



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

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

(Friday the 23rd day of April, 2021)

APPEAL No.184/2019

(Old No. ATA 341 (7) 2015)

Appellant

M/s. Institute of Engineering Technology.,
University of Calicut
Calicut University (P.O)
Malappuram – 673 636

Respondent

The Assistant PF Commissioner
EPFO, Sub-Regional Office
Eranhipalam P.O
Kozhikode-673 006.

By Adv. Dr. Abraham Meachinkara

This case coming up for final hearing on
22/03/2020 and this Tribunal-cum-Labour Court on
23/04/2021 passed the following:

O R D E R

Present appeal is filed from Order No. KR/KK/23029/ENF-5
(5)/14B/ 2014 / 11098 dt. 07/01/2015 assessing damages U/s 14B
of EPF & MP Act, 1952 (hereinafter referred to as 'the Act') for belated
remittance of contribution for the period 1/6/2002 to 31/10/2005.
The total damages assessed is Rs. 1,34,469/-. The interest demanded

U/s 7Q of the Act for the same period is also being challenged in this appeal.

2. The appellant establishment is a self financing Engineering College of the University of Calicut. The respondent vide its order dt.12/08/2015 held that the appellant establishment is covered under the provisions of the Act. Vide order dt.12/01/2006 the respondent held that an amount of Rs.2,98,498/- being the contribution for the period from 06/2002 to 10/2005 was also payable. A copy of the order is produced and marked as Annexure A2. The appellant approached the Hon'ble EPF Appellate Tribunal and the Hon'ble EPF Appellate Tribunal dismissed the appeal vide order dt.14/11/2006. The appellant filed WPC No. 13997/2007 before the Hon'ble High Court of Kerala and the Hon'ble High Court vide order dt. 14/11/2006 directed the appellant to remit 50% of the assessed dues and restored the appeal before the EPF Appellate Tribunal. A copy of the order of the Hon'ble High Court of Kerala is produced and marked as Annexure A3. The respondent issued notice to the appellant to remit contribution in respect of contract employees for the period from 11/2005 to 04/2008. The appellant approached the Hon'ble High Court in WPC No. 22497 of 2009 and the Hon'ble High Court vide order dt.23/10/2009 directed the respondent not to take any coercive action till the Tribunal finally decides the issue of applicability. A copy of the order of the Hon'ble

High Court of Kerala is produced and marked as Annexure A4. Vide order dt. 13/07/2011 the EPF Appellate Tribunal dismissed the appeal filed by the appellant. A true copy of the order is produced and marked as Annexure A5. On 22/11/2011 the appellant remitted the contribution in full which includes the assessment made as per the impugned order. While so the appellant received a notice from the respondent regarding the proposed damages for belated remittance of contribution for the period from 01/06/2002 to 31/01/2014. Hearing was scheduled on 12/05/2014. A statement of delayed remittance was also enclosed along with the notice. A copy of the summons along with the statement is produced and marked as Annexure A6 series. On 16/06/2014 the appellant filed a written objection which is produced and marked as Annexure A7. On 11/2/2015 subsequent to the impugned order, the appellant remitted Rs.43,000/-. Copy of the debit advice dt. 11/02/2015 is produced and marked as Annexure A8. There was no willful defiance or latches on the part of the appellant. The appellant remitted all the amounts as required under law and as directed by the Hon'ble High Court. The respondent failed to notice that there was no willful or intentional delay on the part of the appellant. The quantum of damages levied should be compensatory rather than penal in nature. The respondent failed to exercise its discretion U/s 14B of the Act in the facts and circumstances of this case. In **Prestolite**

(India) Ltd., Vs Regional Director and Another, 1994 Supp (3) SCC 690 the Hon'ble Supreme Court held that

“Even if regulations have prescribed general guidelines and the upper limits at which the imposition of damages can be made, it cannot be contended that in no case, the mitigating circumstances can be taken in to consideration by the adjudicating authority in finally deciding the matter and it is bound to act mechanically in applying the uppermost limit of the table”.

3. The respondent filed counter denying the above allegations. The appellant establishment failed to remit contribution for the period from 01/06/2002 to 31/10/2005. The remittance was made by the appellant during the period from 05/2002 to 01/2014. Hence a notice was issued to show cause why damages as envisaged U/s 14B of the Act should not be recovered for having made belated payment of contribution. A detailed statement showing the delay in remitting the contribution was also communicated to the appellant. The appellant was also given an opportunity for personal hearing on 12/05/2014. A representative of the appellant attended the hearing and admitted the delay in remittance of contribution. The representative also produced a copy of the order of Hon'ble High Court in WPC No. 22497/ 2009. It was noticed from the judgment of the Hon'ble High Court challenging

the assessment order U/s 7A of the Act, that the appellant did not raise any dispute regarding date of remittance of provident fund dues. Belated remittance of provident fund contribution will attract damages U/s 14B of the Act. Since the appellant failed to remit the amount, the respondent recovered an amount of Rs.43,000/- against the 7Q assessment. The appellant did not raised any dispute before the 14B authority and therefore the appellant may not be allowed to raise any dispute in this appeal which was not raised before the respondent authority. In **Chairman, SEBI Vs Sriram Mutual Fund**, 9523-9524/2003 the Hon'ble Supreme Court held that mensrea is not an essential ingredient for contravention of provisions of a civil Act.

4. The appeal against 7Q order is not maintainable as there is no provision U/s 7(I) of the Act to challenge an order issued U/s 7Q.

5. The appellant is an Engineering College under the University of Calicut. The appellant establishment is covered under the provisions of the Act with effect from 04/2002. The appellant challenged the coverage U/s 7A of the Act. The respondent authority vide order dt. 12/08/2005 upheld the coverage. The order issued by the respondent authority U/s 7A was challenged before EPF Appellate Tribunal. The appeal was dismissed by the Tribunal for default. The appellant approached the Hon'ble High Court of Kerala and the Hon'ble High Court vide order dt 27.04.2007 directed the appellant to deposit 50%

of the assessed amount and directed the EPF Appellate Tribunal to restore the appeal to file. The appellant remitted 50% of the amount as directed by the Hon'ble High Court. The EPF Appellate Tribunal vide order dt. 13/07/2011 dismissed the appeal challenging the applicability of the Act. The appellant remitted the balance amount of Rs.1,49,249/-. It is seen from the above narration of facts that the appellant was challenging the coverage of the appellant establishment under the provisions of the Act before various legal forums such as the respondent authority U/s 7A, EPF Tribunal U/s 7(I) and also before the Hon'ble High Court of Kerala. The appellant remitted 50% of the assessed dues as per the direction of the Hon'ble High Court. The balance 50% was remitted immediately after the disposal of appeal before the EPF Appellate Tribunal upholding the coverage. In this circumstances it is not possible to allege that there was intentional delay on the part of the appellant in remitting the contribution. According to the learned Counsel for the respondent the appellant was contesting the coverage before various forums fully knowing the legal consequences of their action and therefore they cannot plead that there was no intentional delay in remittance of provident fund contribution. Though the appellant cannot fully escape the liability of paying damages for belated remittance of contribution, in the facts and circumstances explained above it is not fair to levy maximum damages on the appellant establishment.

6. 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.

7. Considering the fact, circumstances and pleadings in this case, I am inclined to hold that interest of justice will be met if the appellant is directed to remit 60% of damages.

Hence the appeal is partially allowed the impugned order is modified, the appellant is direct to remit 60% of the damages assessed U/s 14B of the Act. The appeal against 7Q order is dismissed as not maintainable.

Sd/
(V. Vijaya Kumar)
Presiding Officer