



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

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

(Tuesday the, 5th day of April 2022)

APPEAL No. 545/2019

(Old No. ATA.677(7)2010)

Appellant : M/s. Maria Agnes English Medium
Convent School
Kureepuzha.P.O.
Perinad,
Kollam – 691 604

By Adv. M.T.Suresh Kumar

Respondent : The Assistant PF Commissioner
EPFO, Regional Office,
Parameswar Nagar
Kollam – 691 001

By Adv. Pirappancode V.S.Sudheer

This case coming up for final hearing on 14.09.2021 and this Tribunal-cum-Labour Court on 05.04.2022 passed the following:

ORDER

Present Appeal is filed from order No. KR/22047/KLM/PD/2010-11/11078 dated 07.07.2010 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 06/2002 to 03/2007. The total damages assessed is Rs.7,19,568/- (Rupees Seven lakh nineteen thousand five hundred and sixty eight only)

2. The appellant is an educational institution and is covered retrospectively w.e.f. 06/2002. The appellant is regular in compliance except for the pre-discovery period. The levy of damages as per the impugned order is for the pre discovered period. The appellant is an educational institution run by a charitable society. Due to financial difficulty, the salaries of the employees were delayed and therefore, the contributions were also delayed. The appellant was offered a personnel hearing on 15.02.2010 and the appellant requested for waiver of damages. The damages levied, include the pre-discovery period. The appellant remitted the interest demanded by the respondent as per the impugned order. A copy of the chalan is produced and marked as Exhibit 2 series. There was no deliberate act or wilful defiance of law and there was no contumacious and dishonest act from the side of the appellant. Appellant is not a chronic defaulter and the delay occurred because of the delayed allotment of provident fund code number. The

respondent failed to notice the changes brought out in Sec 14B after the introduction of Sec 7Q into the Act. The Hon'ble Supreme Court of India in ***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 proceeding 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 obligations.

3. The respondent filed counter denying the above allegations. The appellant establishment was covered under the provisions of the Act w.e.f. 01.06.2002. There was delay in remittance of contribution for the period from 06/2002 to 03/2007. Any belated remittance will attract interest under Sec 7Q and damages under Sec 14B of the Act. Hence a notice dated 10.02.2010 was issued to the appellant along with a detailed monthwise delay statement. The appellant was also given an opportunity for personnel hearing on 15.02.2010. A copy of the notice dated 10.02.2010 along with the enclosures is produced and marked as Exhibit R1. A representative of the appellant attended

the hearing and submitted that the school was not in a position to pay damages as the establishment is a charitable institution. Thereafter the enquiry was posted on various dates and on 19.04.2010, the representative who attended the hearing again request for a copy of the calculation sheet. A copy of the calculation sheet was provided to the representative of the appellant. The appellant did not file any objection to the statement or attended the hearing on the next date of posting. It is the statutory obligation of the employers to comply with various duties cast upon them. Financial difficulty cannot be a ground for non payment of dues in time. In ***Sky Machinery Ltd Vs Regional Provident Fund Commissioner***, 1998 LLR 925, the Hon'ble High Court of Orissa held that "financial crunch will not be sufficient for waving penal damages for delay in depositing provident fund contribution". The Hon'ble Supreme Court of India in ***Hindustan Times Ltd. Vs Union Of India***, 1998 (2) SCC 242 held that financial difficulty is not a relevant explanation to avoid liability for payment of dues in time. The Division Bench of the Hon'ble High Court of Punjab and Haryana in ***Elsons Cotton Mills Vs Regional Provident Fund Commissioner***, 2001 (1) SCT 1104 (P&H)(DB),

held that financial crisis or poor financial capacity is not a ground for not paying provident fund of employees in time. The appellant had fulfilled all the conditions prescribed for coverage under the Act w.e.f. 01.06.2002. The provisions of the Act applied to an establishment by its own force, once the conditions prescribed for coverage under the Act are fully satisfied. The delay in the coverage of the appellant establishment had already resulted in denial of legitimate provident fund benefits to the beneficiary employees. Levy of damages is an inevitable step when there is delay in remittance of contribution. Sec 14B was inserted with an object to act as a detriment on the employers to prevent them from not carrying out their statutory obligations to make payments to provident fund.

4. EPF and MP Act 1952 is legislation for providing social security to employees. It provides for compulsory deduction of provident fund from the employees and equal contribution from the employer, which is deposited in the employees account. The Act also provides for pension as well as insurance. Provident fund and other contributions have to be deposited by the employer by 15th of the next month in which the employee has worked in the

establishment and the wages payable to him. The respondent being the custodian of the provident fund is duty bound to maintain, retain and discharge the social welfare benefit to the present as well as future provident fund members. In case of failure on the part of the employers to deposit the contribution in time, the delivery of benefits to the employees will be directly impacted. To prevent any delayed remittance of contribution, Sec 14B was introduced into the Act so that the employers may be thwarted or deterred from making any further defaults.

5. According to the learned Counsel for the appellant, the appellant school was covered retrospectively from 06/2002. The respondent also assessed the dues under Sec 7A from 06/2002 and recovers the amount. Sec 14B is meant to compensate the employees who were denied the benefit by the employer. The learned Counsel further argued that the appellant establishment is under great financial distress and any further damages will cause severe hardship to the appellant establishment.

6. The learned Counsel for the respondent pointed out that the appellant establishment was statutorily coverable from 06/2002 as it satisfied all the legal requirements. However the

appellant failed to come forward and extend social security benefits to its employees as required under law. The respondent organisation was therefore forced to cover the appellant establishment from a retrospective date, assess the dues and recover the same from the appellant establishment. Having violated the provisions of the Act and Schemes, the appellant cannot plead that they are not liable under the Act to remit the contribution or to pay damages and interest from the due date of coverage.

7. The learned Counsel for the appellant pleaded financial difficulty as a ground for delayed remittance of contribution. The appellant however failed to produce any documents to substantiate the claim of financial difficulty. In ***M/s. Kee Pharma Ltd Vs APFC***, 2017 LLR 871 the Hon'ble High Court of Delhi held that the employers will have to substantiate their claim of financial difficulties if they want to claim any relief in the levy of penal damages under Sec 14B of the Act. In ***Sree Kamakshi Agency Pvt Ltd Vs EPF Appellate Tribunal***, 2013 1 KHC 457 the Hon'ble High Court of Kerala held that the respondent authority shall consider the financial constraints as a ground while levying damages under Sec 14B, if the appellant pleads and produces documents to

substantiate the same. In ***Elstone Tea Estates Ltd Vs RPFC***, W.P.(C) 21504/2010 the Hon'ble High Court of Kerala held that financial constraints have to be demonstrated before the authority with all cogent evidence for satisfaction to arrive at a conclusion that it has to be taken as mitigating factor for lessening the liability. Having failed to substantiate the claim of financial difficulties, the appellant cannot come up in appeal and plead that delay in remittance was due to financial difficulty of the appellant establishment.

8. The learned Counsel for the appellant also pointed out that there was delay in remittance of contribution because of the retrospective coverage of the appellant establishment. The learned Counsel for the respondent pointed out that it was a statutory obligation on the part of the appellant to start compliance once the statutory requirements are met. The Act, acts on its own force and is not depended on any orders or instructions issued by the respondent organisations. Allotment of code number is only for administrative convenience and not under the provisions of the Act and Schemes.

9. The learned Counsel for the appellant pointed out that there was no intentional delay and therefore there was no mensrea in belated remittance 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.

10. The appellant is an educational institution. The claim of the learned Counsel for the appellant is that the delay in remittance of contribution was basically due to the retrospective coverage of the appellant establishment though there was delay subsequently also. However taking into account the above facts, the appellant is entitled to some relief with regard to the damages under Sec 14 B of the Act.

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

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

Sd/-
(V.Vijaya Kumar)
Presiding Officer