



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

Present: Shri.V.Vijaya Kumar, B.Sc., LLM, Presiding Officer.  
(Thursday the, 24<sup>th</sup> day of February 2022)

**APPEAL No. 266/2018**

Appellant : M/s PRS College of Engineering &  
Technology  
(Erstwhile Mary Matha College of  
Engineering & Technology),  
Paliyode, Neyyattinkara,  
Dalummugham.P.O.  
Thiruvananthapuram – 695 125

By Adv. T.L.Sreeram

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

By Adv. Ajoy P.B.

This case coming up for final hearing on 02.12.2021 and this  
Tribunal-cum-Labour Court on 24.02.2022 passed the following:

**ORDER**

Present Appeal is filed from order No. KR/TVM/16826/ PD/  
2018-19/2081 dated 6.6.2018 assessing damages under Section  
14B of EPF and MP Act (hereinafter referred to as 'the Act') for  
belated remittance of contribution for the period from 06/2005 –

11/2006. The total damages assessed is Rs.9,30,194/- (Rupees Nine lakh thirty thousand one hundred and ninety four only)

2. Mary Matha College of Engineering & Technology was an establishment covered under the provisions of the Act. The said establishment was taken over by the present management w.e.f 05.06.2008 and eventually changed its name to PRS College of Engineering & Technology. When the present management took over, there was no clarity with regard to the records regarding remittance of provident fund contribution. After taking over, the appellant is remitting contribution in accordance with law. When the appellant establishment was under the previous management, there was an order issued by the respondent authority under Sec 7A of the Act assessing the dues for the period from 12/2004 – 11/2006. A copy of the said order is produced and marked as Exbt.A1. Then management remitted the entire amount of Rs.11,23,388/-. Copy of the receipt dated 31.03.2007 evidencing the aforesaid payment is produced and marked as Exbt.A2. On 29.06.2008, immediately after take over by present management the respondent authority initiated action for recovery of an amount of Rs. 14,90,047/- with interest and

cost. The appellant was compelled to remit an amount of Rs.12,98,000/- with the respondent organisation. Hence the entire dues till 11/2006 was cleared by the appellant. A copy of the demand draft dated 08.07.2008 for an amount of Rs. 12,98,000/- drawn in favour of Regional PF Commissioner is produced and marked as Exbt.A3. The appellant received a notice dated 22.07.2011 from the respondent to show cause why damages under Sec 14B of the Act shall not be recovered against belated payment of dues for the period from 8/2003 – 10/2008. The appellant filed a detailed written statement. Without taking into account the written statement filed by the appellant, the respondent issued an order directing the appellant to remit an amount of Rs.13,34,768/- towards damages for the period from 08/2003 – 10/2008. The proceeding is perse illegal for the fact that the same amounts to levy of multiple damages by way of two proceedings for the same period. The copy of the impugned order dated 28.10.2011 is produced and marked as Exbt.A4. The appellant preferred a statutory appeal before EPF Appellate Tribunal, New Delhi as appeal No. ATA 218(7)2012 and the appeal was admitted subject to remittance of Rs.4,00,000/- with the respondent. Copy of the said order dated 27.02.2012 is

produced and marked as Exbt.A5. The appellant deposited Rs.4,00,000/- on 23.03.2012. The covering letter dated 23.03.2012 along with the copy of the demand draft is produced and marked as Exbt.A6 & Exbt.A6(a) respectively. The appellant again received a notice dated 12.03.2018 from the respondent alleging delay in remittance of contribution for the period from 06/2005 to 11/2006. In the said summons it was made clear that the damages sought to be determined is against belated payment which was determined in the year 2007, which is Exbt.A1 proceedings dated 05.01.2007. A copy of the said summons dated 12.03.2018 is produced and marked as Exbt.A7. A representative of the appellant attended the hearing before the respondent and pointed out that the proposed proceeding will amount to repetition of the order concluded by 14B proceedings for the same period as can be evidenced from Exbt.A4. Further the details of the pending appeal is also brought to the notice of the respondent. The appellant also raised the maintainability of the assessment after a lapse of more than 12 years. It was also made clear that all the dues, damages and interests for the period from 08/2003 to 10/2008 had already been remitted by the appellant. Without taking any of the

submissions into account, the respondent authority issued the impugned order. The respondent authority went wrong in ignoring the already concluded exhibit A4 proceedings under provisions of the Act for the period from 08/2003 – 10/2008. The respondent authority also went wrong in assessing the damages when appeal from Exbt.A4 order is still pending. The respondent authority ought to have found that entire dues, damages and interest upto 11/2006 has already been paid by the appellant. The proceedings initiated under Sec 14B of the Act after 12 years is hit by limitation. The respondent authority failed to notice that the appellant establishment is in a very bad financial condition and the appellant after taking over the management had to remit huge amount as per Exbt.A2 and A3.

3. The respondent filed counter denying the above allegations. The appellant establishment is covered under the provisions of the Act. The appellant failed to remit contribution for the period from 06/2005 – 11/2006. The delay in remittance of contribution will attract damages under Sec 14B of the Act read with Para 32A of EPF and MP Scheme. Accordingly, notice dated 12.03.2018 was issued to the appellant directing the appellant to appear for personnel hearing on 23.03.2018. On

23.03.2018, an Advocate representing the appellant attended the hearing. According to the learned Counsel for the appellant, there is a delay of more than 10 years in initiating the process under Sec 14B of the Act. It was explained to the learned Counsel that there is no limitation prescribed under the Act or Schemes. Another contention raised by the appellant was that of financial difficulties. However no documents were produced to substantiate the claim. Since the ground raised by the appellant is not valid, the respondent authority issued the impugned order. The contention that the appellant establishment was taken over by a new management is wrong. There was merely a change in the constitution of the trust and there was no disruption of activity of appellant establishment. Exbt.A1 is a proceedings issued under Sec 7A of the Act determining the dues for the period from 12/2004 to 11/2006. Exbt.A2, in this appeal is not the receipt for Rs.11,23,388/- but is the Revenue Recovery Certificate dated 31.03.2007 showing the outstanding dues against Exbt.A1. Exbt.A2 is issued to the Recovery Officer to initiate recovery action against the defaulting establishment. This amount was subsequently remitted by the appellant through DD No. 061183 for an amount of Rs.12,98,000/-, a copy of which is

produced and marked as Exbt.A3. The recovery of Rs.12,98,000/- includes an amount of Rs.66,887/- towards 14B and 7Q for the period 08/2003 to 02/2004. Further it also includes damages under Sec 14B and interest under Sec 7Q for the period from 02/2004 – 12/2004 amounting to Rs. 61,313/-. Exbt.A4 filed in this appeal is a proceeding dated 28.10.2011 issued under Sec 14B of the Act, levying damages for delayed payment of statutory dues in respect of enrolled employees for the period from 12/2006 – 10/2008. The appellant filed an appeal against the said order and remitted an amount of Rs. 4,00,000/- as per the interim direction of the Tribunal. Exbt.A7 is a notice send by the respondent under Sec 14B for levying damages and interests for the delayed remittance of contribution for the period from 06/2005 to 11/2006 in respect of which an amount of Rs. 11,23,389/- was assessed under Sec 7A of the Act as per Exbt.A1 order. The appellant is liable to deposit the contribution for a particular month by 15<sup>th</sup> of the following month in which the employee has worked and the dues are payable to him. Since the appellant delayed the contribution, the appellant is liable to remit damages under Sec 14B of the Act. The appellant establishment intentionally omitted the notice leading to Exbt.A4 proceedings

which is produced as Exbt.R1. There is no merit in the contention of the appellant that there was a change in management. There was only a reconstitution of the trust of a running educational institution. The appellant establishment was given more than adequate opportunities before the impugned order is issued. The appellant attended the hearing and made their submissions. The respondent organisation is under a legal obligation to pay interest at the rate declared by the Government from time to time, irrespective of the fact whether the employer has remitted the dues in time or not. The Hon'ble Supreme Court of India in **Organo Chemical Industries Vs UOI**, 1979 AIR (SC) 1803 held that "this social security measure is a human homage the State pays to Article 39 and 41 of the Constitution. The viability of the project depends on the employer duly deducting the workers contribution from their wages, adding 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 its function". The representative of the appellant attended the hearing on 23.03.2018, 23.04.2018, 04.05.2018 and 04.06.2018 to present his case. The appellant was provided the statement showing the details of delay



committed by the appellant establishment. The appellant did not raise any objection regarding delay statement but only pointed out the delay in initiating the 14B proceedings and also the financial constraints of the appellant establishment. Hence the appellant cannot be allowed to raise contentions which were not raised before the respondent authority during the 14B proceedings.

4. The appellant establishment delayed remittance of provident fund contribution for the period from 06/2005 – 11/2006. The respondent therefore initiated action under Sec 14B for assessing damages. The respondent authority issued a show cause notice along with a delay statement. A representative of the appellant attended the hearing and pleaded that there was delay of 12 years in initiating the 14B proceedings and therefore it is barred by limitation. The appellant also pleaded that the appellant establishment is having financial difficulty which delayed the remittance of contribution. The appellant however failed to produce any documents to substantiate their claim of financial difficulty. After taking into account the submissions made by the appellant, the respondent authority issued the impugned order.

5. In this appeal, the learned Counsel for the appellant raised some more issues which were not raised before the respondent authority and was therefore not considered by him. The main contention taken by the learned Counsel for the appellant in this appeal is that there is an overlap in period of assessment between the present order and a previous order under Sec 14B issued by the respondent authority. The learned Counsel for the respondent was directed to clarify the claim of the learned Counsel for the appellant. The learned Counsel for the respondent filed a brief argument note along with a copy of the notice issued by the respondent authority for the previous assessment of damages. According to the learned Counsel for the respondent, the appellant suppressed the damages notice relating to Annexure A4. The respondent therefore produced a copy of the notice as Exbt.R1. A comparison of the two damages notice it is clear that there is no overlap in assessment of damages. It was also pointed out by the learned Counsel for the respondent that the appellant raised the same contention before the respondent authority also and is subsequently dropped fully knowing that there is no merit in the contention. The learned Counsel for the respondent also pointed out that there is no possibility of overlap

in period between two orders under Sec 14B of the Act as the same is generated by the system on the basis of the returns, remittances and the bank statement in respect of the appellant establishment.

6. The learned Counsel for the appellant also pleaded that there was a change in management of the appellant establishment. According to him, the compliance position of the appellant establishment under the previous management was very bad and the appellant had to set right the same by investing huge amounts. According to the learned Counsel for the respondent, there is actually no change in management. There was only a reconstitution of the trust in a running educational institution. According to the learned Counsel for the respondent, even if there is a change in management, it will not affect the provident fund liability of the appellant establishment. He relied on the decision of the Hon'ble High Court of Kerala in ***Ernakulam Radio Company (Calicut) Vs RPFC***, 1974 KHC 135. In the above case relying on the decision of the Hon'ble Supreme Court in ***Lakshmi Rattan Engineering Works Vs RPFC***, 1966 (1) LLJ 741, and the ***State of Punjab Vs Satpal***, 1970 (2) LLJ 64, the Hon'ble High Court held that a change in ownership or

location of an establishment does not affect the applicability of the Act to that establishment, as the law takes into account only the existence of establishment and the employment of a certain number of persons. As per Sec 1(3) of the Act, the Act applies to an establishment and it is not concerned as to who is the owner.

7. Another contention raised by the learned Counsel for the appellant is with regard to the delay in initiating the proceedings under Sec 14B of the Act. The learned Counsel for the respondent pointed out that there is no limitation provided in the Act for initiating a process under Sec 14B. In ***RPFC Vs KT Rolling Mills Pvt. Ltd.***, 1995 AIR (SC) 943, ***M/s. K Street Lite Electronic Company Vs RPFC***, 2001 AIR SC 1818 K(SC) 2J and ***Hindustan times ltd Vs Union of India***, 1998 AIR SC 688 (SC) 2J, the Hon'ble Supreme Court of India consistently held that in spite of all the amendments over a period of more than 30 years, the legislature did not think fit to make any provision prescribing a period of limitation for initiating a proceeding under Sec 14B of the Act. It is therefore clear that it is not the legislative intention to prescribe any period of limitation for computing and recovering the arrears and damages. The delay in these cases were beyond 12 years and the Hon'ble Supreme Court

held that the assessment of damages under Sec 14B cannot be struck down on the ground of limitation.

8. The learned Counsel for the appellant also pointed out that the new management of the appellant establishment had to incur huge additional liabilities in terms of provident fund contribution, damages and interest. It was also argued that the appellant establishment was facing acute financial crisis during the relevant point of time. The learned Counsel for the respondent pointed out that no documents, whatsoever was produced by the appellant before the respondent or in this appeal to substantiate the financial constraints. However it is seen that the appellant establishment is an educational institution and there is a change in management or a reconstitution of the trust to facilitate a better management of the institution. It is also seen that the appellant establishment has remitted huge amounts as contribution, damages and interest under the Act and also the Schemes thereunder. Taking into account the above facts, it is felt that the appellant establishment can be given some accommodation with regard to the damages under Sec 14B of the Act.

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

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

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