking coercive steps against the petitioners. Aggrieved by the same, present writ petition is filed.

Learned Standing Counsel for 3<sup>rd</sup> respondent submits that the petitioners have to satisfy the conditions laid down in Section 7(O) of the Act of 1952 before entertaining appeal, but learned counsel for petitioner submits that petitioner is not in a position to deposit the amount, as without proper reasons, ex parte order was passed.

Since the appeal filed by the petitioner is stated to be pending before the 3<sup>rd</sup> respondent, petitioner can make application under proviso to Section 7 (O) of the Act of 1952 to the 3<sup>rd</sup> respondent for waiving the condition of pre-deposit and the 3<sup>rd</sup> respondent may consider the same within a period of one week from the date of receipt of a copy of this order. Pending same, no coercive steps shall be taken. The 3<sup>rd</sup> respondent is directed to dispose of the appeal as expeditiously as possible preferably within a period of three months thereafter, in accordance with law.

With the above direction, this Writ Petition is disposed of. There shall be no order as to costs. As a sequel to the disposal of this petition, miscellaneous petitions, if any, pending shall stand closed."

**iii)** The Petitioner accordingly filed an application U/s.7(O) of the Act of 1952 in Appeal No.CGIT 2017 (271/2018) on the file of Employee's Provident Funds Appellate Tribunal – Central Government Industrial Tribunal–cum–Labour Court, Hyderabad, praying the concerned Court to waive the condition to pre-deposit 75% of due amount as determined by ex-parte orders dated 03.08.2017, 13.10.2017, Prohibitory Orders dated 06.11.2017 by remanding the Appeal for Denova Enquiry by giving notice/hearing at every stage in the interest of justice and equity.



**iv)** Through vide impugned order dated 30.01.2024 in I.A.Nos.1 and 2 of 2024 in EPF Appeal No. CGIT (2017) 271/2018, the Central Government Industrial Tribunal–cum–Labour Court, Hyderabad, rejected the request of the Petitioner to waive the condition \_\_\_\_\_ to pre-deposit 75% of due amount determined against the Petitioner observing at Para 8 of the said order as under :

“Para 8 : Perusal of the record goes to reveal that Appellant has raised debatable issues which requires consideration in the present Appeal. Therefore Appeal is liable to be admitted. As far as the plea of the Appellant regarding complete waiver of pre-deposit amount of 75% determined amount U/s.7-A is concerned. I am of the opinion that the impugned order pertains to the year 2017 and the matter has been stayed since last 5 years, therefore in the facts and circumstances of the case, there is no case made out for complete waiver of 75% of the pre-deposit condition. Therefore in the interest of justice the Appeal is admitted on the remittance of 30% of the determined amount U/s.7-A within 6 weeks from the date of passing of the order and on compliance of the said condition operation of the impugned order is stayed and Appeal is admitted for consideration and hearing.”

**Aggrieved by the said order dated 30.01.2024 passed in I.As.No.1 & 2 of 2024 in EPF Appeal No.CGIT (2017) 271/2018 passed by CGIT the Petitioner filed the present Writ Petition.**

**5. The learned counsel appearing on behalf of the Petitioner mainly puts-forth the following submissions :**

a) The impugned order dated 30.1.2024 is in violation of the directions passed in W.P.No.1873/2018, dated 04.07.2018.

b) The authority had passed 2 ex-parte orders dated 03.08.2017, 13.10.2017 and also 2 consequential orders dated 06.11.2017, 02.04.2018 contrary to Section 7-A of the Act without giving amply opportunity to the Petitioner to file written statement.

c) Important documents, enquiry report, salary register copies were not furnished to the Petitioner in spite of Petitioner's specific request made by the Petitioner to furnish the same.

d) No reasons are assigned as on what basis, dues about Rs.12 lakhs had been determined.

e) The Petitioner's school has been closed for 2 years due to Covid-19 and 50% students did not turn up and there was no means to pay 30% dues, hence precondition to deposit dues may be waived.

f) No useful purpose will be served if the Appeal is kept pending since 2017 without remanding to primary authority.

g) The quasi judicial authority miserably failed to give cogent valid reasons in passing ex-parte orders dated 03.08.2017, 13.10.2017 and consequential orders dated 06.11.2017, 08.04.2018 without giving reasons.

**On the basis of the aforesaid submissions the learned counsel for the Petitioner submits that the writ petition should be allowed as prayed for.**

**6. The learned standing counsel Mr. G. Venkateswarlu placing reliance on the averments made in the counter affidavit filed by the Respondent submits that the Petitioner is not entitled for relief as prayed for in the present writ petition.**

7. Reply affidavit has been filed by the Petitioner contending that no person shall be condemned without furnishing documents and without assigning reasons. Dues to a tune of Rs.12 lakhs cannot be determined without giving reasonable opportunity to the Petitioner and hence the Petitioner is entitled for the relief as prayed for in the present writ petition.

**DISCUSSION AND CONCLUSION:**

8. A bare perusal of the record indicates that the Petitioner has preferred an Appeal before the Central Government Industrial Tribunal-cum-Labour Court in the Employees Provident Funds Appellate Tribunal, Hyderabad on 09.11.2017, aggrieved against the orders dated 03.08.2017 and 13.10.2017 along with stay petition U/s.7-I of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 and the Petitioner in pursuance to the directions of this Court dated 04.07.2018 passed in W.P.No.1873/2018 filed an application under Proviso to Sec.7(O) of the Act of 1952 before CGIT seeking to waive the condition to pre-deposit of 75% due amount as determined by *ex parte* orders dated 03.08.2017 and 13.10.2017, prohibitory orders dated 06.11.2017 by remanding the appeal for denova enquiry by giving

notice/hearing at every stage, in the interest of justice and equity. The CGIT-cum-Labour Court, Hyderabad vide its order dated 30.01.2024 in I.A.Nos.1 and 2 of 2024 in EFP Appeal No. CGIT (2017) 271/2018, at para 8 of its order very clearly observed that Petitioner herein had raised debatable issues which requires consideration in the present Appeal, therefore Appeal is liable to be admitted and as far as the plea of the Petitioner herein is concerned regarding complete waiver of pre-deposit amount of 75% determined amount U/s.7-A is concerned, the court observed that since the impugned order pertains to the year 2017 and since the matter has been stayed since the last 5 years, therefore in the facts and circumstances of the case there is no case made out for complete waiver of 75% of pre-deposit condition and held that the Appeal is admitted on the remittance of 30% of determined amount U/s.7-A within 6 weeks from the date of passing of the order and on compliance of the said condition operation of the impugned order is stayed and Appeal is admitted for consideration and hearing.

**9. Section 7-O of the Act, 1952 is extracted here under:**

"7-O. Deposit of amount due, on filing appeal.—No appeal by the employer shall be entertained by a Tribunal unless he has deposited with it seventy-five per cent of the amount due from him as determined by an officer referred to in section 7A:

**Provided that the Tribunal may, for reasons to be recorded in writing, waive or reduce the amount to be deposited under this section."**

**10.** This Court is of the firm opinion that as per the Section 7-O of the Act, 1952, 75% of the amount determined should be deposited for admission of the appeal under Section 7-I of the Act. However, the Tribunal was considerate to the petitioner – school and ordered the Petitioner's school to remit 30% of the determined amount U/s.7-A within 6 weeks from the date of passing the order.

**11.** Employees Provident Fund and Miscellaneous Provisions Act, 1952 (for short 'EPM Act') is a social legislation for providing the institution for social security to the employees and workers.

**12. The Apex Court in the judgment dated 18.10.2013 in Arcot Textile Mills Ltd., vs. Regional Provident Fund,**

**Commissioner & Others, reported in (2013) 16 SCC 1 and in particular, at paras 15, 18, and 24 observed as under :**

“15. On a perusal of the aforesaid provision it is evident that an appeal to the tribunal lies in respect of certain action of the Central Government or order passed by the Central Government or any authority on certain provisions of the Act. We have scanned the anatomy of the said provisions before. On a studied scrutiny, it is quite vivid that though an appeal lies against recovery of damages under Section 14B of the Act, no appeal is provided for against imposition of interest as stipulated under Section 7Q. It is seemly to note here that Section 14B has been enacted to penalize the defaulting employers as also to provide reparation for the amount of loss suffered by the employees. It is not only a warning to employers in general not to commit a breach of the statutory requirements but at the same time it is meant to provide compensation or redress to the beneficiaries, i.e., to recompense the employees for the loss sustained by them. The entire amount of damages awarded under Section 14B except for the amount relatable to administrative charges is to be transferred to the Employees’ Provident Fund.

18. At this stage, it is necessary to clarify the position of law which do arise in certain situations. The competent authority under the Act while determining the moneys due from the employee shall be required to conduct an inquiry

and pass an order. An order under Section 7A is an order that determines the liability of the employer under the provisions of the Act and while determining the liability the competent authority offers an opportunity of hearing to the concerned establishment. At that stage, the delay in payment of the dues and component of interest are determined. It is a composite order. To elaborate, it is an order passed under Section 7A and 7Q together. Such an order shall be amenable to appeal under Section 7I. The same is true of any composite order a facet of which is amenable to appeal and Section 7I of the Act. But, if for some reason when the authority chooses to pass an independent order under Section 7Q the same is not appealable.

24..... There is no cavil for the fact that it is social welfare legislation to meet the constitutional requirement to protect the employees. That is why the legislature has provided for imposition of damages, levy of interest and penalty....."

**13.** In the affidavit filed by the petitioner it is primarily averred by the petitioner that prescribing the condition of remittance of 30% of the determined amount by the CGIT is in violation of the earlier orders of the Court dated 04.07.2018 passed in W.P.No.1873 of 2018 and the main grievance of the writ petitioner is that unfair and illegal procedure is being followed in determination of the amount for the period in question by the Respondent authority



which had been determined without affording reasonable and fair opportunity of hearing to the Petitioner during the enquiry and hence does not comply with the principles of natural justice and all other pleas put forth by the Petitioner in the affidavit filed by the petitioner in support of the present writ petition and the reply affidavit filed by the petitioner, this Court opines that the issues which have to be adjudicated and decided by the Competent Authority in the EPF Appeal No.CGIT (2017) 271/2018, preferred by the petitioner under Section 7-I of the EPF and MP Act, 1952, aggrieved by the order dated 03.08.2017 passed the Respondent Authority under Section 7(A) of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 against the Petitioner Establishment had been infact admitted by the Tribunal vide its order dated 30.01.2024 on the file of Central Government Industrial Tribunal cum Labour Court at Hyderabad, in I.A.Nos.1 & 2 of 2024 in EPF Appeal No.CGIT (2017) 271/2018.

**14.** This Court opines that Employees' Provident Funds and Miscellaneous Provisions Act, 1952 is a beneficial piece of legislation enacted by the Act of Parliament for the welfare of working class. This social security measure is a humane homage the State pays

under Articles 39 and 41 of the Constitution. The viability of the fund depends on the employer duly deducting the worker's contribution from their wages, adding his own little and promptly depositing the sum into the fund constituted by the Act. The mechanics of the system will suffer paralysis if the employer fails to perform his function. The dynamics of this beneficial statute derives its locomotive power from the funds regularly flowing into the statutory bill. The proper implementation of various Schemes under the Act is solely dependent upon the prompt compliance by the establishment. Financial ups and downs are invariably an inherent part of any business. The benefits envisaged and provided under the Act cannot be held hostage to the vagaries of profit and loss of establishments. Even if it is assumed that there was a loss as is claimed, it does not justify the delay in deposit of Provident Fund money which is an unqualified statutory obligation and cannot be allowed to be linked with the financial position of the establishment, over different points of time.

**15. This Court opines that the judgments relied upon by the learned counsel appearing on behalf of the Petitioner does not apply to the facts of the present case and hence the**

pleas put-forth by the Petitioner on the basis of the said judgments are untenable and hence rejected.

16. Taking into consideration the aforesaid facts and circumstances of the case and duly taking into consideration the view and the law laid down by the Apex Court in the Judgment reported in 2013 (16) SCC Page 1, dated 18.10.2013 in "Arcot Textile Mills Ltd. V. Regional Provident Fund Commissioner and others" (referred to and extracted above), and duly considering that the Tribunal vide the impugned order 30.01.2024 in I.A.Nos.1 & 2 of 2024 in EPF Appeal No. CGIT (2017) 271/2018 had passed an interim order reducing the amount of pre-deposit in favour of the petitioner to 30% of the determined amount, this Court opines that the petitioner is not entitled for grant of relief as prayed for herein, since there is no breach of any fundamental right of the petitioner, this Court is of the firm opinion that when the Appeal is still pending adjudication by the competent Court (Tribunal) as stipulated under Law, this Court cannot entertain a writ petition on the same subject under Article 226 of the Constitution of India, and hence, the

**Writ Petition is dismissed since the same is devoid of merits. The petitioner is granted four (04) weeks time from the date of receipt of the copy of the present order for deposit of the awarded amount as per the order dated 30.01.2024 passed in I.A.Nos.1 and 2 of 2024 in EPF Appeal No. CGIT (2017) 271/2018. However there shall be no order as to costs.**

Miscellaneous petitions, if any, pending in this Writ Petition, shall stand closed.

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**SUREPALLI NANDA, J**

Date: 03.06.2024

**Note** : L.R. Copy to be marked.  
*B/o.Yvkr/Ktm*