



सत्यमेव जयते

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

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

(Friday the 01<sup>st</sup> day of April, 2022)

**Appeal No.49/2020**

Appellant : M/s. Trichur Urban Co-operative Bank Ltd.  
Head Office , Mission Quarters,  
Thrissur – 680001.

By Adv. Mathews K. Uthuppachan

Respondent : The Assistant PF Commissioner  
EPFO, Sub Regional Office  
Kaloor, Kochi – 682017

By Adv. Sajeev Kumar K. Gopal

This case coming up for final hearing on 30/03/2022 and this Tribunal-cum-Labour Court on 01/04/2022 passed the following:

**ORDER**

Present appeal is filed from order No. KR/KCH/13320/ Penal Damages /2020 /11890 dt. 18/2/2020 assessing damages U/s 14B of EPF & MP Act (hereinafter referred as 'the Act') for belated remittance of contribution in respect of Shri. M.R. Jayendran for the period from 9/2006 to 12/2016, delayed remittance of contribution in respect of non-enrolled

employees for the period from 03/2012 to 07/2016 and belated remittance of regular contribution for the period from 02/2012 to 08/2019. The total damages assessed is Rs.18,82,460/-.

2. The appellant is a Co-operative bank registered under the Kerala Co-operative Societies Act 1963. The appellant received the notice dt. 05/12/2019 proposing to levy damages and interest for the period from 09/2006 to 12/2016. A copy of the notice is produced and marked as Annexure 1. The appellant appear in response to the notice and filed a written statement dt. 21/01/2020, a copy of which is produced and marked as Annexure 2. The proceedings mainly related to the period from 09/2006 to 12/2016 with respect to one of its employees Mr. M.R. Jayendran who was dismissed from service with effect from 29/09/2006. Shri.Jayendran challenged his dismissal before the Corporative Arbitration Court in CRC No. 58/2007 which was allowed by award dt. 20/05/2009 directing his re-statement with back wages and other service benefits. A true copy of the award is produced and marked as Annexure 3. The appellant challenged the award before the Kerala Co-operative Tribunal in Appeal No. 27/2010. The appeal was dismissed by judgment dt. 31/08/2011. A copy of the judgment

dt.31/08/2011 is produced and marked as Annexure 4. The appellant challenged the Annexure 4 judgment before the Hon'ble High Court of Kerala in W.P.(C) No. 34581/2011 and stay against the operation of Annexure 4 judgment was granted. The writ petition was later dismissed by judgment dt.10/11/2015. A copy of which is produced and marked as Annexure 5. The appellant challenge the Annexure 5 judgment in Writ Appeal No. 39/2015 and the Division Bench of the Hon'ble High Court of Kerala vide its judgment dt. 16/07/2018 partly allowed the appeal restricting the back wages to 50%. The true copy of the judgment is produced and marked as Annexure 6. The issue regarding the back wages was settled only on 16/07/2018 and it was agreed to pay 50% back wages and contribution become payable only from that date. The respondent authority also assessed damages in respect of belated remittance for 35 employees for the period from 01/2012 to 03/2016. The payment become due in view of an order dt. 21/12/2016 issued by the respondent U/s 7A of the Act, copy of which is produced and marked as Annexure 7. A copy of the impugned order is produced as Annexure 8. There was no willful or intentional delay on the part of the appellant in remitting the contribution. Shri.Jayendran was dismissed from service with effect from

29/09/2006 and the matter was finally settled as per the judgment of the Hon'ble High Court dt.16/07/2018. The contribution will become payable only from the date the matter was finally settled and not from the earlier date. The appellant has prepared a computation of interest and damages payable with respect to Shri. M.R. Jayendran and 35 employees with regard to contribution was held payable as per Annexure 7 order. A true copy of the same is produced and marked as Annexure 9. The respondent authority failed to exercise its discretion U/s 14B of the Act and Para 32A of the EPF Scheme. Penalty is imposed only in cases where there is contumacious conduct or willful disobedience. The existence of mensrea or actusreus to contravene a statutory provisions must also be held to be a necessary ingredient for levy of damages, as per the decision of Hon'ble Supreme Court of India in **Employees State Insurance Corporation Vs HMT Ltd and Another**, AIR 2008 SC 1322 and **Assistant PF Commissioner, EPFO and another Vs Management of RSL Textiles India Pvt. Ltd**, 2017 (3) SCC 110. The respondent authority failed to notice that after introduction of Sec 7Q in the Act, the compensatory component is taken out of Sec 14B of the Act. The legal position that existed at the time of rendering the judgment in **M/s. Organo Chemical Industries Vs**

**Union of India**, 1979 (2) LLJ 416 has been substantially changed by the introduction of Sec 7Q. In **Chairman, SEBI Vs Sriram Mutual Fund**, (2006) 5 SCC 361 referred to by the respondent, penalty is imposed under the relevant section were mandatory as the term used is **“he shall be liable to a penalty”**.

3. The respondent filed counter denying the above allegations. The appellant is an establishment covered under the provisions of the Act. The appellant defaulted in payment during the period 09/2006 to 08/2019. Delayed remittance will attract damages U/s 14B and interest U/s 7Q of the Act. The respondent therefore issued a notice dt. 05/12/2019 directing the appellant to show cause as to why damages as stipulated U/s 14B of the Act read with Para 32A of EPF Scheme shall not be levied for belated remittance of dues. The appellant was also given an opportunity for personal hearing on 01/01/2020. A detailed damages statement showing monthwise details of belated remittance for the entire period of enquiry was also enclosed alongwith the summons. An authorised representative of the appellant attended the hearing and stated that the interest and penal damages proposed to be levied is partly due to the compensation awarded and provident fund paid in respect of

Shri. M.R. Jayendran. The representative also produced the judgments and also a detailed statement. The damages proposed to be levied is split into three 1) for the period from 09/2006 to 12/2016 in respect of delayed remittance of contribution for the back wages paid to Shri. M.R. Jayendran. 2) Period from 03/2012 to 07/2016 pertaining to contribution on non enrolled eyes as assessed U/s 7A of the Act. 3) Period from 02/2012 to 08/2019 is the delay in remittance of regular dues. No objection was raised with regard to this part of the delayed remittance. The appellant did not raise any dispute regarding the delay statement. The respondent therefore issued the impugned order after considering all the relevant facts as pleaded by the appellant. Shri M.R. Jayendran, General Manager was dismissed from service from 29/09/2006. All the appeals filed by the management upto the single bench of the Hon'ble High Court were dismissed. In the writ appeal filed before the Division Bench the Hon'ble High Court modified the order clarifying that the employee will be entitled to 50% back wages in addition to the eligible retiral benefits. The appellant thereafter remitted the entire provident fund contribution in respect of the wages paid to Shri. M.R. Jayendran. The entire provident fund contribution was meant to be credited to the individual provident fund account of

the member with interest in terms of Paragraph 60 of EPF Scheme from the due date itself regardless of the actual date of remittance of contribution by the appellant. The member is entitled to provident fund benefits as per the statutory provisions. The direction of the Hon'ble High Court that the member is eligible for all retiral benefits, includes the statutory benefits under EPF and MP Act. There is no estoppel against statute. The respondent is liable to extend eligible provident fund benefits to the member as per the provisions of the Scheme. The enquiry U/s 14B was initiated for assessing damages for the period from 09/2006 to 08/2019. The Annexure 1 summons was clear on the same. There was an earlier proceedings U/s 7A wherein the appellant failed to enroll 35 eligible employees to provident fund benefit for the period from 01/2012 to 03/2016. In the 7A enquiry an amount of Rs.7,59,699/- was quantified and the same was remitted belatedly. Since the contribution were remitted belatedly the appellant was liable to remit damages for belated remittance of contribution. The pleadings of the appellant regarding the belated remittance of contribution in respect of Shri. M.R. Jayendran and also in respect of 35 non-enrolled employees were considered in detail by the respondent authority in the impugned order and damages have been levied strictly in

accordance with the rates laid down in Para 32A of EPF Scheme. The Hon'ble Supreme Court of India in **Chairman, SEBI Vs Sri Ram Mutual Fund**, 2006 (5) SCC 361 held that the imposition of penalty becomes a sign qua non of the violation and has held that no excuses from the employer can be entertained in civil liability cases. According to the Hon'ble Supreme Court mensrea is not an essential ingredient for contravention of the provisions of a civil Act.

4. The appellant filed rejoinder in terms of the appeal memo denying the allegations in the written statement filed by the respondent .

5. The appellant delayed remittance of contribution for the period from 09/2006 to 08/2019 due to various reasons. The respondent initiated action U/s 14B of the Act read with Para 32A of EPF Scheme. A detailed delay statement was also forwarded alongwith the notice. The appellant was also given an opportunity for personal hearing. A representative of the appellant attended the hearing and disputed the proposed assessment of damages. After considering the submissions made by the appellant, the respondent issued the impugned order.



In this appeal the appellant reiterated its stand taken before the respondent authority in the 14B proceedings. According to the learned Counsel for the appellant, he has serious disputes regarding the assessment of damages on the payments made by the appellant against Shri. M.R Jayendran. According to him Shri. M.R. Jayendran was dismissed from the service of the appellant establishment with effect from 29/09/2006. Shri. M.R. Jayendran challenged the order of dismissal before the Co-operative Arbitration Court and the same was allowed vide Annexure 3 orders. Thereafter the appeals before Co-operative Tribunal and also before the Single Bench of the Hon'ble High Court of Kerala, the Annexure 3 order was upheld. The Division Bench of the Hon'ble High Court of Kerala modified the said order and directed the appellant to pay 50% of the back wages to Shri. M.R. Jayendran vide order dt. 16/7/2018. According to the learned Counsel for the appellant, the matter reached finality only on 16/07/2018 when the Division Bench of the Hon'ble High Court of Kerala disposed off the Writ Appeal No. 39/2015. Accordingly the learned Counsel argued that the liability to pay 50% of the wages arose only on 16/07/2018 and therefore the appellant is liable to remit contribution only on that day. According to the learned Counsel for the respondent the

Division Bench of the Hon'ble High Court of Kerala in Writ Appeal No. 39/2015 also held that Shri. Jayendran is entitled and eligible for retiral benefits apart from 50% back wages. Accordingly Shri. Jayendran is entitled for provident fund benefits with cumulative rate of interest for the past 12 years when no contribution was paid by the appellant. He further argued that if the amount is credit to the account of Shri. Jayendran in lumpsum, the argument of the appellant to certain extend is correct. However in the present case the contribution in respect of Shri. Jayendran was credited on a monthly basis with a cumulative interest worked out on monthly closing balance. According to him the interest U/s 7Q is not adequate to compensate the loss of interest to Shri. Jayendran. Therefore the appellant is liable to remit damages as stipulated U/s 14B read with Para 32A for the contribution remitted against Shri. Jayendran on 50% back wages. The appellant establishment challenged the orders of Kerala Co-operative Arbitration Court in ARC No. 58 of 2007 fully knowing the consequences of their action. There was a delay of 12 years to reach a finality in the matter in view of the action taken by the appellant to prefer appeals at various stages of the proceedings. The appellant therefore cannot completely escape the liability for delayed

remittance of contribution in respect of Shri. Jayendran belatedly. However they are entitled for some accommodation taking into account the facts and circumstances of this case.

6. There are two more components on which damages were assessed as per the impugned order. The learned Counsel for the respondent pointed out that the appellant failed to enroll 35 eligible employees from their due date of eligibility during the period 01/2012 to 03/2016. The respondent, therefore, initiated an enquiry U/s 7A and assessed the dues of Rs.7,59,699/-. The appellant thereafter remitted the amount. Non-enrollment of an eligible employee to provident fund benefit is an offence under the provisions of EPF and MP Act 1952. Having committed an offence under the Act the appellant cannot come up in appeal and argue that they are entitled for accommodation with regard to the assessment of dues in respect of non-enrolled employees. It is a well settled mandate of law that a person who by manipulation of a process frustrates the legal rights of others would not be permitted to take advantage of his own wrong or manipulation. In this case the appellant committed a wrong by not enrolling the eligible employees from their due date of eligibility and therefore he cannot be permitted

to take advantage of his wrong or manipulation and argue that there was no intentional delay in remittance of contribution in respect of non-enrolled employees .

7. The learned Counsel for the respondent also pointed out that there was delay in remittance of contribution of regular dues for the period from 02/2012 to 08/2019. It is seen that the appellant has not raised any objection regarding the assessment of damages on belated remittance of regular contribution from 02/2012 to 08/2019.

8. The learned Counsel for the appellant argued that there was no intentional delay in remittance of contribution particularly with regard to the remittance in respect of Shri. M.R Jayendran. As already pointed out the delay in remittance in respect of Shri.M.R. Jayendran was due to the fact that there was pending litigation regarding their liability to pay wages to the employee. However the appellant cannot escape the liability completely as the interest component U/s 7Q will not be adequate to compensate the loss of interest. The learned Counsel for the appellant also argued that there was no mensrea in belated remittance of contribution. He also relied on various

decisions of the Hon'ble Supreme Court of India and also High Court of Kerala.

9. 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”

10. 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 appeal is partially allowed the impugned order is modified and the appellant is directed to remit 70% of the damages.

Sd/~

**(V. Vijaya Kumar)**  
**Presiding Officer**