



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

सत्यमेव जयते

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

(Friday the 29th day of April , 2022)

APPEAL No.50/2020

Appellant

Ernakulam Regional Co-operative
Milk Producers Union Ltd.,
Kottayam Diary
Vadavathoor
Kottayam – 686 010

By M/s. B.S. Krishnan Associates

Respondent

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

By Adv. Joy Thattil Ittoop

This case coming up for final hearing on 27/04/2022 and this Tribunal-cum-Labour Court on 29/04/2022 passed the following:

ORDER

Present appeal is filed from a composite order No. KR/KTM / 1828 / APFC / Penal Damages/14B&7Q/ 2019-2020/11253 dt. 14/01/2020 assessing damages U/s 14B of EPF & MP Act, 1952 (hereinafter referred to as ‘the Act’.) and 7Q respectively for belated remittance of contribution for the

period from 03/2004 to 08/2006. The total damages assessed is Rs. 16,771/-. The interest demanded U/s 7Q of the Act for the same period is also being challenged in the appeal.

2. The appellant is a Co-operative Society registered under the Co-operative Societies Act, engaged in producing, processing and marketing of Milk and Milk products. It is covered under the provisions of the Act. The appellant establishment never defaulted in payment of contribution. The appellant establishment, on the basis of the Board Resolution dt. 06/08/1984 has been remitting provident fund contribution without any upper limit on eligible wages. The statutory auditors objected to the same in their report for the year 1994-1995. The Government of Kerala at the time of review of audit objections directed the Kerala Co-operative Milk Marketing Federation to limit the contribution to provident fund to the statutory limit of Rs.6500/-. Some of the Officers of the Federation approached the Hon'ble High Court of Kerala. The Hon'ble High Court did not interfere with the decision of government and therefore dismissed the original petition. The Board of Directors of the Federation, on 02/12/2003, decided to comply with the directions issued by the Government and limit the contribution

of provident fund payable by the employer strictly in accordance with EPF Scheme. The order of KCMMF dt. 09/12/2003 is produced and marked as Annexure 1. Accordingly the appellant started remitting the employers' share of contribution from March 2004 restricting to the existing the statutory limit of Rs. 6500/-. In the meanwhile the Hon'ble High Court of Kerala in Writ Appeal No. 1591/2003 passed an interim order directing the Milma to deposit the amount in excess of statutory limit in a separate account in a nationalized bank and in case the employees succeed in this case, the amount shall be deposited in their provident fund account along with 9% interest thereon. A copy of the interim order dt. 09/03/2004 in Writ Appeal No. 1591/2003 is produced and marked as Annexure 2. Accordingly KCMMF issued an order dt.19/03/2004 directing to implement the interim order by depositing the provident fund contribution in excess of the statutory limit in a separate bank account in a nationalized bank. Copy of the order dt.19/03/2004 is produced and marked as Annexure 3. Accordingly the appellant remitted the employers share of contribution from March 2004 till August 2006 and deposited the contribution in excess of statutory limit in a separate bank account as directed by the

Hon'ble High Court of Kerala. Thereafter as per the judgment of the Hon'ble High Court of Kerala, the appellant decided to remit the employers' share of contribution on the total salary with effect from October 2006. It was also decided to withdraw the deposited account from the separate account and the remit the same to the provident fund account of the employees. Copy of the order dt. 23/12/2006 is produced and marked as Annexure 4. The appellant complied with the directions of the Hon'ble High Court and there was no delay on the part of the appellant. While so, the respondent issued the summons dt.18/10/2019 directing the appellant to show cause why damages and interest shall not be levied. A copy of the summons is produced and marked as Annexure 5. In Annexure 5 it is stated that on verification of Form 3A with office records in respect of Shri,Josekutty M.M (KR/KTM/1828/192) who applied for pension on higher wages as per the judgment of the Hon'ble High Court of Kerala in W.P.(C) No. 25435/2014, it is observed that for the period from 03/2004 to 08/2006 the remittance towards employers' share is limited to statutory limit in contravention of the provisions of Para 26 of EPF Scheme. However the employers' share is seen to have been remitted on full salary to the date of leaving service. It

is noted that the defaulted amount was remitted on 13/03/2007 for the said member. Hence it is a belated payment for which the appellant is liable to pay damages. Further the respondent also demanded the damages of Rs.16,771/- and Rs. 5,488/-towards interest. A representative of the appellant attended the hearing and explained the true facts. The Government of Kerala vide letter dt.11/02/2008 granted permission to Milma to continue to remit provident fund contribution without any salary limit. A copy of the order of government of Kerala dt. 11/02/2008 is produced and marked as Annexure 7. The respondent without waiting for the appeal period to be over issued an order of attachment dt.18/03/2020. A copy of the said order is produced and marked as Annexure 8. Immediately on receipt of the order the respondent send a letter dt.15/04/2020 requesting to withdraw the attachment. A copy of the said letter is produced and marked as Annexure 9. The respondent authority proceeded on the mistaken understanding of law that in all cases of delay there shall be levy of damages. The respondent failed to consider the mitigating circumstances pleaded before the respondent. There was no mensrea or actusreus or any contumacious conduct on the part of the appellant with regard to delay in payment of

contribution. In spite of the extenuating circumstances explained during the proceedings under Sec 14B, the respondent imposed a penalty of Rs.16,771/-. The Hon'ble Supreme Court in **ESIC Vs HMT Ltd**, AIR SC 1322, **Assistant PF Commissioner Vs RSL Textile India Pvt Ltd**, 2017 (3) SCC 110 and the Hon'ble High Court in **RPFC Vs Harrisons Malayalam Ltd**, 2013(3) KLT 790 held that existence of mensrea is an essential condition for invoking the powers U/s 14B of the Act .

3. The respondent filed counter denying the above allegations. The appellant is covered under the provisions of the Act. Shri. Josekutty M.M is a member of the appellant establishment and the appellant failed to remit his provident fund contribution as required under 26 (6) of EPF Scheme for the period 03/2004 to 08/2006 within the stipulated time. Shri. Josekutty M.M applied for pension on actual wages on the basis of the judgment of Hon'ble High Court of Kerala dt.31/10/2014 in W.P.(C) No. 25435/2014. On verification of Form 3A it was found that there was delay in remittance of employers' share of contribution for the period 03/2004 to 08/2006. However the employers' share of contribution was seen to be remitted on full wages. The appellant establishment

remitted the defaulted employers' share of contribution on 13/03/2007. The respondent therefore issued Annexure 5 notice along with the calculation sheet directing the appellant to show cause why damages and interest shall not be levied from the appellant establishment. The appellant was also given an opportunity for personal hearing on 14/11/2019. A representative of the appellant attended the hearing and sought time to verify the calculation of interest and damages. Accordingly the enquiry was adjourned to 20/12/2019. However none attended the enquiry on 20/12/2019. The respondent therefore issued the impugned order on the basis of the records placed before him in the enquiry. The contentions of the appellant that their internal policy delayed remittance of contribution is not at all tenable. Any delay or default in remittance of contribution will attract interest and damages. For the successful working of any social security system, the timely receipt of money into the fund is very much essential. The respondent organization is trying its best to give optimum benefits to the members. In the present case, the appellant had delayed the remittance of differential higher wages dues in respect of 69 employees as per Annexure R1. The respondent

organization has to credit interest for these members from the interest suspense account. This will negatively affect the interest payable to other EPF subscribers. This is the loss that is sought to be recovered from the defaulter for the purpose of indemnifying the benefits of the scheme. The Hon'ble High Court of Kerala in Annexure 2 judgment states that the employer shall during the pendency of writ appeal deposit the amount in excess of the statutory limit in a separate account in a nationalized bank and in case the employees succeeded in the case, the amount shall be deposited in their provident fund account along with 9% interest. It is clear from the letter dt. 03/07/2018 issued by the appellant to the respondent that the appellant has not complied with the directions of the Hon'ble High Court to deposit the amount with 9% interest. A true copy of the letter dt. 03/07/2018 issued by the appellant to the Regional PF Commissioner is produced and marked as Exbt R1.

4. The respondent while processing the pension in respect of one of the employees of the appellant, Shri. Josekutty M.M found that the employers' share of contribution in respect of the member for the period 03/2004 to 08/2006 was remitted belatedly. Accordingly the respondent

authority issued Annexure 5 notice directing the appellant to remit damages U/s 14B and interest U/s 7Q in respect of the delayed remittance of employers share of contribution. The respondent also gave an opportunity for personal hearing to the appellant to appear on 25/11/2019, in case there is any dispute regarding the notice. A representative of the appellant attended the hearing and sought time for verification of the delay statement. Accordingly the enquiry was adjourned to 20/12/2019. None attended the enquiry and therefore the respondent authority felt that the appellant has no dispute regarding the statement and therefore issued the impugned order.

5. In this appeal, the learned Counsel for the appellant took this Tribunal through the reasons for the belated remittance of contribution. According to the learned Counsel for the appellant, the appellant establishment was remitting contribution without any upper limit on eligible wages. The statutory auditors of the appellant establishment pointed out that the employers' share of contribution can be restricted to the statutory limit of Rs.6500/- Accordingly the government of Kerala issued instructions to restrict the employers' share of the contribution to

the statutory limit of Rs.6500/-~.~ Some of the employees approached the Hon'ble High Court and the Hon'ble High Court refused to interfere with the decision of the government. Therefore the Board of Directors on 02/12/2003 decided to comply with the directions of the government and the appellant started remitting contribution restricted to the statutory limit of Rs.6500/- from March 2005 onwards. In the meanwhile the Hon'ble High Court of Kerala in Writ Appeal No. 1591/2003 issued an interim direction that the contribution on higher wages can be deposited in a separate bank account and in case the employees won the case, the amount can be transferred to employees account with 9% interest. Accordingly the appellant organization issued a direction to deposit the money in a separate bank account as per Annexure 3. The appellant therefore remitted the contribution on higher wages from March 2004 to August 2006 in a separate bank account. Ultimately the Hon'ble High Court decided in favour of the employees and the appellant started remitting employers' share of contribution without any statutory limit from October 2006. The amount deposited in a separate bank account was also transferred to the provident fund account of the employees. According to the learned Counsel for

the appellant this is the reason for delayed remittance of contribution and the appellant was not at all responsible for the delay.

6. According to the learned Counsel for the respondent, as per the direction of the Hon'ble High Court in Writ Appeal 1591 of 2003, the appellant is required to refund the employers' share of contribution with 9% interest . However, the appellant transferred only the principal amount, thereby violating the interim directions of the Hon'ble High Court of Kerala.

7. From the facts narrated in detail by the learned Counsel for the appellant and also the documents produced, it is clear that the delay in remittance of contribution was not intentional and it is not possible to hold that the appellant deliberately committed the delay in remittance of contribution. However the appellant cannot escape its liability to remit interest on belated remittance and particularly so since the appellant failed to comply directions of the Hon'ble High Court of Kerala to transfer the amount kept in the separate bank account to be transferred to employees account with 9% interest. Further as per the statutory provisions and the existing law declared by the

Hon'ble High Court as well as the Hon'ble Supreme Court, this Tribunal cannot interfere with the demand of interest under Sec 7Q of the Act. With regard to the damages demanded as per the impugned order the learned Counsel for the respondent pointed out that the intention of parties or mensrea is not a relevant consideration while imposing damages U/s 14B of the Act.

8. 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”

However considering the circumstances of this case the appellant establishment is entitled for some relief as far as damages U/s 14B is concerned.

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 60% of the damage assessed U/s 14B of the Act . I am not inclined to interfere with the demand of intend U/s 7Q.

Hence the appeal is partially allowed, the impugned order assessing damages U/s 14B is modified and appellant is 60% of the damages. The appeal against the interest demanded U/s 7Q is dismissed.

Sd/-

(V. Vijaya Kumar)
Presiding Officer