



सत्यमेव जयते

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

Present: Shri.V.Vijaya Kumar, B.Sc., LLM, Presiding Officer  
(Wednesday, 20<sup>th</sup> day of October 2021)

**APPEAL No.60/2020**

Appellant

M/s. St. Gregorios Medical  
Mission Hospital  
Parumala  
Pathanamthitta - 689626

By Adv.R Sankarankutty Nair

Respondent

The Regional PF Commissioner  
EPFO, Regional Office  
Pattom.P.O.  
Thiruvananthapuram – 695 004

By Adv. Ajoy P B

This case coming up for final hearing on 21/06/2021 and  
this Tribunal-cum-Labour Court on 20/10/2021 passed the  
following:

**ORDER**

Present appeal is filed from Order No. KR/TVM/4656/  
Damages Cell/2019-20/ 4859 dated 24/02/2020 assessing  
damages under Section 14B of EPF and MP Act(hereinafter

referred to as 'the Act') for belated remittance of contribution for the period 01.04.2018 – 31.03.2019. Total damages assessed is Rs.1,88,441/- (Rupees One lakh eighty eight thousand four hundred forty one only).

2. The appellant is a Multispecialty Hospital with a Nursing College, covered under provisions of the Act. The appellant is regular in compliance with regard to the regular employees of the appellant. The appellant used to provide training facility for qualified persons on payment of stipend. Though the trainees engaged under Standing Orders are excluded from the provisions of the Act, the respondent directed the appellant to remit contribution in respect of the trainees also. The appellant remitted contribution in respect of trainees for the period from 04/2016 to 01/2019 as per the direction of the respondent. The respondent authority initiated action for assessment of damages for belated remittance of contribution for the above period. The respondent issued a summons along with a detailed delay statement which is produced and marked as Annexure A2. The appellant was also given an opportunity for personnel hearing. The appellant attended the hearing and

filed a written statement objecting to the levy of damages. A copy of the written statement filed by the appellant before the respondent authority is produced and marked as Annexure 3. The respondent made the claim of enrolment of trainees after a long period and therefore the appellant was compelled to remit both shares of contributions. The interest levied under Sec 7Q of the Act was remitted by the appellant. The appellant was under a bonafide belief that trainees under Standing Orders are not liable to be enrolled under Provident Fund Scheme. The respondent initiated action under Sec 7A of the Act to assess dues in respect of 22 trainees for the period from 04/2016 - 01/2019. The respondent issued an order assessing the dues to the tune of Rs. 8,75,709/-. The remittance of Rs.6,64,336/- made by the appellant was also adjusted in the Sec 7A Order. It can be seen that there was no wilful or intentional delay in remitting the contribution. There is no allegation of mensrea on the part of the appellant in remitting the dues so as to impose penalty. Though the appellant was not liable to remit contribution in respect of trainees, the appellant remitted the

contribution in respect of 14 persons who continued in the service of appellant establishment.

3. Respondent filed counter denying the above allegations. The appellant is an establishment covered under the provisions of the Act. As per the records maintained by the respondent, it is seen that there was delay in remittance of contribution by the appellant. Therefore an enquiry under Sec 14B of the Act was initiated. A summons dated 19.06.2019 along with a delay statement was forwarded to the appellant. The appellant was also given an opportunity for personal hearing on 16.07.2019. Though the appellant acknowledged the receipt of summons, there was no representation for the appellant. Hence the matter was adjourned to 30/07/2019 and a representative of the appellant attended the hearing and filed a written statement. The representative did not dispute the delay statement. The main contention of the appellant was that the amount involved and the period covered was in respect of certain trainees engaged under Standing Orders. The appellant also contended that the non enrolment was detected during an inspection by the Enforcement Officer. The appellant was

under the bonafide belief that the trainees engaged under standing orders need not be enrolled to Provident Fund membership. The appellant failed to enrol eligible employees engaged by them for almost three years. There is no exclusion for trainees engaged by the appellant establishment and they are legally liable to enrol them. The ignorance of law cannot be taken as a defence. The issue regarding the eligibility of the trainees to be enrolled was already decided under a statutory proceedings under Sec 7A vide order dated 04.11.2019. Hence the same cannot be a ground in this appeal. In **Chairman, SEBI Vs Sriram Mutual Fund** Civil Appeal No.9523-9524/2003 the Hon'ble Supreme Court held that "mensrea is not an essential ingredient for contravention of provisions of civil Act". The EPF and MP Act being social security legislation cannot ignore the liability of the appellant to remit the contribution in time.

4. According to the learned Counsel for the appellant, the appellant establishment was engaging 22 trainees and they were being paid stipend. Since trainees are not employees, the appellant did not enrol these trainees under provident fund

membership. The respondent authority initiated an enquiry under Sec 7A of the Act and decided that the appellant establishment is liable to enrol all the trainees and assessed the dues. The appellant remitted an amount of Rs.6,64,336/-. According to the Counsel for the appellant, there was no wilful delay in remittance of contribution, in the circumstances explained above. The appellant was forced to remit the contribution by the respondent. The respondent has no case that there was mensrea in the belated remittance of contribution. In **ESIC Vs HMT Ltd**, 2008 1 LLJ 814 the Hon'ble Supreme Court of India held that "Existence of mensrea or actusreus to contravene a statutory provision must also be held to be a necessary ingredient for levy of damages and/or the quantum thereof". In **Organo Chemical Industries Vs Union of India** 1979 II LLJ 416, the Hon'ble Apex Court held that the respondent authority should apply its mind to the reasons or justification shown by the employer for the default and impose damages after application of mind by a speaking Order. The learned Counsel for the respondent pointed out that there was clear violation of the provisions of the Act and Schemes

thereunder, when the appellant failed to remit the contribution in respect of trainees engaged by them. As per Sec 2(f) of the Act, the trainees are also required to be enrolled unless they are covered by the exemptions. Having violated the provisions of the Act, there was intentional delay in remittance of contribution and therefore there was mensrea in delay of remittance of contribution. I am unable to agree with the argument of learned Counsel for the respondent. It is true that there was non-enrolment of trainees by the appellant during the relevant period of time. The non-enrolment was not brought to the notice of the appellant till 2019 when action was initiated by the respondent authority under Sec 7A of the Act to assess the dues in respect of the trainees. When it was brought to the notice of the appellant, that these trainees are required to be enrolled to the fund, they remitted the contribution in respect of all the trainees who continued with the appellant establishment from the date of their eligibility. To that extend the bonafides of the appellant's claim is established. Hence it is not correct to hold that there was mensrea in respect of delayed remittance of contribution for the trainees. However, the appellant cannot

escape the liability, as the delay in remittance varies from 22 days to 1208 days. The average delay is more than 2.5 years. Hence the interest under Sec 7Q will not be adequate to compensate the loss of interest during the relevant period of time.

5. Considering the facts, circumstances and pleadings, I am inclined to hold that interest of justice will be met if the appellant is directed to remit 70% of damages assessed under Sec 14B of the Act.

6. Hence appeal is partially allowed, 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