



**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM**

सत्यमेव जयते

Present: Shri.V.Vijaya Kumar, B.Sc., LLM, Presiding Officer.

(Friday the, 3rd September 2021)

APPEAL No. 674/2019

Old No. 159(7)2012

Appellant

M/s Grace Higher Secondary School,
Grace Educational Complex,
Kodunthirappully P.O.
Palakkad – 678 004

By : Adv. K.K. Premalal &
Adv. Vishnu Jyothis Lal

Respondent

The Assistant PF Commissioner
EPFO, Sub Regional Office,
P.B.No. 1806, Eranjipalam.P.O,
Kozhikode – 673 006

By Adv.(Dr.)Abraham P Meachinkara

This case coming up for final hearing on 13/04/2021
and this Tribunal-cum-Labour Court on 03/09/2021 passed
the following:

ORDER

Present Appeal is filed from order no. KR/KK/17813/ENF
II(3)/2007/1812 dated, 12/06/2007 assessing damages under
Section 14B of EPF Act and MP Act (hereinafter referred to as the
Act) for belated remittance of contribution from 8/2003 to

02/2006. The total damages assessed is Rs. 2,99,221/- (Two lakh ninety nine thousand two hundred and twenty one only)

2. The appellant is an educational institution established by Salafi Educational Association, a registered charitable society. The appellant is a non-profit making charitable society established for uplifting the backward and weaker classes of the community. The association was raising funds through donation from various well wishers. The appellant is charging a very low fee structure. The day to day affairs of the school could not be managed by the association due to financial crisis. The income from the school is not sufficient even to meet the day to day expenses. The non-payment of provident fund dues was not due to any willful default of the management. There is no contumacious conduct from the part of the appellant. The respondent issued show cause notice dated 25/07/2006 alleging delay in remittance of PF contribution. A true copy of the notice dated 17/07/2006 is produced and marked as **Annexure A1**. The appellant could not represent the case properly before the respondent and therefore challenged the order before the Honourable High Court of Kerala in WP(C) No. 11719 of 2007. A true copy of the order of the Honourable High Court of Kerala is

produced as **Annexure A2**. The appellant explained the delay vide its letter dated 20/08/2007 before the respondent. A copy of the said letter dated 20/08/2007 is produced and marked as **Annexure A3**. Without considering the representation of the appellant, the respondent issued the impugned order. Annexure A1 notice issued to the appellant by the respondent would show that the hearing scheduled was only an empty formality. The respondent ought to have considered that after introduction of section 7Q, the compensatory element of damages has been taken away. The Honourable Supreme Court had laid down guidelines in the matter of imposing penalty for failure to carry out a statutory obligation in the decision of **M/s Hindustan Steel Ltd. V The State of Orissa**, AIR 1970 SC 253. The respondent failed to follow those guidelines.

3. The respondent filed counter denying the above allegations. The appellant establishment defaulted in payment of contribution for the period from 08/2003 to 02/2006. Damages under section 14B of the Act was assessed vide order dated 28/11/2006 the appellant challenged the said order before the Honourable High Court of Kerala in WP(C) No.11719 of 2007 contenting inter alia that there was a change in the management

of the establishment and present employer could not represent the case before the respondent authority. The Honourable High Court of Kerala order dated 04/04/2007 directed the establishment to remit Rs.30,000/-and gave further direction to the respondent to hear the case afresh and pass appropriate orders. In compliance with the direction of Honourable High Court, a notice was sent to the appellant to appear on 22/05/2007 before the respondent authority. On request of the appellant, the case was adjourned to 23/5/2007. The appellant never disputed the delay statement and the delay committed by the appellant. The appellant contented that the delay was due to financial crisis. When it is admitted that there was delay in remittance of contribution, the appellant is liable to pay damages under Section 14B read with Para 32A of EPF Scheme. The respondent issued the impugned order after considering the records placed before it and also on the basis of the written statement and pleadings by the appellants. As per para 30 and 38 of EPF Scheme, it is binding on the appellant to remit the dues within 15 days of close of every month. The appellant was provided with a delay statement furnishing all the required details. The appellant was also given an opportunity for

personnel hearing. The contention of the appellant that the school is running on the donations received from the well-wishers is not established by the documents produced by the appellant. As per the Income and Expenditure statement, only the tuition fee collected from the student is shown as income whereas the expenses are much higher than the income from tuition fees. As the donation received from the well-wishers are not reflected in the income and receipt account, it is not possible to evaluate the actual financial condition of the appellant establishment. In **Hindustan Times Ltd. V Union of India**, AIR 1958 SC 688 the Honourable Supreme Court of India held that the default on the part of the employer based on financial difficulty cannot be a justifiable ground for the employer to escape liability under Section 14B of the Act. In **Calicut Modern Spinning and Weaving Mills Ltd. V Regional PF Commissioner**, [1981(1) LLJ 440], the Honourable High Court of Kerala held that on a combined reading of para 30 & 32 on EPF Scheme shows that in cases where due payment of wages is made impracticable for certain reasons, the obligation of the employer to pay both the contributions payable by himself and on behalf of the member continues with the employers. With regard to the philosophy of

Section 14B, the Honourable Supreme Court in **Organo Chemical Industries V Union of India**, (1979) (4) SCC 573 held that “the pragmatics of the situation is that if the stream of contributions were frozen by employers default after due deduction from the wages and diversion for their own purpose, the scheme would be damnified by traumatic starvation of the fund, public frustration from the failure of the project and psychic demoralisation of the miserable beneficiaries when they find their wages deducted and the employer get away with it even after default in his own contribution and malversation of the workers share. Damages have a wider socially semantic connotation than pecuniary loss of interest on non-payment when a social welfare scheme suffers mayhem on account of injury”. The dictum lay down by the **Hindustan Steel Limited V State of Orissa**, AIR 1970 SC 253 is not relevant to the present case as the above decision was based on the penalty applicable to taxation law whereas the present issue involved is with regard to a social security legislation.

4. Present appeal is admitted by EPF Appellate Tribunal, New Delhi vide its order dated 04/12/2012 and the operation of the impugned order was stayed subject to the condition that the

appellant shall deposit Rs. 70,000/- with the respondent authority apart from Rs.30,000/- remitted as per the direction of the Honourable High Court of Kerala. The appellant did not remit the amount as directed by the EPF Appellant Tribunal.

5. The appellant delayed remittance of PF contribution for the period from 08/2003 to 02/2006. The respondent authority therefore took action under section 14B of the Act read with para 32A of EPF Scheme. Since there was no representation from the side of the appellant during the hearing, the respondent issued an exparte order. The respondent approached the Honourable High Court of Kerala and Honourable High Court of Kerala directed the appellant to deposit Rs. 30,000/- as a pre condition and directed the respondent authority to provide an opportunity to the appellant before finalising the matter. Accordingly the respondent issued fresh notice along with a delay statement showing the due date of payment, the actual date of payment and also the delay in remittance. A representative of the appellant attended the hearing and filed a written statement. According to the statement, the delay was not intentional and was due to financial constrains of the appellant establishment. It was also stated that the appellant is running on donations received by

them from the well wishers and the appellant establishment is otherwise under loss. The respondent authority found that in the documents produced by the appellant, the donations received from the public are not reflected and therefore the appellant establishment is shown to be under loss. The respondent authority therefore doubted the genuineness and correctness of the income and expenditure statement produced by the appellant. At the time of hearing, the learned Council for the respondent pointed out that the appellant failed to remit even the employees' share of contribution deducted from the salary of the employees in time. The learned counsel for the appellant submitted that even the salary of the employees were delayed. However there is no evidence of record to substantiate the claim of the appellant. Non payment of the contribution deducted from the salary of employees is an offence under Sections 405 & 406 of Indian Penal Code. Having committed an offence of breach of trust the appellant cannot plead that there was no mensrea or intentional delay in remittance of PF fund contribution. The appellant being an educational institution run on the donations from general public and also on the finding of the respondent authority that the income and expenditure statement produced

before it indicates the fact that the appellant is running under loss, they are entitled for some relief as far as levy of damages is concerned.

Considering the facts, pleadings and arguments in this appeal, I am inclined to hold that interest of justice will be met if appellant is directed to remit 70% of the damages.

Hence the appeal is partially allowed the impugned order under Section 14 B of the Act is modified and the appellant is directed to remit 70% of the damages.

Sd/-

(V.Vijaya Kumar)
Presiding Officer