



सत्यमेव जयते

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

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

(Thursday the 28th day of April, 2022)

APPEAL No.25/2020

Appellant

Kaduthuruthy Urban
Co-operative Bank ,
Kaduthuruthy,
Kottayam – 686 604

By Adv. Shaji Thomas &
Adv. Jen Jaison

Respondent

The Assistant PF Commissioner
EPFO, Thirunakkara,
Kottayam -686 001

By Adv. Joy Thattil Ittoop

This case coming up for final hearing on 24/02/2022
and this Tribunal-cum-Labour Court on 28/04/2022 passed
the following:

ORDER

Present appeal is filed from a composite order No.
KR/ KTM /1541907/ APFC/ Penal Damage /14B /2019-20 /
11183 dt. 10/01/2020 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 1/8/2010 to

30/03/2019. (Remittance made during 01/08/2010 to 30/09/2019.) The total damages assessed is Rs. 5,80,759/-.

2. The appellant is an Urban Co-operative Bank having 62 permanent employees and 11 contingent employees. The appellant was maintaining its provident fund account at the District Co-operative Bank, Kottayam and remitting the provident fund contribution of its employees from August 2010 to February 2017. An Enforcement Officer conducted an inspection during February 2017 and directed that the appellant to remit the contribution in respect of contingent staff with the respondent organization. The appellant immediately registered itself with the respondent organization and transferred the provident fund contribution in respect of 11 contingent employees to their respective provident fund account. The resolution passed by the Director Board on 20/07/2017 is produced and marked as Annexure A1. Since the salary details of the employees are required to be uploaded from August 2008 to February 2017, there was some delay in remittance of contribution. Since there was delay in transferring the money the respondent issued a notice dt. 05/11/2019 to show cause why damages U/s 14B of the Act shall not be

recovered. The appellant appeared and filed a detailed statement. The respondent authority did not properly appreciate the contentions of the appellant and issued the order which is produced and marked as Annexure A2. The delay in transferring the amount was not due to any motive on the part of the appellant. A true copy of the bank statement issued by the District Co-operative bank in respect of provident fund account maintained by the appellant along with a tabular representation showing the distribution of provident fund accounts remitted with respect to the permanent and contingent employees is produced and marked as Annexure A3. It would show there was no default in transferring funds to the bank. A true copy of the tabular representation showing the details of the transfer of funds to EPF Account during various months from 08/2010 to 10/2016 is produced and marked as Annexure A4.

3. The respondent filed counter denying the above allegations. The appellant is an establishment covered under the provisions of the Act. Employees Enrollment Campaign 2017 was an amnesty Scheme for EPF defaulters introduced by Ministry of Labour and Employment, Government of India by incorporation of Para 82A in EPF Scheme 1952 providing an

opportunity to employers to voluntarily come forward and declare the details of all non-enrolled employees who were entitled to provident fund membership between 01/04/2009 to 31/12/2016. The Scheme was in force was 01/01/2017 to 31/03/2017 and further extended till 30/06/2017. Under Para 82A (2), the employer is required to furnish a declaration in a specified Proforma, in respect of membership of the employees who were required or entitle to become member of the fund. As per Para 82A (3) once a declaration is furnished, a employer is required to remit the employers contribution payable in accordance with provisions of the Scheme and the employees contribution, if any, deducted from the employees' along with interest payable in accordance with Sec 7Q of the Act and the employer was also required to remit a nominal damages of Re.1/- per annum, within 15 days of furnishing the declaration. The time limit for remitting the dues once the declaration has been furnished was 15 days from the date of the declaration. The incentive for the employers under the Scheme include waiver of the employers share, provided the same was not deducted from the wages of the employees, waiver of administrative charges and reduction of damages to Re.1/- per

annum. As per Para 82 A(6), if the employer fails to remit the contribution within 15 days of furnishing the declaration, the dues, interest and damages payable in respect of the declaration furnished under the campaign, such declaration shall be deemed to have not being furnished under the campaign. True copies of the notifications are produced and marked as Annexures R1 to R6. The respondent initiated present action since there was delay in remittance of contribution. The appellant submitted a declaration under the campaign on 13/02/2017. But the appellant failed to remit the dues alongwith interest @12% and damages @Re.1/- per annum within 15 days from 13/02/2017, thereby invalidating the declaration submitted and loosing the benefits under the campaign. The appellant remitted the dues under the Employees Enrollment Campaign 2017 on 28/03/2017, 30/03/2017, 31/03/2017, 04/04/2017, 17/04/2017, 26/04/2017, 06/06/2017, 08/06/2017, 17/06/2017, 20/06/2017 and 23/06/2017. The remittance were delayed beyond the 15 days as stipulated from the date of declaration on 13/02/2017. The appellant is not therefore entitled for the aminsty provisions as per the Enrollment Campaign 2017. The respondent was issued

the summons for hearing U/s 14B alongwith a statement showing the amounts payable U/s 7Q and 14B it was acknowledged by the respondent. The statement reflects the methodology for calculation of damages under Sec 14B and interest Under Sec 7Q of Employees Enrollment Campaign 2017. Hence it is not correct to plead that the appellant was not aware as to how the damages were arrived at. The claim of the appellant that EPFO website was not functional is false and denied. Lakhs of establishments, all over India, remitted their contribution between to 14/02/2017 and 28/02/2017. The appellant establishment is only entitled to retain the pension contribution of the employees with them and the appellant is liable to remit the provident fund contribution of all the employees within 15 days of close of every month with the respondent organization.

4. The appellant establishment delayed remittance of contribution in respect of its employees for the period 08/2010 to 03/2019. Since the appellant did not enrolled the 11 contingent staff to the fund, they attempted to take the benefit of the Employees Enrollment Campaign 2017 notified by Government of India. As per the said amendment, Para 82A was

incorporated in EPF Scheme. As per the Employees Enrollment Campaign and Para 82A (2) of the Scheme, an establishment can declare their non-enrolled employees and remit the contribution within 15 days of filing their declaration. The incentive given to the employers were that they need to remit only the employers' share of the contribution, if the employees share is not deducted from the salary of the employees, alongwith interest U/s 7Q of the Act and damages of Re. 1/- per annum U/s 14B of the Act. The administrative charges also was waived as per the Campaign. The appellant establishment filed a declaration on 13/02/2017 but failed to remit the contribution within 15 days along with interest and damages stipulated as per the Scheme. As per Para 82A (6), if the employer fails to remit the contribution interest and damages within 15 days of furnishing the declaration, it will be treated as an invalid declaration. Since the appellant failed to remit the contribution along with interest and damages within 15 days of filing the declaration, the appellant cannot claim the benefits under the campaign.

5. The learned Counsel for the appellant contended that there was no delay in remittance of contribution. According to

the learned Counsel for the respondent the remittance of the contribution in the bank account of the appellant establishment will not satisfy the statutory requirement U/s 6 of the Act and therefore the appellant is liable to remit damages as stipulated U/s 14B of the Act.

6. The learned Counsel for the appellant relied on the decision of the Hon'ble Supreme Court in **Assistant PF Commissioner EPFO and Another Vs RSL Textiles India Pvt. Ltd**, 2017 KHC 6037 and the judgment of the Division Bench of Kerala High Court in **Regional PF Commissioner Vs Harrisons Malayalam Ltd**, 2013 (3) KLT 790, to argue that when there is no intentional delay the quantum of damages shall be considered appropriately and also that mensrea is a relevant consideration while deciding the quantum of damages U/s 14B of the Act .

7. 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 RPF**, 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”

8. It is seen that the appellant establishment was remitting its provident fund contribution with District Co-operative Bank. The appellant establishment is liable to be covered under the provisions of the Act and therefore they are required to comply under the provisions of the Act. As a subsequent development the appellant establishment is exempted from contributing under Employees Pension Fund

Scheme 1995 and with regard to provident fund and EDLI the appellant is required to comply under the provisions of the Act and Schemes. The appellant was not extending the benefits to the contingent staff. Therefore they tried to avail the Employees Enrollment Campaign 2017 wherein the Government of India has provided some incentive for enrolling the non-enrolled persons. As rightly pointed out by the learned Counsel for the respondent the appellant could not avail the benefits as they failed to satisfy the requirement of remitting the contributions, interest and damages @ Re.1/- per annum within 15 days of filing the declaration. Since the appellant could not avail the benefits, it was required to remit damages as per Sec 14B of the Act. As pointed out by the learned Counsel for the respondent, the appellant cannot escape the liability to pay damages for belated remittance of contribution. However taking into account the special circumstances of this case the appellant can be given some accommodation with regard to levy of damages.

9. 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 as per impugned order.

Hence the appeal is partially allowed, the impugned order is modified and the appellant is directed to remit 70% of the damages assessed U/s 14B of the Act.

Sd/~

(V. Vijaya Kumar)
Presiding Officer