



सत्यमेव जयते

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

Present: Shri.V.Vijaya Kumar, B.Sc., LLM, Presiding Officer.  
(Tuesday the 2<sup>nd</sup> day of November 2021)

**APPEAL No. 687/2019**

Appellant : M/s. Kerala State Rural Womens  
Electronic Industrial Co-operative  
Federation Ltd.,  
C11, Padmasree, Elankom Gardens,  
Sasthamangalam  
Trivandrum – 695 010

By Adv. Sujini S

Respondent : The Regional PF Commissioner  
EPFO, Sub Regional Office  
Pattom, Trivandrum – 695 004

By Adv. Nita N S

This case coming up for final hearing on 03/08/2021  
and this Tribunal-cum-Labour Court on 02/11/2021 passed  
the following:

**ORDER**

Present appeal is filed from order No.KR/TVM/16068/  
PD/2019-20/3224 dated 05/09/2019 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 03/2006 – 12/2018. Total damages assessed is Rs.29,33,480/-. (Rupees Twenty nine lakh thirty three thousand four hundred and eighty only).

2. Appellant is a Co-operative Federation, an apex federation of eighteen co-operative societies. The respondent issued a summons dated 03.05.2019 to the appellant directing to show cause why damages under Sec 14B of the Act read with Para 32 A of EPF Scheme shall not be levied for belated remittance of contribution. A copy of the summons is produced and marked as Annexure A1. Appellant was also given an opportunity for personnel hearing on 28.05.2019 and 04.07.2019. The appellant submitted written clarification. It was clarified that the remittance made beyond the statutory ceiling pertaining to the past periods has been made with an intention to benefit the employees and hence no damages can be levied. Copies of the representations filed are produced and marked as Annexure A2 and Annexure A2(a). The respondent authority without considering the above written statements issued an order assessing damages. A copy of the said order

is produced and marked as Annexure A3. The finding of the respondent authority that the remittance was made without obtaining permission and joint options as required under Para 26(6) of EPF scheme is wrong. The appellant communicated their willingness to remit further amounts with retrospective effect, purely on gratis. A copy of the communication dated 20.02.2018 is produced and marked as Annexure A4. The respondent authority, in turn, replied that even though the statutory limit is Rs.15,000/- the employer can contribute over and above the statutory limit. True copy of the reply dated 22.02.2018 is produced and marked as Annexure A5. The impugned order is issued in clear violation of the order dated 16.05.2011 which is valid even for defaults. A copy of the circular dated 16.05.2011 is produced and marked as Annexure A7. The impugned order is issued on the wrong assumption that there was delay in payment of contributions. Damages can be levied only for deliberate and intentional delay.

3. The respondent filed counter denying the above allegations. The appellant establishment is covered under the

provisions of the Act. The appellant made some belated remittance for the months from 03/2006 – 12/2018. Any delay in remitting contribution will attract damages under Sec 14B of the Act read with Para 32 A of EPF Scheme. Hence a notice was issued to the appellant along with a detail delay statement. The appellant was also given an opportunity for personnel hearing. A representative of the appellant attended the hearing and filed written statement. On perusal of the written statement, it was clear that the appellant establishment was trying to extend undue benefits to its employees to claim higher pension under Employee's Pension Scheme, 1995 who were not eligible otherwise for such higher benefits. The action of appellant in remitting contributions over and above statutory ceiling has to be seen in the backdrop of some judgement of the Hon'ble High Court of Kerala allowing EPF pension on higher wages. As per the above judgements, the petitioners in those cases and their employers who were contributing on full wages to Provident Fund, as per provision containing Para 26(6) of EPF Scheme 1952 from the date of joining or from the date on which their salary exceeded the statutory wage ceiling limit, whichever is

earlier but limiting the contribution to pension fund upto the ceiling limit, were allowed to make book adjustments of those contributions remitted in Provident Fund. In those cases the employer and employees were contributing on full wages without limiting the wage ceiling regularly and without break, though they have not opted for pension on full wages as required in Para 11(3) of EPS 1995. The Hon'ble High Court took a view that the funds were already available with the respondent organisation and only a book adjustment is required to be done. In the present case, the amount was not available with respondent organisation and the appellant remitted the difference of employer contributions from 2006 onwards after a gap of 15 years. This is done without submitting any joint options as required under Para 26(6) of EPF Scheme 1952. The letter dated 22.02.2018 was only a clarificatory communication. It cannot be treated as a permission under Para 26(6) of EPF Scheme. The appellant is trying to extend undue benefits to its employees, who were otherwise not eligible for such benefits. By such an action, the sustainability of Pension Scheme is put under challenge. There is an element of mensrea on the part of the appellant as

the intention of the appellant is not genuine and bonafide. Annexure A7 circular, deals with accounting of contribution towards provident fund on amount of arrears on wage revision and levying of damages under Sec 14B. It deals with a situation in which wage enhancement is done from a back date. In the instant case, there is no such wage revision warranting lumpsum payment into pension fund.

4. The issue involved is whether the appellant establishment is liable to pay damages for belated remittance of contribution under Employee's Pension Scheme 1995. Employee's Pension Scheme was introduced in the year 1995. At the time when the Scheme was introduced, the statutory limit of contribution under the Pension Scheme was restricted to Rs.6500/- and the pension was payable on that amount only. There was a provision under the Scheme to opt for higher contribution. There were some establishments who were contributing under Employees Provident Fund Scheme on higher wages after exercising a joint option under Para 26(6) of EPF Scheme 1952. There was a batch of cases before the Hon'ble High Court of Kerala seeking to allow the

employees of such establishments to contribute under Employees' Pension Scheme on higher wages or on full wages. The Hon'ble High Court in its judgement pointed out that those establishments which are contributing on higher wages under EPF Scheme can opt for pension on full wages or higher wages since the contribution was already with the respondent organisation and there was only a requirement of book adjustment. Lot of employees of such establishment opted for higher pension and diverted the employer's share of contribution to the Pension Fund and got higher pension. According to the learned Counsel for the respondent, when the appellant establishment came to know about the same, they sought a clarification vide Annexure A4 letter dated 20.02.2018. The respondent organizations replied vide Annexure A5 dated 22.02.2018 clarifying the point. The appellant establishment thereafter, on their own, remitted the difference in pension fund contribution for the period from 15.04.2006 without understanding the financial and other consequences of their action. According to the learned Counsel for the respondent, the appellant establishment should have sought permission under Para 26(6) of EPF

Scheme 1952, before remitting higher contribution. The requirement under Para 26(6) is that the employer and employee shall file a joint application seeking permission to contribute on higher wages. According to the respondent, since this statutory requirement is not complied by the appellant, it cannot claim that they have taken permission from the respondent to remit contribution on higher wages. According to the Counsel for the appellant, there is no statutory obligation on the part of the establishment to remit contribution on higher wages. However the same is done as a gratis to its employees' and therefore the contribution on higher wages will not attract penal damages. It is difficult to agree with the argument of the learned Counsel of the appellant. Damages and interests are levied on any belated remittance into the Provident Fund or Pension Fund Account of its employees. The question is not whether the appellant establishment is remitting the contribution as a gratis or otherwise. It is the case of the learned Counsel for the respondent that since there is a violation of the provisions of the Scheme and since the appellant establishment is trying to extend undue benefits to its employees through back door,



the appellant cannot plead that there is no mensrea in belated remittance of contribution. The argument of the learned Counsel for the respondent cannot be accepted. The appellant establishment is not benefited by remitting additional contribution in the Pension Account of its members. Only their employees are benefited. Violation if any, claimed by the respondent cannot be taken as intentional and it is not possible to say that there is mensrea in belated remittance of such contributions. The learned Counsel for the respondent argued that the Pension Fund itself is under strain and therefore any additional liability on Pension Fund will create more problems and the sustainability of Pension Fund will be under challenge. It is true that it will create additional liability on Pension Fund since the respondent organisation is liable to pay pension on higher wages to the member and his wife for life and also children below the age of 18. It is further seen from the Annexure A1 statement that the delay involved is huge varying from 10 days to 4671 days. The additional liability created on Pension Fund by such delay in remitting contribution cannot be compensated by interest under

Sec 7Q alone. The appellant establishment is liable to remit damages on the belated remittance of pension contribution. If not, it will create an unhealthy precedent. The learned Counsel for the appellant also relied on Annexure A7 circular dated 16.05.2007. As rightly pointed out by the learned Counsel for the respondent, the said circular is relevant only in respect of retrospective pay revision and is not relevant to the facts of the present case.

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

6. Hence the appeal is partially allowed, the impugned order is modified and appellant is directed to remit 70% of the damages.

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