



सत्यमेव जयते

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

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

(Monday the, 4th day of April 2022)

APPEAL No. 32/2020

Appellant : Malabar Co-operative Educational
Academy Limited,
No. M 796, Payaningal Junction,
Parappanangadi.P.O,
Malappuram – 676 303.

By Adv.C.Anil Kumar

Respondent : The Assistant PF Commissioner
EPFO, Sub Regional Office,
Eranhipalam P.O.,
Kozhikode – 673 006

By Adv.(Dr.)Abraham P Meachinkara

This case coming up for final hearing on 23.11.2021 and this
Tribunal-cum-Labour Court on 04.04.2022 passed the following:

ORDER

Present Appeal is filed from order No. KR/KKD/28047/
ENF3(5)/Dam./2019-20/4198 dated 19.11.2019 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

05/2016 – 07/2019. The total damages assessed is Rs. 2,47,682/- (Rupees Two lakh forty seven thousand six hundred and eighty two only)

2. Appellant is a Co-operative society registered under the Kerala Co-operative Societies Act. The society is imparting education to students in +2 level in Commerce & Humanities and degree classes in English, Sociology and Commerce. During 2009, the appellant establishment was brought under the coverage of the Act. The appellant establishment being a Co-operative society is not coverable under the provisions of the Act as the appellant never employed 50 or more persons. The appellant is a self financing institution and is running on loss for the past many years. At present the accumulated loss is more than 35 lakh. A true copy of the relevant portion of the audit certificate issued by the Kerala State Co-operative Department for financial year 2017-18 is produced and marked as Annexure 1. The relevant pages of audit certificate for the financial year 2018-19 is produced and marked as Annexure 2. The delay in remittance occurred due to the acute financial crisis during the relevant point of time. The respondent authority issued the impugned order without giving an opportunity to the appellant to produce documents to substantiate the claim of financial difficulties.

There was no wilful omission on the part of the appellant. Without considering the submissions made by the appellant, the respondent authority came to the conclusion that there was mensrea in delayed remittance of contribution. The Hon'ble Supreme Court of India in ***M/s. Hindustan Steel Ltd Vs State of Orissa***, AIR 1970 SC 253, held that an order imposing penalty for failure to carry out a statutory obligation is the result of a quasi criminal proceedings and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest or acted in conscious disregard of its obligation. In view of the above observation, the respondent authority ought to have examined whether there was mensrea in belated remittance of contribution.

3. The respondent filed counter denying the above allegations. The appellant establishment is covered under the provisions of the Act. Hence it is a statutory obligation under Para 30 of EPF Scheme for the appellant to ensure remittance of contribution within 15 days of close of every month. There was delay in remittance of contribution. Accordingly, a notice was issued to the appellant under Sec 14B along with a detailed month wise delay statement. The appellant was also given an opportunity for

personnel hearing on 04.10.2019. On the request of the appellant, the enquiry was adjourned to 18.11.2019 to facilitate a reasonable opportunity to the appellant. The Chairman of the appellant establishment attended the hearing, admitted the delay and requested for waiver of penal damages. After hearing the appellant, the respondent issued the impugned order. The delay in remittance was detected by the respondent and thereafter confirmed in proceedings under Sec 14B of the Act after providing an opportunity to the appellant. The financial difficulty of an establishment is not a ground to reduce or waive penal damages. The Hon'ble Supreme Court of India in ***Organo Chemical Industries Vs Union of India***, 1979 (2) LLJ 416 SC, held that even if it is assumed that there was loss as claimed, it does not justify the delay in deposit of provident fund money which is an unqualified statutory obligation and cannot be allowed to be linked with the financial position of the establishment over different points of time. As per Sec 14B of the Act and Para 32B of EPF Scheme, any delay in remittance should be visited with the consequence of damages irrespective of the reason for delay. The Hon'ble Supreme Court of India in ***Chairman, SEBI Vs Sri Ram Mutual Fund And Another***, 2006 (5) SCC 361 held

that mensrea is not an essential ingredient of contravention of procedure of civil act.

4. The appellant delayed remittance of provident fund contribution for the period from 05/2016 – 07/2019. The delay in remittance attracts damages under Sec 14B of the Act. The respondent therefore issued notice along with a delay statement and gave an opportunity for personnel hearing. A representative of the appellant attended the hearing, admitted the delay and requested for waiver of damages. The respondent authority issued the impugned order after hearing the appellant.

5. In this appeal, the learned Counsel for the appellant raised two grounds for delayed remittance of contribution. According to the learned Counsel, the appellant establishment was running under heavy loss during the relevant point of time. Because of the heavy financial constraints, the appellant establishment could not remit the contribution in time. According to the learned Counsel for the respondent, the appellant failed to produce any documents before the respondent authority to substantiate the claim of financial difficulty. In this appeal the appellant produced a few page extracts of the audit certificates issued by the Kerala State Co-operative

Department. According to the Annexure 1 audit certificate for the year 2016 - 17, the appellant establishment had a loss of Rs.3,40,278/- and a cumulative loss of Rs.33,02,103. As per Annexure 2, the audit report for the year 2017-18, the appellant had a loss of Rs.8,60,898/- and a cumulative loss of Rs.41,63,007/-. The learned Counsel for the respondent pointed out that this few page extract of the audit report cannot be accepted for deciding the quantum of damages to be paid by the appellant.

6. The learned Counsel for the appellant also pointed out that the delay in remittance was only due to the financial constraints of the appellant establishment and was not at all intentional. He further pointed out that there was no mensrea in belated remittance of contribution. The learned Counsel for the respondent submitted that the appellant have no case that the wages of the employees were not paid in time by the appellant. When wages are paid, the employees' share of contribution is deducted from the salary of the employees. Non-remittance of employees' share of contribution deducted from the salary of the employees is an offence of breach of trust under Sec 405/406 of Indian Penal Code. Therefore the appellant cannot plead that there was no intentional delay in remittance of 50% of the total contribution which accounts for the

employees' share 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. Considering the fact that appellant is an educational institution registered under the Co-operative Societies Act and also the fact that the appellant establishment was running under loss during relevant point of time, the appellant establishment is entitled for some relief as far as damages under Sec 14B of the Act is concerned.

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

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

Sd/-
(V.Vijaya Kumar)
Presiding Officer