



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

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

APPEAL No.633/2019

Appellant

M/s. Mar Gregorious Memorial
Muthoot Medical Centre,
College Road, Kozhencherry
Pathanamthitta – 689 641

By M/s. Ashok B. Shenoy

Respondent

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

By Adv. Nita N.S

This case coming up for final hearing on 14.07.2021
and this Tribunal-cum-Labour Court on 20.10.2021 passed
the following:

ORDER

Present appeal is filed from Order No. KR/12521/ TVM/
PD/ VK/2013/12515 dated 31.01.2013 assessing damages

under Section 14B of EPF and MP Act(hereinafter referred to as 'the Act') for belated remittance of contribution for the period from 01/2007 – 08/2008. Total damages assessed is Rs.4,28,549/- (Rupees Four lakh twenty eight thousand five hundred and forty nine only).

2. The appellant is an establishment covered under provisions of the Act from 31.05.1971. The respondent initiated an enquiry under Sec 7A of the Act for default, for the wage month June 2004 – August 2008 on account of alleged non enrolment of employees, dues of bonded staff and security staff. The appellant participated in the enquiry which culminated in an assessment order dated 22.09.2009. The appellant remitted the amount on 16.11.2009, 20.11.2009 and 03.12.2009. The respondent thereafter issued another order in September 2012 directing the appellant to pay damages to the tune of Rs.4,28,549/- for belated remittance of contribution from January 2007– August 2008. The true copy of such a demand is produced and marked as Annexure A2. A written objection was filed

by the appellant before the respondent on 06.11.2012. A true copy of same is produced and marked as Annexure A3. Without taking into account the representations made by the appellant, the respondent issued an order dated 31.02.2013 assessing damages to the tune of 4,28,549/- for belated remittance of contribution for period from January 2007 – August 2008. A true copy of the said order is produced and marked as Annexure A4. The respondent authority is not an officer authorised by Central Government by issuance of notification under Section 14B of the Act. The impugned order is also vitiated for violation of principle of natural justice as the appellant was not aware of the details of delay and rate of damages proposed to be levied before passing the Annexure A4 order. The impugned order is also bad for, it is a non speaking Order and is vitiated by non application of mind. There is no finding in the impugned order that the imposition of damages is justifiable in the instant case. The respondent authority passed the impugned order under a wrong perception that all delays will attract damages under Section 14B of the Act. The

assessment of damages made is contrary to the statutory provision in paragraph 38 of EPF scheme. As per paragraph 38 of EPF Scheme, contributions are payable only within 15 days of close of the month in which wages is paid and deduction towards contribution is made. The appellant is paying wages to its employees in the succeeding month with deduction towards employees' contribution and therefore the contribution are to be paid by the appellant only before 15th of the month following the month in which payment of wages is made. For instance, the wages for the month of March 2007 being paid in April 2007 with deductions towards employees' contribution being made only in April 2007; contribution from appellant's are payable in terms of Paragraph 38 of EPF Scheme only by 15.05.2007 and not by 15.04.2007 as reckoned in Annexure A2 notice. The appellant was not also provided the benefit of grace period of five days as provided under circular dated 19.03.1964 and 24.10.1973.

3. The respondent filed counter denying the above allegations. The appellant is covered under the provisions of the Act w.e.f 31.05.1971. There was delay in remittance of contribution for the period from 01/2007 – 08/2008 and therefore the respondent initiated action under Sec 14B of the Act. A notice dated 17.09.2012 was issued to the appellant to show cause why damages as stipulated under Sec 14B of the Act read with Para 32A of EPF Scheme shall not be recovered from the appellant. A detailed delay statement was also enclosed along with the notice dated 17.09.2012. The appellant was also given an opportunity for personnel hearing on 11.10.2012. The appellant did not appear on that date but requested for an adjournment vide letter dated 08/10/2012. Enquiry was adjourned to 07/11/2012. A representative of the appellant attended the hearing and submitted that the damages proposed is not correct but he could not produce any documents to substantiate his claim. The appellant was given another opportunity on 05.10.2012. The appellant did not appear or file any written statement. The appellant was given another

opportunity on 23.01.2013. There was no representation for the appellant on the said date also. The respondent therefore issued the impugned order on the basis of the detailed delay statement sent to the appellant along with the notice. The appellant establishment defaulted in payment of contribution in respect of non-enrolled employees, bonded staff and security staff for the period from 06/2004 – 08/2008 and therefore an enquiry was initiated under Sec 7A of the Act which culminated in an assessment order dated 22/09/2009. The appellant remitted the assessed amount on various dates. Since there was delay in remittance, the respondent initiated action under Sec 14B. As already explained, the appellant was given adequate opportunity to represent his case. The allegation of violation of principles of natural justice is only an afterthought. The appellant had already admitted in the appeal memo that there was delay in remittance of contribution due to financial constraints and liquidity crisis and due to non availability of funds. The averment that the delay reckoned for the purpose of levy in damages is not correct, is based on

wrong assumption on the part of the appellant. The provident fund and other contributions has to be deposited by the employer by the 15th of next month in which the employee has worked in the establishment and dues becomes payable because employee has already performed the employment upto last date of previous month. The remittance of EPF and other dues are to be reckoned from the due month in which worker has performed his work and not from the date of payment of wages as per the convenience of the appellant. The allegation that the impugned order is passed without affording him the details of assessment is not correct. The contention that there was no deliberate act or wilful default on the part of the appellant in remitting the dues belatedly cannot be a defence for waiver or deduction of damages. The ground of financial difficulty for non-remittance or delayed remittance of contribution has been rejected by Hon'ble Supreme Court of India in **Organo Chemical Vs Union of India** 1979(002)LLJ 416 SC and in **M/s Hindustan Times Vs Union of India** 1998 SC 688. The claim of the appellant

that the respondent authority has not divulged details of delay etc. are not correct. The Annexure 2 delay statement issued along with the notice would adequately explain the process of calculation of damages which included the due date of payment, the actual date of payment, the delay in remittance and also the proposed damages. The only ground pleaded before the respondent authority was financial constrains and according to various judgment of the Hon'ble Supreme Court of India financial constrains cannot be a valid ground for the employers to escape the liability under Sec 14B of the Act. The PF contribution is part of wages and non-remittance of contribution under the Act is a violation of fundamental rights guaranteed at Article 21 of the Constitution. The Hon'ble High Court of Mumbai in **Ralliwof case**, WP(C)1688/2000 held that non-payment of wages by an employer to its employees will be in violation of Article 21 of the Constitution. The Hon'ble Supreme Court in **Chairman, SEBI Vs Sriram Mutual Fund**, Civil Appeal No. 9523-9524/2003 held that "mensrea is not an essential ingredient for contravention of the provisions of a

civil Act. Penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the regulation is established and hence the intension of party committing such violation becomes wholly irrelevant". Provident fund and allied dues have to be deposited by the appellant by 15th of next month in which the employee has worked in the establishment and dues become payable to him. A grace period of five days was allowed to the employers for remitting the dues. However if the employer remits dues after 21st of the month, the delay will be reckoned w.e.f. statutory time limit ie; 15th of the month. Further the grace period is already withdrawn by the respondent organisation and the appellant is liable to remit the contribution within 15 days of close of the month.

4. The learned Counsel for the appellant has taken various grounds while challenging the impugned order. The first ground taken by the learned Counsel by the appellant is that the respondent is not an Officer authorised by Central Government to exercise the powers under Sec 14 B of the

Act. The claim of the learned Counsel is not correct as Government of India vide notification no. S.O.1553 dated 17.04.2002 has delegated the powers under Sec 14B to Additional Central PF commissioner, Regional PF Commissioner and Assistant PF Commissioner's to handle the cases under Sec 14B of the Act. Another contention raised by the learned Counsel of appellant is that the details of violations were not disclosed to the appellant before the impugned order under Sec 14B was issued. According to the learned Counsel for the respondent, Annexure A2 is the notice issued to the appellant by the respondent enclosing there the details of violations and delay committed by the appellant in remittance of provident fund dues. Therefore it is not correct to argue that the details of delay or violations were not communicated to the appellant. The learned Counsel for the appellant also pointed out that the impugned order is bad in view of the fact that none of the issues raised by the appellant in Annexure A3 representation dated 06.11.2012 were answered in the impugned order. It is seen that the appellant was given

opportunities on 11.10.2012, 07.11.2012, 05.12.2012, and 23.01.2013. A representative of the appellant attended the hearing on 07.11.2012 and submitted a representation. The appellant thereafter remained absent from the proceedings continuously, inspite of the fact that the notices issued by the respondent authority were acknowledged by the appellant. The learned Counsel for the appellant relied on the decision of the Division Bench of the Hon'ble High Court of Kerala in **Standard Furniture Vs Registrar, EPF Appellate Tribunal and another**, 2020(3)KHC 793. According to the learned Counsel for the respondent, since the appellant failed to take any contention and failed to appear and participate in the proceedings under Sec 14B, there was no occasion for the appellant to pass a speaking order. According to the learned Counsel for the appellant, in the circumstances that delayed the remittance of the contribution as explained in the appeal memo, the respondent ought to have considered the mitigating circumstances atleast to reduce the quantum of damages. On a perusal of the fact, it is seen that the appellant

establishment evaded statutory dues for the period from 06/2004 – 08/2008 in respect of employees engaged by them. The evasion included dues in respect of non-enrolled employees directly engaged by the appellant, dues of security staff, dues in respect of GNM bonded staff and dues in respect of non-enrolled employees of canteen. During the course of the enquiry under Sec 7A of the Act, the appellant admitted to the liability in respect of all categories of employees except GNM bonded staff deployed by them. However, the authority under Sec 7A of the Act found that the GNM bonded staff also are required to be enrolled to the fund and therefore assessed the dues. The appellant thereafter remitted the contributions in 3 or 4 instalments. According to the learned Counsel for the respondent, the appellant deserves no sympathy as they violated the provisions of the Act knowing fully their liability under the Act. If at all there was any dispute, that was only with regard to the bonded staff. Hence the appellant cannot claim that there is any mitigating circumstances, warranting reduction of damages under Sec 14B of the Act. The learned

Counsel for the appellant also raised two contentions with regard to the liability of the appellant to pay contribution under paragraph 38 of EPF Scheme. According to the learned Counsel for the appellant, as per Para 38 of EPF Scheme, contributions are payable only within 15 days of close of the month in which wages are paid and deduction towards contribution is made. When that be so, as wages to employees for each month are being paid by the appellant in the succeeding month with deduction towards employees' contribution being made in the succeeding month only, the contributions are to be made from appellants end only before 15th of the month following the month in which payments of wages are made. According to him, the wages for the month of March 2007 was paid within April 2007 with deductions towards employees' contribution being paid only in April 2007, contributions from appellants end are payable in terms of Para 38 of EPF Scheme only by 15.05.2007 and not 15.04.2007 as reckoned in Annexure A4 order. The learned Counsel for the appellant also contended that he is entitle to five days grace periods from 15th which

should be excluded for the purpose of calculating damages. According to the learned Counsel for the respondent, the provident fund and other allied dues have to be deposited by the appellant by the 15th of next month in which the employee has worked in the establishment and dues become payable to him because the worker has already performed his job upto the last date of previous month. A grace period of five days is allowed to the employers for remitting the dues, ie upto 20th of next month. If the employer remits the dues on or after 21st of the month, the delay will be reckoned w.e.f. the 15th of the month to the date of actual remittance, for calculating damages. The Hon'ble High Court of Kerala considered the implication of Para 38 of EPF Scheme and also the grace period in ***Jewel Homes Pvt. Ltd Kochi Vs Employee Provident Fund Organisation***, 2012 II CLR 495 (KER.HC). Though the above decision pertains to the calculation of interest under Sec 7Q of the Act, the interpretation of Para 38 and the implication of the grace period in calculating interest in that case is squarely applicable to the present case also. After elaborately

considering Para 38 of EPF Scheme and other relating provisions in other Schemes, the Hon'ble High Court held that

*“Para 10 ‘On a plain reading of aforesaid, it is evident that under the Employees Provident Fund Scheme 1952, the Employee Deposit Linked Insurance Scheme 1976 and the Employee Pension Scheme 1995, the employer has to remit his share of contribution together with employees’ share of contribution within 15th of the close of every month. The contention raised by the petitioner, which was reiterated by the learned Counsel appearing for the petitioner is that, the period of 15 days has to be calculated from the end of the month in which the contribution is deducted and not from the end of the month in respect of which the salary from which the contribution deducted is paid. I am afraid that the said contention cannot be accepted. The Apex Court in **Organo Chemical India Vs Union of India** 1979(002)*

LLJ0416 SC interpreting Paragraph 38 of the Scheme held as follows:”

“Para 33. The initial responsibility for making payment of contribution of the employer as well as the employee lies on the employer. Para 30 of the scheme makes it incumbent on the employer that he shall, in the first instance pay both the contribution payable by himself and also on behalf of the member employed by him. Under Para 38, the employer is authorised before paying the member employee his wages in respect of any period or part of period for which contributions are payable, to deduct the employees contribution from his wages. It further provides that the deposit of such contribution shall be made by the employer within 15 days of close of every month, ie; a contribution for a particular month has got to be deposited by 15th of the month following. A

breach of any of these requirements is made a penal offence”

In the light of the binding decisions of the Apex Court the contention of the petitioner that it is liable to pay interest only if the contribution is not remitted within 15 days from the end of the month in which it is deducted from the wages paid to the employee cannot be accepted.”

The Hon'ble High Court also examined the implication of the grace period, in calculating penal interest under Sec 7Q of the Act and held that “Even assuming that as per the circular the petitioner was entitled to a grace period of five days, as the petitioner had not admittedly remitted the contribution within the said period of five days, the petitioner cannot escape from the liability to pay interest on the expiry of period of 15 days stipulated in paragraph 38 of the Scheme for the reason that the circular issued by the Central PF Commissioner cannot have the effect of amending the provisions contained in the scheme issued by the Central Government. I therefore find no reason to accept

the said contention". In view of the clear findings on the above issues, the claim of the learned Counsel for the appellant with regard to Para 38 of EPF scheme and regarding the grace period of five days cannot be accepted.

The learned Counsel for the appellant argued that the appellant was under a bonafide belief that the GNM bonded staff and other non enrolled staffs are not required to be enrolled to Provident Fund Scheme. The respondent vide its Annexure A1 Order dated 22.09.2009 decided the liability and the appellant remitted the amount immediately thereafter in instalments. According to the learned Counsel for the respondent, there was no contest with regard to the liability of the appellant, except the GNM bonded staff. Non-enrolment of employees is a clear violation of provisions of the Act and Schemes for which the appellant can be prosecuted. According to the Counsel, the appellant cannot therefore plead that there was no mensrea in belated remittance of contribution. Though the argument of the learned Counsel for the respondent is to some extend

correct, the appellant can be extended some relief as far as damages are concerned, as the appellant was under a bonofide belief that the trainees need not be enrolled to the fund.

6. Considering the facts, circumstances, pleadings and evidence in this appeal, I am inclined to hold that interest of justice will be met if the appellant is directed to remit 80% of the damages assessed under Sec 14B of the Act.

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

Sd/-

(V.Vijaya Kumar)
Presiding Officer