



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

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

(Thursday the 1st day of April, 2021)

APPEAL No.500/2019

Appellant

M/s. Prasanthi Public School
Republican Higher Secondary
School Premises,
Konni,
Pathanamthitta- 689691.

By Adv. C.M. Stephen

Respondent

The Assistant PF Commissioner
EPFO, Regional Office, Pattom
Thiruvananthapuram- 695 004.

By Adv. Nitha. N.S.

This case coming up for final hearing on 15/02/2021 and this Tribunal-cum-Labour Court on 01/04/2021 passed the following:

O R D E R

Present appeal is filed from order No. KR/TVM/26021/Damage Cell/2019-20/1523 dt. 18/06/2019 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 03/2015 to 10/2018. The total damages assessed is Rs.3,42,663/-.

2. The appellant establishment is a pre-primary school situated in the premises of M/s. Republican School and is commonly owned by a Charitable Trust. The appellant is covered U/s 2 (A) of the Act clubbing along with Republican Higher Secondary School. The appellant establishment is not coverable under the provision of the Act as the employment strength never reached 20. However no proceedings were initiated to decide the question of applicability. The appellant school was running under heavy loss which is clear from the Annexure A2 series documents produced in this appeal. In spite of the financial difficulties the appellant remitted the contribution for the period from 03/2015 to 10/2018. The respondent issued notice dt.15/05/2019 proposing to levy damages alleging delay in payment of contribution. A copy of the notice is produced and marked as Annexure A4. The appellant attended the hearing on 11/06/2019 and pleaded time for filing written objection. The appellant was denied opportunity to produce the challans. The respondent alleged delay of 1390 days based on some documents which was inaccessible to the appellant and no copy thereof was issued to him. The enquiry was conducted in total violation of the principles of the natural justice as the appellant was not given sufficient documents to disprove

the charges. The appellant establishment is not coverable under the provision of the Act as the appellant was not employing 20 employees as on the date of coverage. The appellant establishment also is managed by a different Principal and Managing Committee. The respondent failed to consider the financial difficulty of the school. The appellant was not aware of the background of Annexure A4 notice and Annexure A1 proceedings. Copies of the documents relied on by the respondent was not provided to the appellant. The appellant was denied an opportunity for filing written statement. The appellant was also denied opportunity to substantiate the fact that there was no delay in remittance and also the grave financial difficulties compelling him to make delayed payments. The respondent ought to have calculated the delay from the date of payment of the salary. The 14B proceedings are also mature as there was no assessment of dues U/s 7A.

2. The respondent filed counter denying the above allegations. The appellant establishment is covered under the provision of the Act. The appellant defaulted in payment of contribution for the period from 03/2015 to 10/2018 and these belated payments attract levy of damages U/s 14B of the Act read with Para 32A of EPF Scheme. Hence a show cause notice dt. 16/05/2019 was issued to the appellant advising him to appear

before the 14B authority on 11/06/2019 either in person or through a representative. A detailed statement showing the due date of payment, the amount involved the actual date of payment, the delay in remittance and the proposed damages under Para 32A of EPF Scheme was also enclosed along with the notice. The Chairperson of the Trust of the appellant appeared before the authority and stated that the delay in remitting the dues was due to financial difficulties. The delay involved is upto 1309 days and the financial difficulties claimed by the appellant is not supported by any evidence. Further the delayed contribution includes the employees share deducted from the salary of the employees and therefore the appellant is not entitled for any relief U/s 14B of the Act. The delay in remittance of contribution was never disputed by the appellant before the 14B authority. The only ground pleaded was that of financial difficulties and the financial difficulties was not substantiated by the appellant. The appellant never requested for any adjournment or time for producing documents or filing any written statement. The appellant who attended the hearing admitted the delay on the basis of which the impugned order is issued. The appellant establishment is a chronic defaulter and therefore deserves no sympathy in the assessment of damages U/s 14B of the Act. The appellant never disputed the coverage of the appellant establishment under the

provision of the Act and the same cannot be disputed in the proceedings U/s 14B of the Act. The claim of financial difficulties is not proved by the appellant. The Hon'ble Supreme Court in the case of **Organo Chemical Industries Vs Union of India**, 1979 (2) LLJ 416 SC held that "Even if it is assumed that there was loss as claimed, it does not justify the delay in deposit of provident fund money which is an unqualified statutory obligation and cannot be allowed to be linked with the financial difficulties over different points of time. Besides 50% of contribution deposited late represented the employees' share which have been deducted from the employee's wages and was trust money with the employer for deposit in the statutory fund. The delay in deposit of this part of the contribution amount to breach of trust and does not entitle the employer to any consideration for relief."

4. The learned Counsel for the appellant raised a basic issue with regard to violation of principles of natural justice. It is seen that the respondent issued Annexure A4 notice dt. 16/05/2019 directing the appellant to show cause why penal damages shall not be levied against the appellant establishment for belated remittance of contribution for the period 27/10/2015 to 31/03/2019. The respondent also enclosed Annexure A3 series of documents along with the notice. In Annexure A3 series the

respondent furnished the wage month, the due date, the date of actual payment, challan reference number, the delay in remittance and also the proposed damages U/s 14B and also the interest U/s 7Q of the Act. The appellant was also given an opportunity for personal hearing on 11/06/2019. On 11/6/2019 the Chairman of the trust appeared before the respondent authority and admitted the delay in remittance of contribution. However he pleaded that the appellant is facing acute financial crisis and therefore requested that the damages may be waived. The respondent found that the appellant is a chronic defaulter and the delay in remittance of contribution is upto 1309 days and therefore deserves no sympathy with regard to assessment of damages. Since the appellant admitted the delay and did not request for any further adjournment for filing additional documents or written statement, the respondent concluded the enquiry and issued the impugned order. Having failed to raise any other ground before the 14B authority and having failed to request for time to produce documents or filing written statement, the appellant cannot come up in appeal and argue that the appellant was denied opportunity for producing additional documents and therefore there is violation of principles of natural justice. The learned Counsel for the appellant also disputed the coverage of the appellant establishment in these proceedings. As rightly pointed by the

learned Counsel for the respondent, the appellant did not raise the issue of coverage before the appropriate forum U/s 7A of the Act and he cannot be allowed to raise the applicability issue in this proceedings. Though the appellant claimed that the true copies of the challan for the period from 03/2015 to 10/2018 is produced as Annexure A3 series, it is seen that the same is not annexed to the appeal booklet. Though the appellant pleaded financial difficulties before the respondent authority. The same was not substantiated by producing supporting documents. The appellant however produced the financial statements for the year 2017 to 2019 as Annexure A2 series in this proceedings. The learned Counsel for the respondent argued that the documents now produced by the appellant shall not be considered as they failed to produce the same before the authority U/s 14B of the Act. In **Aluminium Corporation Vs Their workmen**, 1963 (II) LLJ 629 SC the Hon'ble Supreme Court held that the current assets and liabilities as reflected in the Balance Sheet cannot be taken as sacrosanct unless the figures in the balance sheet are proved through a competent person. However the documents produced by the appellant shows that there was an excess expenditure over income of Rs.3,18,080.36 in the year ending 31/03/2017 and expenditure over income Rs.50,258.28 for the year ending 31/03/2018 and an excess of expenditure over

income of Rs.1,12,848.07 for the year ending 31/03/2019. Hence it is clear from the documents that the appellant establishment was facing some financial constraints during the relevant point of time. However on verification of Annexure A3 series delay statement, it is seen that the delay in remittance of contribution was upto 1309 days and it was also pointed by the learned Counsel for the respondent and the appellant is a chronic defaulter in remittance of contribution. The learned Counsel for the respondent also argued that the appellant has no case that the salary for the employees is delayed to this extent and therefore the employees share of contribution which amounts to 50% of the total contribution is deducted from the salary of the employees and retained by the appellant for such long period. Non-remittance of employees' share of contribution deducted from the salary of the employees is an offence U/s 405 & 406 of Indian Penal Code. Having committed an offence of breach of trust, the appellant cannot claim that there was no mensrea in belated payment of contribution at least to the extent of employees share deducted from the salary of the employees. However taking into account the financial constrains and also the fact the appellant is a lower primary school, they deserve some relaxation as far as 14B is concerned.

5. Considering the facts, circumstances, evidence and arguments, 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 assessed U/s 14B of the Act.

Sd/-

(V. Vijaya Kumar)
Presiding Officer