



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

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

Monday the, 4<sup>th</sup> day of April 2022)

**APPEAL No. 98/2019**

(Old No. ATA. 945(7)2014)

Appellant : District Project Officer  
Sarva Shiksha Abhiyan,  
Govt. Girls High School Compound  
Thiruvalla.P.O.  
Pathanamthitta – 689 101

By Adv. Swamidasan.K.N

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

By Sri.John Samuel  
Asst. PF Commissioner,  
EPFO, Trivandrum

This case coming up for final hearing on 15.12.2020 and this Tribunal-cum-Labour Court on 04.04.2022 passed the following:

**ORDER**

Present Appeal is filed from order No. KR/26338/TVM/PD/2014/4748 dated 17.07.2014 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 11/2003 –

11/2010. The total damages assessed is Rs. 21,53,612/- (Rupees twenty one lakh fifty three thousand six hundred and twelve only)

2. The appellant is a state implementing society of Ministry of Human Resource Development, Government of India registered under Societies Act of 1994. Sarva Shiksha Abhayan frame work started from 2003 onwards and the appellant establishment has been brought under the purview of Act w.e.f. 30.05.2003 during 2010 after a lapse of 7 years. The respondent authorities assessed and recovered the dues from the appellant establishment by attaching the bank account on 24.03.2011. The respondent initiated action for assessment of damages for belated remittance of contribution and proposed to levy the damages to the tune of Rs. 21,53,612/- and interest under Sec 7Q for an amount of Rs. 11,23,669/-. The appellant also remitted an amount of Rs.4,96,042/- on 27.09.2013 towards short remittance of contribution for the period from 2003-04 to 2011-12. From 11/2010 onwards the appellant is regular in compliance. The funds for the project are provided for specific activities as approved in the annual work plan budget of Government of India. There was no wilful defiance of law or latches on the part of the

appellant. The appellant remitted all the contributions as required by law. The respondent authority failed to take into account the fact that there was no intentional delay on the part of the appellant in delayed remittance of contribution. The respondent ought to have taken into consideration various relevant circumstances like the number of default, the extend of delay and frequency of defaults etc before arriving at the quantum of damages. The appellant had no intention to wilfully disobey any statutory obligation. Penalty cannot be saddled on somebody who is not guilty. The respondent authority ought to have considered the mitigating circumstances while assessing damages. The respondent authority failed to exercise its discretion available under Sec 14B of the Act and Para 32B of EPF Scheme.

3. According to the learned Counsel for the respondent, the appellant is liable to remit provident fund contribution within 15 days of close of every month. The appellant remitted the dues belatedly for the period from 11/2003 – 11/2010. The delayed remittance attracts damages under Sec 14B of the Act read with Para 32A of EPF Scheme. Hence a notice dated 16.01.2014 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 him. A detailed delay statement was also forwarded along with the notice. The appellant was also given an opportunity for personnel hearing on 12.03.2014. A representative of the appellant attended the hearing and requested for waiver of damages and interests.

4. In the present appeal, the appellant challenged the impugned order under Sec 14B as well as under Sec 7Q of the Act. The EPF Appellate Tribunal while admitting the appeal directed the appellant to deposit the interest under Sec 7Q as there is no provision under Sec 7(I) to file an appeal from Sec 7Q order. The appellant did not remit the interest. When the matter was taken up for hearing, the appellant sought permission to remit the interest demanded under Sec 7Q and permission was granted. Accordingly the appellant remitted the interest demanded under Sec 7Q of the Act amounting to Rs. 11,23,669/-.

5. According to the learned Counsel for the appellant, the appellant establishment was covered w.e.f. 30.05.2003 in the year 2010 after a lapse of 7 years. According to him, the appellant cannot be held liable for damages for delayed remittance of

contribution for this period. According to the learned Counsel for the respondent, the provisions of the Act, acts on its own force and there is no requirement of allotting a code number to an establishment for them to start compliance. Once the statutory requirements are met, the appellant is required to start compliance under the provisions of the Act and Schemes thereunder. Since the appellant fails to start compliance, the respondents issued a code number in 2010 assessed the dues under Sec 7A of the Act and recovered the outstanding dues from the appellant establishment by attaching the bank account of the appellant.

6. The learned Counsel for the appellant also pleaded that there was no intentional delay or wilful defiance of law on the part of the appellant. According to him, there is no mensrea in belated remittance of contribution by the appellant establishment. 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.

7. The appellant establishment is an organisation coming under the control of the Central and State Government. The appellant is involved in the development of primary education in the country by developing the course of primary education and

infrastructure of schools. The funds are allocated by HRD Ministry of Government of India. The appellant establishment is covered retrospectively from May 2003 in the year 2010. There is some justification in the claim of the learned Counsel for the appellant. The delayed remittance of contribution was due to the fact of retrospective coverage. It is true that the appellant is required to comply under the provisions of the Act when the statutory requirements are met. Taking into account the special circumstances pleaded by the learned Counsel for the appellant, the appellant establishment is entitled for some relief with regard to the damages under Sec 14B of the Act.

8. Considering the facts, circumstances, pleadings and arguments 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.

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.

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