



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

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

(Wednesday the 13th day of April, 2022)

APPEAL No. 219/2018 (Old No. A/KL-07/2017) &
320/2019 (Old No. ATA- 230(7) 2015)

Appellant

Malappuram District
Co-operative Bank,
P.B.No.8
Malappuram – 676 505.

By Adv. E.S.M Kabeer

Respondent

The Regional PF Commissioner
EPFO, Sub Regional Office
Eranhipalam
Kozhikode – 673006.

By Adv. Dr. Abraham P.Meachinkara

This case coming up for final hearing on
21/09/2021 and this Tribunal-cum-Labour Court on
13/04/2022 passed the following:

O R D E R

Appeal No. 219/2018 is filed against order No. KR /
KK /2722 /Enf-3(1) /14B / 2016 / 5308 dt. 09/12/2016
assessing damages U/s 14B of EPF & MP Act,1952 (hereinafter
referred to as ‘the Act’) for belated remittance of contribution

for the period from 07/2009 to 06/2015. The total damages assessed is Rs. 5,92,000/-.

2. **Appeal No.320/2019** is filed against order No. KR/KK/2722/Enf-3(1)/14B/2015/11140 dt. 08/01/2015. assessing damages U/s 14B of EPF & MP Act,1952 (hereinafter referred to as 'the Act') for belated remittance of contribution for the period from 07/2009 to 03/2014. The total damages assessed is Rs. 2,18,52,590/-.

3. Since common issues are taken up in both the appeals, the same is heard together and disposed of by a common order.

4. The appellant is Malappuram District Co operative Bank Ltd. The appellant bank is covered under the provisions of the Act and remittances were being made to the respondent organization with effect from 01/07/1970. Govt of Kerala by Notification No. GO (P) No. 103/2005/Co-op dt. 29/04/2005 introduced Self Financing Pension Scheme for the Employees of the State Co-operative Bank and Fourteen District Co-operative Banks of Kerala. Consequently the respondent excluded these institutions from the purview of the Act U/s 16 (1) (b) with effect from 01/04/2005 as per order No KR/RO/Enf-1(8)/09

dt. 26/05/2009. The respondent informed the appellant not to remit the contributions under the Scheme as per communication dt. 07/07/2009. A true copy of the order of exclusion is produced as Annexure A1. Government of Kerala directed the appellant to enroll all the employees to Co-operative Employees Pension Board constituted as per GO dt. 29/04/2005 and Co-operative banks become members of Pension Board. Consequently the contribution of the employees has been remitted to the State Pension Board. Some of the employees of the appellant bank challenged the exclusion in W.P.(C) No. 35573/2010. The writ petition was disposed off by the Hon'ble High Court vide Annexure A2 judgment. The said judgment was confirmed in Writ Appeal No. 1217/ 2012. The State Pension Board challenged the judgment before the Hon'ble Supreme Court of India. The appellant did not file any appeal before the Hon'ble Supreme Court as any decision in the SLP filed by the State Pension Board is binding on them. Before quashing of the exclusion order of the respondent by the Hon'ble High Court, the appellant remitted contribution before the State Pension Board and an amount of Rs.4,80,56,360/- is held up in the Pension Board and Rs.2,98,47,569/- was already

disbursed to 114 retired employees. An amount of Rs.3 crores was deposited with the government as security under the Provident Fund Trust Act. In the meanwhile some employees of the appellant filed Writ Appeal No. 36/2014 against the judgment in Writ Petition No. 17617/2012, passed in favour of the appellant. The Division Bench of the Hon'ble High Court of Kerala set aside the judgment in W.P.(C) No. 17617/2012 in Writ Appeal No. 36/2014. Thereafter the appellant started remitting contribution with the respondent. True copy of the judgment in Writ Appeal No.36/2014 is produced and marked as Annexure A3. The respondent authority thereafter initiated an enquiry Under Sec 7A of the Act, to determine the dues payable from July 2009 onwards. The respondent authority issued an order assessing dues to the tune of Rs.15,97,89,462/-. The appellant approached the Hon'ble High Court of Kerala in W.P.(C) No.12167/21017 and the Hon'ble High Court was pleased to pass an interim order of stay. A true copy of the stay order is produced and marked as Annexure A4. The appellant remitted an amount of Rs.6,25,40,358/- against the assessed amount U/s 7A of the Act. The respondent initiated an enquiry U/s 14B for assessing damages for belated

remittance of contribution. A representative of the appellant attended the hearing and filed a written statement. A copy of the written statement dt. 01/04/2015 is produced and marked as Annexure A5. The specific contention of the appellant was that the delay in remittance was due to the exclusion and subsequent writ petitions and writ appeals pending before the Hon'ble High Court of Kerala. Ignoring the contentions of the appellant, the respondent issued the impugned order. The appellant approached the Hon'ble High Court of Kerala in W.P.(C) No. 3913 of 2015 and the Hon'ble High Court granted one month stay on the condition that the appellant may file appeal before this Tribunal. True copy of the said order is produced and marked as Annexure A6. The Hon'ble Supreme Court of India in **Organo Chemical Industries Vs Union of India**, 1979 (4) SCC 573 held that the expression damages occurring U/s 14 B is in substance a penalty imposed on the employer for breach of statutory obligations. In **ESIC Vs HMT and Another**, 2008 (3) SCC 35 the Hon'ble Supreme Court held that there should be a clear finding on the existence of mensrea on the part of the employer. The respondent authority failed to notice that the appellant had already remitted Rs.4,80,56,368/-before the

Kerala State Co-operative Employees Pension Board and further an amount of Rs.2,98,47.569 were already settled to 114 retired employees. The respondent authority also failed to notice that the Pension Board has challenged the judgment in Writ Appeal No. 1217/2012 before the Hon'ble Supreme Court and matter is pending. The respondent authority has already recovered an amount of Rs.1,09,57,794/- towards interest U/s 7Q of the Act.

5. The respondent filed counter denying the above allegations. The appellant delayed remittance of contribution and therefore the respondent initiated action U/s 14B of the Act. Notice was issued to the appellant along with the delay statement. A representative of the appellant attended the hearing and filed a written statement. The Kerala State Co-operative Bank and 14 District Co-operative banks including the appellant bank filed application before the respondent organization seeking exemption from Employees Pension Scheme 1995 U/s 17(1)(C) of the Act. The above said application was filed in view of the notification dt. 29/04/2005 issued by Government of Kerala notifying Self Financing Pension Scheme for the employees of Kerala State Co-operative Bank and District Co-operative banks. The respondent organization found

that it is not feasible to grant exemption from Employees Pension Scheme 1995, since the benefits granted under Self financing Pension Scheme was not favourable to the employees. Accordingly Kerala State Co-operative Bank and 14 district Co-operative banks were excluded from the purview of the Act U/s 16 (1) (b) of the Act. Subsequently Government of Kerala issued notification dt. 30/06/2009 notifying the exclusion with effect from 01/04/2005. Several writ petitions were filed before the Hon'ble High Court of Kerala challenging the exclusion notification dt. 30/06/2009. The learned Single Judge of the Hon'ble High Court of Kerala by a common judgment in 33 writ petitions quashed the notification vide its judgment dt. 31/01/2012. As the appellant bank was excluded, it discontinued compliance under the provision of the Act. The judgment of the learned Single Judge was challenged in Writ Appeals before the Division Bench of the Hon'ble High Court of Kerala. The Division Bench of the Hon'ble High Court of Kerala vide its judgment dt. 27/06/2012 dismissed the Writ Appeal by a common judgment. From the above judgment the Pension Board filed SLP No. 37019/2012 and the State Government filed another SLP No. 38054/2012. Both the SLPs are pending

and the Hon'ble Supreme Court refused to grant any stay to the judgment of the Division Bench of the Hon'ble High Court of Kerala. Hence, as on date, there is no exclusion for the appellant bank from the provisions of the Act and therefore they will have to continue compliance. Since there was delay in remittance of contribution by the appellant establishment the respondent initiated action for assessing damages U/s 14B of the Act. A detailed statement was forwarded along with the notice and the appellant was given an opportunity for personal hearing. A representative of the appellant attended the hearing and pleaded the pendency of the writ petitions and exclusions as a ground for delayed remittance of contribution. The respondent authority found that the ground pleaded by the appellant are not valid and the appellant ought to have started compliance from June 2012 after the dismissal of the Writ Appeal by the Hon'ble High Court of Kerala. The Hon'ble Supreme Court of India in **Chairman, SEBI Vs Sriram Mutual Fund**, 2006 (5) SCC 361 held that mensrea is not an essential ingredient for contravention of provisions of a civil Act.

6. The learned Counsel for the appellant pointed out that there is a overlap in periods of assessment under Sec 14B of

the Act in the two impugned orders. In the order dt. 28/07/2015 the damages assessed is for the period 07/2009 to 10/2014 and in the impugned order dt. 19/12/2016 the damages are again assessed for the period from 07/2009 to 11/2015. Accordingly the learned Counsel for the respondent was directed to seek instructions from respondent authority regarding the overlap pointed out by the learned Counsel for the appellant. The learned Counsel filed a memo to the effect there is no overlap and some left out amounts for the period from 07/2009 to 11/2015 made, during 01/06/2015 to 20/06/2016 are taken into account in the impugned order dt.19/12/2016. The learned Counsel further pointed out that it is evident from said orders, as the same is mentioned in paragraph seven of order dt.28/07/2015 and paragraph six of the order dt. 19/12/2016.

7. There is no dispute regarding the facts of the case. The appellant establishment is covered under the provisions of the Act. The appellant establishment sought exemption from Employees Pension Scheme 1995, since Government of Kerala notified a Self Financing Pension Scheme for the Employees State Co-operative Bank and 14 District Co-operative banks

including the appellant. The respondent organization examined the request and found that it was not possible to grant exemption U/s 17(1)(C) of the Act and therefore issued an exclusion order U/s 16(1)(b) of the Act. Government of Kerala also issued notification dt.30/06/2009 excluding the Co-operative banks from the purview of the Act with effect from 01/04/2005. Some of the employees challenged the notification before the Hon'ble High Court of Kerala and Single Bench of the Hon'ble High Court vide its judgment dt.01/06/2012 quashed the Government notification dt. 09/12/2009. The Division Bench of the Hon'ble High Court also dismissed the Writ Appeals vide its judgment dt.27/06/2012. The appellant did not challenge the judgment of the Division Bench. However the Kerala State Co-operative Employees Pension Board and Government of Kerala filed a SLPs before the Hon'ble Supreme Court and the same is pending. However the Hon'ble Supreme Court refused to grant any stay to the judgment of the Division Bench of the Hon'ble High Court of Kerala.

8. According to the learned Counsel for the respondent, the appellant establishment is required to comply under the

provisions of the Act atleast from the date of dismissal of the Writ Appeals by the Divisional Bench of the Hon'ble High Court of Kerala on 27/06/2012. However the appellant failed to remit the contributions and therefore the respondent authority initiated action U/s 7A of the Act assessed the dues and started recovery action. The appellant establishment approached the Hon'ble High Court of Kerala and obtained a stay for the assessment order. However the appellant remitted part of the amount on thereon. The respondent initiated action U/s 14B to assess damages for belated remittance of contribution.

9. According to the learned Counsel for the appellant, the delay in remittance was due to the fact that the appellant remitted a part of the amount with the Co-operation Pension Fund Board and part of the amount was already disbursed directly to the retired employees. According to him, the appellant establishment had financial constraints and that is one of the reasons for delayed remittance of provident fund contribution. Further the learned Counsel also pointed out that the delay was consequent on the exclusion granted by the

respondent organization and consequent litigations before the Hon'ble High Court of Kerala.

10. The learned Counsel for the respondent pointed out that if the grounds taken by the appellant are bonafide, they ought to have remitted the contribution atleast in June 2012, when the Division Bench of the Hon'ble High Court of Kerala dismissed the Writ Appeal. He further pointed out that withholding the provident fund contribution after June 2012 is an offence under the provisions of the Act and withholding the employees' share of the contribution deducted from the salary of the employees is an offence U/s 405 & 406 of Indian Penal Code and therefore amounts to criminal breach of trust.

11. It is true that granting of exclusion and the consequent litigations before various Courts is a reason for delayed remittance of contribution. However, as rightly pointed out by the learned Counsel for the respondent, the appellant ought to have remitted the contributions immediately after the final decision by the Division Bench of the Hon'ble High Court of Kerala on 27/06/2012. There is absolutely no justification for further delay in remittance of contribution as the appellant decided not to challenge the decision of the Division Bench of

the Hon'ble High Court before the Hon'ble Supreme Court. The claim of remittance to the Kerala State Co-operative Employees Pension Board is not a ground for delay of provident fund contribution as the Pension Board is handling only pension for which a part of employers' share of contribution is diverted. There is no justification for delaying the remittance of employees' share of contribution, even assuming that the appellant is entitled for exemption from Employees Pension Scheme 1995.

12. The learned Counsel for the appellant further argued that there was no intentional delay and there is no mensrea in belated remittance of contribution. The Hon'ble Supreme Court of India examined the applicability of mensrea in a proceedings U/s 14B of the Act. In **Horticulture Experiment Station Gonikoppal, Coorg Vs Regional PF Organisation**, Civil Appeal No. 2136/2012, the Hon'ble Supreme Court after examining the earlier decisions of court in **Mcleod Russel India Ltd Vs RPFC**, 2014 (15) SCC 263 and **Assistant PF Commissioner Vs The Management of RSL Textiles India (Pvt) Ltd**, 2017 (3) SCC 110 held that

“ Para 17: Taking note of three Judge Bench judgment of this Court in **Union of India Vs. Dharmendra Textile Processor 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 U/s 14B of the Act 1952 and mensrea or actus reus is not an essential ingredient for imposing penalty/damages for breach of civil obligations/liabilities”

13. As already pointed out the respondent organization granted exclusion to the appellant establishment vide order dt.26/05/2009 and the same was later ratified by the government of Kerala also. However the single as well as the Division Bench of the Hon'ble High Court of Kerala in writ petitions and writ appeals quashed the notifications issued by the government and Regional PF Commissioner and there was some delay in resolving the dispute. However, there is no justification for further delay in remittance of contribution by

the appellant establishment. Taking into account all the above facts, the appellant establishment is entitled for some relief as far as damages U/s 14B is concerned.

14. The learned Counsel for the respondent pointed out that there is no provision U/s 7(I) to challenge an order U/s 7Q of the Act. The learned Counsel for the respondent pointed out that no appeal is maintainable from an order issued U/s 7Q of the Act. On a perusal of Sec 7(I) of the Act, it is seen that no appeal is provided from an order issued U/s 7Q of the Act. In **Arcot Textile Mills Vs RPFC**, AIR 2014 SC 295 the Hon'ble Supreme Court held that no appeal is provided from an order issued U/s 7Q of the Act. The Hon'ble High Court of Kerala in **District Nirmithi Kendra Vs EPFO**, W.P.(C) 234/2012 also clarified that no appeal can be prefer against an order issued U/s 7Q of the Act. In **M/s ISD Engineering School Vs EPFO**, WP(C) No. 5640/2015(D) and also in **St. Mary's Convent School Vs APFC**, WP (C) No. 28924/2016 (M) held that the order issued U/s 7Q of the Act is not appealable.

15. 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 70% of the damages assessed U/s 14B of the Act.

Hence the appeals are partially allowed, the impugned orders U/s 14B are modified and the appellant is directed to remit 70% of the damages. The appeal against 7Q order is dismissed as not maintainable.

Sd/-

(V. Vijaya Kumar)
Presiding Officer