



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

सत्यमेव जयते

Present: Shri.V.Vijaya Kumar, B.Sc., LLM, Presiding Officer.  
(Wednesday the 10<sup>th</sup> day of November 2021)

**APPEAL No. 21/2019**

Old No. ATA 742(7)2012

Appellant : Tandem, Pearson Education  
Services Pvt. Ltd.  
Sankar Road, Sasthamangalam  
Trivandrum – 695 010

By Adv. Manoj Kumar  
Adv. Shweta Bharti

Respondent : The Assistant PF Commissioner  
EPFO, Regional Office  
Pattom, Trivandrum – 695 004

By Adv. Ajoy P B

This case coming up for final hearing on 04.08.2021 and  
this Tribunal-cum-Labour Court on 10.11.2021 passed the  
following:

**ORDER**

Present appeal is filed from order No.KR/26184/RO/  
TVM/PD/VK/2012/5653 dated 18.07.2012 under Section 14B  
of EPF and MP Act 1952 (hereinafter referred to as ‘the Act’) for

belated remittance of contribution from 11/2009 – 02/2011. Total damages assessed is Rs.68,000/-. (Rupees sixty eight thousand only).

2. The appellant is an educational institution covered under the provisions of the Act. The respondent initiated an enquiry under Sec 7A of the Act on the basis of the report of the area Enforcement Officer that there was evasion of wages during the period from 08/2009 – 12/2010. On conclusion of the 7A enquiry, the respondent assessed dues to the tune of Rs.11,36,853/-. The assessment order was challenged before the Hon'ble EPF Appellate Tribunal and is pending. In the meanwhile, the respondent initiated the enquiry under Sec 14B of the Act for belated remittance of contribution and issued the impugned order. The respondent ought to have found that damages must have some co-relation with the loss suffered by the employees of the organisation. The respondent ought to have taken into consideration various relevant circumstances like number of defaults, extend of delay, frequency of delay and the amount involved. The appellant had no intension to wilfully disobey any statutory obligation.

There is no documentary evidence to show that there was delay in remittance of contribution. Penalty cannot be saddled on somebody who is not guilty. The respondent authority ought to have taken into account the mitigating circumstances leading to the delayed remittance of contribution.

3. The respondent filed counter denying the above allegations. The appellant establishment failed to pay the statutory dues in time for the period from 11/2009 to 02/2011. The delay in remitting the contribution will attract damages under Sec 14B of the Act. Accordingly an enquiry under Sec 14B was initiated by issuing notice dated 20.06.2012, directing the appellant to show cause why damages shall not be levied for belated remittance of contribution. The appellant was also given an opportunity for personnel hearing on 11.07.2012. A representative of the appellant attended the hearing and admitted the fact that there was delay in remitting the statutory dues. Since there was no dispute regarding the delay statement and also other issues, the respondent issued the impugned order. The other contentions raised in this appeal has no relevance to the facts

of this case. The respondent organisation is under obligation to pay interest to the members of the fund at the rate declared by the Government irrespective of the fact whether the employer has remitted the contribution in time or not. It is also a fact that the delay in payment of contribution will delay the investment and there will be huge loss of interest to the organisation. The Hon'ble Supreme Court of India in ***M/s. Organo Chemical Industries Vs Union of India*** 1979 AIR (SC) 1803 held that "this social security measure is a human homage, the state pays to Article 39 to 41 of the Constitution. The viability of the project depends on the employer duly deducting the workers contribution from their wages, add his own little and promptly depositing the mickle into the chest constituted by the Act. The mechanics of the system will suffer paralysis if the employer fails to perform his function". The claim of the appellant that there is no mensrea or contumacious conduct in delaying remittance of contribution is not correct. The appellant defaulted in remittance of the employees share of contribution deducted from the salary of the employees and thereby committed an

offence of breach of trust under Sec 405/406 of Indian Penal Code. In **Chairman, SEBI Vs Sriram Mutual Fund**, 2006 (5) SCC 361 the Hon'ble Supreme Court held that mensrea is not an essential ingredient for contravention of the provisions of a civil Act.

4. During the course of the argument the learned Counsel for the appellant pointed out that the appellant company had merged with M/s. Tutor Vista Global Private Limited by virtue of the order dated 28.08.2014 passed by the Hon'ble Madras High Court in Company Petition No.240/2014. He further submitted that the name of M/s.Tutor Vista Global Private Limited has been changed to M/s.Pearson India Education Services Private Ltd. w.e.f. 13.09.2014.

5. There was delay in remittance of provident fund contribution by the appellant during the period 11/2009 – 02/2011. The respondent therefore initiated action under Sec 14B of the Act read with Para 32A of EPF Scheme for assessing damages for belated remittance of contribution. The respondent issued a notice along with a delay statement

showing the due date of payment, the actual date of payment, the amount involved and the delay in remittance. The appellant was also given an opportunity for personnel hearing. A representative of the appellant attended the hearing and admitted the delay in remittance of contribution. The respondent therefore issued the impugned order quantifying the damages on the basis of the delay statement.

6. In the appeal, the appellant had elaborately discussed another action taken by the respondent authority under Sec 7A of the Act. Since the said action has no relevance to this proceedings and the appeal from that order is pending, it is not appropriate to take up that issue in this appeal. According to the learned Counsel for the appellant, the respondent authority issued a cryptic order in a mechanical manner without proper application of mind. According to the learned Counsel for the respondent, there was no dispute regarding the delay and no other ground was pleaded by the representative of the appellant and therefore there was no possibility of issuing a detailed speaking order. The learned Counsel for the appellant further pointed out that

the respondent authority ought to have taken into consideration the true spirit of Sec 14B of the Act and also the loss suffered by the employees of the organisation. The loss suffered by the organisation has no co-relation with the damages levied. This position is upheld by the Hon'ble Supreme Court in ***M/s. Organo Chemical case (supra)***. The learned Counsel for the appellant also argued that there was no mensrea in belated remittance of contribution and there was no wilful defiance of law or laches on the part of the appellant. The learned Counsel for the respondent pointed out that the appellant even failed to remit the employees share of contribution deducted from the salary of the employees in time and therefore cannot plead that there was no mensrea in belated remittance of contribution. The Hon'ble Supreme Court of India in a recent decision examined its earlier decisions whether mensrea is a relevant consideration while deciding the issue regarding quantum of damages under Sec 14B of the Act. The Hon'ble Supreme Court of India in ***Horticulture Experiment station, Gonikoppal, Coorg Vs Regional Provident Fund Organisation***, Civil Appeal No.

2136/2012, after examining the 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, held that,

*“Para 17 : taking note of the three Judge Bench Judgement of this court in **Union Of India 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 decided 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.



6. Considering the facts, circumstances, pleadings and evidence in this appeal, I am not inclined to interfere with the impugned order.

Hence the appeal is dismissed.

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