



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

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

(Monday the, 25<sup>th</sup> day of April 2022)

**APPEAL No. 10/2021**

Appellant : M/s. K.V.M Hospital  
Cherthala,  
Alappuzha – 688 524

By Adv. R Sankarankutty Nair

Respondent : The Assistant PF Commissioner  
EPFO, Sub Regional Office,  
Kaloor  
Kochi – 682 017

By Adv. Sajeev Kumar K Gopal

This case coming up for final hearing on 20.04.2022 and this Tribunal-cum-Labour Court on 25.04.2022 passed the following:

**ORDER**

Present Appeal is filed from order No. KR/KCH/4410/Penal Damages/2020/5011 dated 14.12.2020 assessing damages under Section 14B of EPF and MP Act 1952 (hereinafter referred to as 'the Act') for belated remittance of contribution for the period from

01.04.1996 – 31.01.2000. The total damages assessed is Rs.5,33,731/-(Rupees five lakh thirty three thousand seven hundred and thirty one only)

2. This appeal is filed from an order passed by the respondent authority under Sec 14B dated 14.12.2020 levying damages. A copy of the order is produced and marked as Annexure A1. Appellant is a super specialty hospital covered under the provisions of the Act. The appellant is regular in compliance except in respect of some trainees. On the basis of the report of the Enforcement Officer dated 06.05.2019 which is produced as Annexure A2, the respondent initiated proceedings under Sec 7A of the Act. The respondent issued summons dated 03.06.2019, a copy of which is produced and marked as Annexure A3. On conclusion of the enquiry, the respondent authority issued an order dated 06.12.2019 assessing dues on non-enrolled trainees, a copy of which is produced and marked as Annexure A4. The appellant remitted the contribution as per Annexure A5. Thereafter the respondent initiated proceedings for levying damages for belated remittance of contribution. The respondent issued notice dated 21.10.2020 along with the details of the delay.

The appellant appeared for enquiry, disputed the claim and filed a written objection on 18.11.2020 which is produced and marked as Annexure A7. The claim in respect of non-enrolled trainees were made after a long period and therefore the appellant was compelled to pay both the shares as the trainees had already left. Hence it is clear that there was no intentional or wilful default on the part of the appellant. Appellant was under the bonafide belief that trainees under Standing Orders are not employees liable to be covered under the Act. The respondent also did not take any timely action to avoid the alleged delay in payment of contribution. The claim for damages is raised after 3 years and is therefore barred by limitation. There is no mensrea on the part of the appellant in delayed remittance of contribution so as to pay penalty by way of damages. The appellant was not legally bound to remit the dues in respect of trainees for which the damage is now levied. The respondent paid both the contribution by the time the proceedings for enrolment was initiated.

3. The respondent filed counter denying the above allegations. The appellant is covered under the provisions of the Act. The Enforcement Officer during the time of inspection,

reported that the appellant failed to enrol 18 employees for the period from 11/2013 - 03/2017. Hence an enquiry under Sec 7A was initiated and after hearing the appellant, the respondent issued an order stating that the non-enrolled 18 employees will come within the definition of employees and therefore assessed the dues in respect of non-enrolled employees. The appellant thereafter remitted the amount. An enquiry under Sec 14 B was initiated vide notice dated 18.11.2020. A detailed delay statement was also forwarded to the appellant along with the notice. The appellant was also given an opportunity for personnel hearing. A representative of the appellant attended the hearing and filed a written statement. No dispute was raised on the delay in remittance of contribution or the proposed damages. Accordingly the respondent issued the impugned order. In the enquiry initiated under the Sec 7A of the Act, the appellant admitted the liability to enrol trainees vide their letter dated 29.07.2019, a copy of which is produced and marked as Exhibit-R1. Hence the appellant cannot raise the dispute under Sec 7A in the proceedings under Sec 14B of the Act. The delayed remittance of contribution will attract damages and interest under Sec 14B and

7Q respectively. The delay in remittance of contribution varied from 990 days to 2206 days. The appellant is aware of the consequence of delayed remittance of contribution. The fact leading to the belated payments of statutory dues were solely within the control of the appellant. The ignorance of law cannot be pleaded as an excuse for delayed remittance of contribution. In ***Ernakulam District Co-operative Bank Vs Regional Provident Fund Commissioner***, 2000(1) LLJ 1662, the Hon'ble High Court of Kerala held that even though there may be sufficient reasons for the appellant to make belated payment, that is not a ground for granting exemption from paying penalty or damages. The Hon'ble Supreme Court of India in ***Chairman SEBI Vs Sri Ram Mutual Fund***, 2006 (5) SCC 361, held that mensrea is not an essential ingredient for contravention of the provisions of a civil Act.

4. The appellant establishment failed to enrol 18 trainees to provident fund membership. The respondent authority initiated action under Sec 7A, assess the dues and recovered the same from the appellant establishment. After recovery of the provident fund dues, the respondent authority initiated action for assessment of damages under Sec 14B of the Act, issued notice

along with a delay statement to the appellant and also provided an opportunity for personnel hearing. A representative of the appellant attended the hearing and filed a written statement admitting the delay but requesting for waiver of damages. The respondent authority issued the impugned order after taking into account the submissions made by the appellant.

5. In this appeal, the appellant is trying to challenge indirectly the order issued under Sec 7A of the Act. If the appellant was aggrieved with the order issued by the respondent authority under Sec 7A of the Act, the right course open to them was to challenge the said order under Sec 7(I) of the Act. The finding of the respondent authority in the 7A order cannot be challenged in a proceeding under Sec 14B of the Act.

6. The basic contention of the learned Counsel for the appellant is that the appellant was not liable to remit contribution in respect of trainees. However they complied with the directions issued by the respondent under Sec 7A of the Act. According to the learned Counsel for the appellant, because of the delay in initiating the enquiry under Sec 7A, the appellant was compelled to pay both the shares of contribution. The learned Counsel

pointed out that this ought to have been considered as a mitigating circumstance for reducing or waiving damage. According to the learned Counsel for the respondent, the appellant cannot recover employees share for the retrospective period from the salary of the employees and in the event of default or non-enrolment the appellant is statutorily bound to remit both the contributions. The learned Counsel for the appellant also contented that there is delay in initiating the proceedings under Sec 14B of the Act. It is a settled legal position that there is no limitation prescribed under the Section and therefore delay in initiating 14B proceeding cannot be pleaded as a ground for waiving or reducing damages. The learned Counsel for the appellant also argued that there was no intentional delay as they were under the bonafide belief that trainees need not be enrolled to provident fund membership. He also pointed out that there is no mensrea in belated remittance of contribution. The Hon'ble Supreme Court of India in ***Horticulture Experiment Station, Gonikoppal, Coorg Vs Regional Provident Fund Organisation***, Civil Appeal No. 2136/2012 examined the issue of mensrea in Sec 14B proceedings. After considering its earlier decisions in ***Mcleod***

**Russell India Ltd. Vs Regional Provident Fund Commissioner,** 2014(15) SCC 263 and **Assistant Provident Fund Commissioner Vs Management of RSL Textiles India Pvt. Ltd.,** 2017(3) SCC 110 the Hon'ble Supreme Court held that

*“Para 17. Taking note of the three Judge Bench Judgement of this court in **Union Of India and others Vs Dharmendra Textile Processors and Others (Supra)** which is indeed binding on us, we are of the considered view that any default or delay in payment of EPF contribution by the employer under the Act is a sine qua non for imposition of levy of damages under Sec 14B of the Act 1952 and mensrea or actusreus is not an essential element for imposing penalty/damages for breach of civil obligations/liabilities”*

The above judgement of the Hon'ble Supreme Court finally settled the question whether the intention of parties in delayed remittance of provident fund contribution is relevant while deciding the quantum of damages under Sec 14B of the Act.



7. It is a fact that there was delay in remittance of contribution in respect of non-enrolled employees. Though financial difficulties were pleaded, the same was not substantiated by any evidence either before the respondent authority or in this appeal. The claim of the appellant that they were under the bonafide belief that the trainees are not required to be enrolled to the provident fund membership and they were compelled to pay both shares of contribution can be considered as a special and mitigating circumstance warranting some relief as far as damages is concerned.

8. Considering the facts, circumstances, pleadings and evidence in this appeal, I am inclined to hold that interest of justice will be met if the appellant is directed to remit 80% of the damages.

Hence the appeal is partially allowed, the impugned order is modified and the appellant is directed to remit 80% of the damages assessed under Sec 14B of the Act.

Sd/-  
**(V.Vijaya Kumar)**  
Presiding Officer