



सत्यमेव जयते

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

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

(Friday the, 14<sup>th</sup> day of January 2022)

**APPEAL No. 467/2019**

Appellant : M/s. Ashtanga Educational Trust,  
1/1062, Guruvayoor Road  
Koottanad,  
Palakkad – 679 533

By Adv.Viju K Raphel

Respondents : 1. The Central Board of Trustees  
EPFO, Bhavishyanidhi Bhavan,  
14, Bhikaji Cama Place,  
New Delhi – 110 066

2. Regional PF Commissioner  
EPFO, Bhavishyanidhi Bhavan  
Eranhipalam.P.O.  
Kozhikode – 673 006.

By Adv.(Dr.) Abraham P Meachinkara

This case coming up for final hearing on 12.10.2021 and  
this Tribunal-cum-Labour Court on 14.01.2022 passed the  
following:

**ORDER**

Present Appeal is filed from order No. KR/KK/28849/ ENF-4(5)/14B/2019/2610 dated 29.07.2019 assessing damages under Section 14B of EPF and MP Act (hereinafter referred to as 'the Act') for belated remittance of contribution from 04/2018 to 03/2019. The total damages assessed is Rs. 4,23,679/- (Rupees four lakh twenty three thousand six hundred and seventy nine only)

2. The appellant is an educational institution with no profit motive and imparting education in the Ayurvedic system of medicine. The student's intake to the appellant institution reduced due to the remoteness of the appellant institution. Further due to the structural changes in the self financing educational sector, the appellant fell into heavy loss from 2016 – 17 onwards. Payment of salary and consequent recovery of contribution was also delayed. Whileso the 2<sup>nd</sup> respondent issued notice dated 13.06.2019 alleging delay in remittance of contribution and also directing the appellant to showcause why damages and interest shall not be levied for belated remittance of contribution. A copy of the notice is produced and marked as

Annexure A2. The appellant was given an opportunity for personnel hearing. A representative of the appellant attended the hearing and explained the circumstances in which the delay was caused. A written statement was also filed before the respondent authority. A copy of the written statement is produced and marked as Annexure A3. It was brought to the notice of the respondent authority that there was no contumacious conduct on the side of the appellant in not paying the contribution in time. The respondent authority, ignoring the contentions of the appellant, issued the impugned order, a copy of which is produced and marked as Annexure A1. The respondent also issued an order under Sec 7Q demanding interest which is produced and marked as Annexure A4. There is no wilful latches or omissions on the part of the appellant. There is no legal reasons for penalising the appellant for alleged delay in addition to interest.

3. The respondent filed counter denying the above allegations. The appellant is an establishment covered under the provisions of the Act. Hence the appellant is bound to pay statutory Provident fund, Pension fund and Insurance fund as

stipulated under the provisions of the Act and Schemes. The appellant establishment failed to pay the contribution as stipulated under Para 30 of the Scheme. The respondent therefore initiated action for assessing damages under Sec 14B of the Act. A notice dated 13.06.2019 was issued to the appellant to show cause why damages as envisaged under Sec 14B of the Act should not be recovered for belated payment of contribution. The appellant was also given an opportunity for personnel hearing on 16.07.2019. The Secretary of the trust attended the hearing and filed a statement stating that the remittances were delayed due to financial difficulty. Since financial difficulty cannot be a reason for delayed remittance of contribution, the respondent issued the impugned order assessing damages under Sec 14B of the Act. The grounds pleaded by the appellant regarding the structural changes in self financing education sector and the loss of the appellant from 2016-2017 etc are not relevant while deciding the quantum of damages under Sec 14B of the Act. In ***Associated Industries (Private) Limited Vs Regional Provident Fund Commissioner***, Kerala, 1963 (II) LLJ 652, the Hon'ble High Court of Kerala held that the employers are under legal obligation to

deposit their shares of contribution to the fund within the time prescribed, the moment the Act and the Scheme become applicable to them. The Division Bench of Hon'ble High Court of Kerala in **Calicut Modern Spinning and Weaving Mills Vs RPFC**, 1982 KLT 303 held that the employer is bound to pay contribution under the Act every month voluntarily irrespective of the fact whether wages have been paid or not. The Hon'ble Supreme Court in **Chairman, SEBI Vs Sri Ram Mutual Fund**, 2006 (5) SCC 361 held that mensrea or intention of parties is not a relevant ingredient for contravention of the provisions of a civil Act.

4. As per Sec 7(I) no appeal can be filed against an order assessing interest under Sec 7Q of the Act.

5. During the course of this proceedings, the learned Counsel for the appellant sought permission to produce the balance sheet of the appellant establishment as on 31.03.2018 and statutory audit report for the year 2018-2019. Those documents were taken on record.

6. It is an admitted fact that there was delay in remittance of contribution during the period from 04/2018 to 03/2019, for remittances due from 06/2017 onwards. According to the learned Counsel for the appellant, the delay in remittance of contribution was due to the financial difficulty of the appellant establishment. It is seen that in the written statement dated 15.07.2019 filed before the 2<sup>nd</sup> respondent also the appellant has pleaded only financial difficulty but without any supporting documents to substantiate the same. In this appeal, the appellant produced the balance sheet for the year ending 31.03.2018 and also 31.03.2019. From the balance sheet for the year ending 31.03.2018, it is seen that the revenue income from the operation of pharmacy, canteen, trust, college and indirect income was Rs.3.58 crores. This income for 31.03.2018 increased to Rs. 6.41 crores and for the year ending 31.03.2019, the income increased to 8.39 crores. Hence it can be seen that the revenue income of the appellant establishment increased considerably from year on year. It is true that the expenditure has also increased. However the claim of the appellant that the financial constraints was the reason for delay of remittance of

contribution is not fully supported by the documents produced by the appellant. The learned Counsel for the respondent pointed out that the documents now produced by the appellant also would substantiate the fact that the salaries of the employees were paid in time. When the salaries are paid, the employee's share of contribution is deducted from the salary of the employees'. Non remittance of employee's 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. Having committed a criminal offence, the appellant cannot plead that there was no intentional delay in remitting the contribution atleast to the extent of 50% of the total contribution, being the employees' share of contribution deducted from the salary of the employees. On a perusal of the delay statement send along with the notice, it is seen that the delay in remittance of contribution varies from 30 days to 408 days. The average delay was almost 10 months in remitting the contribution. The appellant was holding the employees share of contribution for such a long period. The learned Counsel for the appellant also relied on the decision of the Hon'ble High Court of Kerala in **RPFC Vs**

**Harrison's Malayalam Ltd. And Others**, Laws (Ker) 2013 (8) 39 and **Standard Furniture Vs Registrar, EPF Appellate Tribunal and Another**, 2020 4 KLT 105 and **BPL Ltd Vs Employees Provident Fund Appellate Tribunal**, laws (Ker) 2014 (7) 336 to argue that financial constraints will have to be considered as a mitigating circumstance while deciding the quantum of damages under Sec 14B of the Act.

7. The learned Counsel for the appellant also relied on the decision of the Hon'ble Supreme Court of India in **Assistant Provident Fund Commissioner and Another Vs the Management of RSL Textiles India Pvt.Ltd**, Laws (SC) 2017 (1) 27 to argue that mensrea or lack of the same is a relevant consideration while deciding the question of damages. 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.

8. As already pointed out, the financial statements now produced by the appellant would not adequately support the claim of the appellant that the delay in contribution was

exclusively due to the financial constraints of the appellant establishment. However it is seen that the appellant establishment was running under loss from the year 31.03.2017 onwards. For the year ending 31.03.2017 the appellant establishment suffered a loss of Rs. 93,13,879, for the year ending 31.03.2018 the appellant establishment suffered a loss of Rs. 1,57,38,600/- and for the year ending 31.03.2019 the loss was Rs. 1,14,99,629/-. The learned Counsel for the respondent pointed out that these documents now produced by the appellant cannot be relied on, as the same is not proved by a competent witness before the respondent authority. He pointed out that the figures in the balance sheet are not beyond the pale of suspicion. He pointed out that for the year 31.03.2017, when the loss was 93.13 lakh, the depreciation shown is 95.39 lakh. Similarly for the year 31.03.2018, when the loss is shown as 1.57 crores the depreciation is shown as 1.28 crores. Similarly for the year 31.03.2019, when the loss is 1.15 crores, the depreciation shown in the balance sheet is 2.08 crores.

9. Taking into account all the facts, circumstances, pleadings and evidences as discussed above, I am inclined to hold

that interest of justice will be met if the appellant is directed to remit 80% of the damages. Interest demanded under Sec 7Q of the Act is not applicable and is not therefore interfered with.

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

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