



सत्यमेव जयते

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

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

(Tuesday the 5th October 2021)

APPEAL No. 291/2019

Appellant

M/s. Christhu Jyothi
English Medium School
Kayyoor.P.O.,
Kottayam - 686651

By Adv. C Anil Kumar

Respondent

The Assistant PF Commissioner
EPFO, Regional Office
Kottayam - 686 001

By Adv. Joy Thattil Ittoop

This case coming up for final hearing on 23/06/2021
and this Tribunal-cum-Labour Court on 05/10/2021 passed
the following:

ORDER

Present appeal is filed from order No. KR/KTM/20692/
APFC/Penal damage/14B/2019-20/449 dated 26/04/2019
assessing damages under Sec 14B of EPF and MP Act for
belated remittance of contribution for the period from 07/2016

to 03/2018. Total damages assessed is Rs. 1,55,001/-(Rupees One Lakh fifty five thousand and one only)

2. The appellant school is run by Christhuraj Church. The school started with the aim of giving good education to the children in the nearby locality. Large number of students were given fee concession and free education. The School is run with financial support of a parish in Kayyoor village. The fees collected is also lower, compared to similar institutions. The appellant is covered under the provisions of the Act. There was always paucity of funds and there was delay in payment of wages to the staff and teachers. The school was running under heavy loss for the last so many years. A true copy of the Income & Expenditure account of the appellant school for the year 31/03/2018 is produced and marked as **Annexure 1**. The respondent initiated proceedings for assessing damages for the alleged delay in remittance of contribution. The appellant appeared before the respondent and informed him about the circumstances in which delay occurred. A detailed written statement was also filed before the respondent authority which is produced and marked as **Annexure 3**. The

notice received from the respondent is produced and marked as **Annexure 2**. The delay in remitting EPF contribution was not deliberate or willful. The impugned order does not disclose the basis of assessment. The Hon'ble Supreme Court in **M/s. Hindustan steel Ltd. Vs. The State of Orissa** held that "*An order imposing penalty for failure to carry out a statutory obligation is result of a quasi criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged either act deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation*". Section 14 B of the Act, as it stand now, is only penalty and therefore the decision of the Hon'ble Supreme Court in the above case is squarely applicable.

3. The respondent filed counter denying the above allegations. Admittedly there was delay in remittance of contribution. When there is delay in remittance, damages under Sec 14 B read with Para 32 A of EPF scheme is applicable. The respondent issued notice dated 19/12/2018 and the appellant was also given an opportunity for personnel hearing. Though there was no response from the appellant in

the initial stages of the proceedings, a representative of the appellant attended the hearing on 21/03/2019 and submitted a detailed statement highlighting the financial difficulties of the appellant establishment. The Hon'ble Supreme Court of India in **Hindustan Times Vs Regional PF Commissioner**, AIR 1998 SC 688 held that financial problems cannot be a justifiable ground for the employer to escape provident fund liability. The Hon'ble Supreme Court of India in **Organo chemicals Vs Union of India** held that *“even if it is assumed that there was a loss as claimed, it does not justify the delay in deposit of PF money which is an unqualified statutory obligation and cannot be allowed to be linked with financial position of the establishment over different periods of time”*. While imposing damages, mensrea is not an essential ingredient. The Hon'ble Supreme Court of India in **Chairman, SEBI Vs Sriram Mutual Fund and another**, Civil Appeal. No. 9523-9524/2003 held that 'Mensrea' is not an essential ingredient for contravention of the provisions of a civil law. The Scheme prescribed the time period within which the provident fund dues are required to be paid. Any delay in remittance in violation of said provisions will attract damages under Sec 14B of the Act. The

appellant establishment is liable to remit contribution within 15 days of the close of the month as per Para 38 of EPF Scheme 1952. The Hon'ble High Court of Kerala in **Calicut Modern Spinning and Weaving Mills Vs Regional PF Commissioner**, 1982 Lab IC 1422 held that para 38 of EPF Scheme obliges the employer to make payment within 15 days of close of every month and para 30 of the Scheme cast an obligation on the employer to pay both the contribution payable by himself and on behalf of the member employed by him in the first instance. Any delay will attract damages under Sec 14 B.

4. The only ground pleaded by the learned Counsel for the appellant for belated remittance of contribution is the financial difficulty of the appellant establishment. The appellant also produced the balance sheet of the appellant school as on 31/03/2018. According to the learned Counsel for the respondent, the delay in remittance of contribution as per the impugned procedure is for the period 2016 – 2018 and therefore the balance sheet now produced by the appellant in this proceedings for the year ending 31/03/2018 is not

relevant. I am unable to agree with the learned Counsel for the respondent. For an educational institution, the financial difficulty will not arise overnight and even though the documents produced will not cover the whole period, it will definitely give an indication of the financial position of the appellant establishment. According to the learned Counsel for the appellant, for the year ending 31/03/2018, the excess of expenditure over income for the school is Rs.70,82,476/-. Though, the learned Counsel for the appellant argued that there was delay in payment of wages, the same is not supported by the documents produced by them. It is seen that the salary and wages to the employees were paid during the year and if at all there is any delay it is for the appellant to establish the same. It is also seen from the documents that the appellant is a chronic defaulter, in the sense that the damages were levied for delay in remittance of contributions for the earlier period also. As per Annexure A1 it is seen that the amount of Rs.7,01,689/- is shown as penalty levied for delay in remittance during the earlier period. It is further seen that on the liability side, the appellant is having huge amounts towards payment of provident fund contribution, which clearly

shows that inspite of the earlier penalty proceedings, the appellant delays remittance of provident fund contribution. The very purpose of introduction of Sec 14B is to avoid such kind of contingency and to warn employer's regarding their liability in the event of delayed remittance of provident fund contribution. The learned Counsel for the respondent also pointed out that the appellant failed to substantiate their claim that there was delay in payment of wages to its employees. The documents now produced by the appellant would not support such a claim. When the salaries of the employees are paid, the employees' share of contribution is deducted from the salary of the employees'. Non remittance of contribution deducted from the salary of the employees is an offence under Sec 405/406 of Indian Penal Code. Having committed an offence of breach of trust, the appellant cannot plead that there is no mensrea in belated remittance of contribution, atleast to the extent of 50% of the total contribution. On a perusal of Annexure A2 delay statement send along with the notice, it is seen that the delay in remittance varied from 62 to 670 days. At an average there is a delay of more than 1 year in remittance of contribution. The appellant was withholding

the employees' share of contribution deducted from the salary of the employee for such a long period. Hence the appellant cannot plead that the delay in remittance of contribution was not intentional.

5. However considering the fact that the appellant is an educational institution run in a remote area of the state and also the fact that the appellant is running the institution at a huge financial loss, they deserve some relief in terms of damages levied under Sec 14B of the Act.

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

7. Hence the appeal is partially allowed. Impugned order is modified and appellant is directed to remit 70% of the damages.

Sd/-
(V. Vijaya Kumar)
Presiding Officer