



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

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

(Thursday the 7th day of October, 2021)

APPEAL No.501/2019

Appellant

M/s. St. Mary's Central School
Rajakumari, Arivilamchal P.O
Idukki – 685 619:

By Adv. P. Ramakrishnan
Adv. C. Anil Kumar

Respondent

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

By Adv. Joy Thattil Itoop

This case coming up for final hearing on 05.07.2021 and this Tribunal-cum-Labour Court on 07.10.2021 passed the following:

ORDER

Present appeal is filed from order No.KR / KTM / 20127 / APFC / Penal Damage / 14B / 2019-2020 dt. 24/06/2019, 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 08/2011 to 07/2018 . The total damages assessed is Rs.17,26,537/-.

2. The appellant is a School covered under the provisions of the Act from the year 2004. The appellant school is presently owned and run by the Corporate Education Agency of the diocese of Idukki. From the year 2010 onwards the School suffered the huge financial loss and there was delay in remittance of provident fund contribution. Due to accumulated loss the owner of the school transferred the ownership of the school to the Corporate Education Society in the year 2018. The appellant received a notice dt.05/04/2019 from the

respondent authority. The manager of the school appeared before the respondent authority and filed a written statement dt. 03/05/2019. A copy of the said written statement is produced and marked as Annexure A1. Without considering the representation, the respondent authority issued the impugned order. The respondent thereafter issued a prohibition order dt.03/10/2019 attaching the bank account of the appellant school. A copy of the said order is produced and marked as Annexure A3. True copies of the income and expenditure account for the year 31/03/2014 to 31/03/2018 is produced and marked as Annexure A4. There is no finding regarding mensrea in the impugned order. In **Assistant PF Commissioner Vs Management of RSL Textiles India Pvt Ltd**, 2017 (3) SCC 110 the Hon'ble Supreme Court held that in the absence of a finding regarding mensrea on the part of the employer, action U/s 14B cannot be sustained. In **RPFC Vs Harrison Malayalam Ltd**, 2013 (3) KLT 790 the Division Bench of the Hon'ble High Court of Kerala held that financial difficulties will be a mitigating circumstance to be considered while levying damages under Section 14B of the Act .

3. The respondent filed counter denying the above allegations. The appellant is challenging the impugned order on the basis of financial difficulty. Incomplete and selected pages of the income and expenditure statement for the year 2014 to 2018 are produced in this proceedings. The default period is from 2011 to 2018. The financial statements now produced by the appellant cannot be admitted in evidence as the same was not produced before the respondent authority at the time of hearing. The appellant failed to explain the financial difficulties. Self inflicted losses due to mismanagement does not excuse the appellant from levy of penal damages. After recovering the employees' share of contribution, the appellant establishment remitted the same to the respondent organization only after more than 6 years. A true copy of the summons dt.05/04/2019 enclosing therewith a calculation sheet issued by the respondent is produced and marked as Annexure R1. Annexure R1 would establish the extent of delay committed by the appellant for which there is no explanation. The

Hon'ble Supreme Court of India in **Organo Chemical Industries Vs Union of India**, 1979 LIC 1261 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. The Hon'ble Supreme Court of India in **Hindustan Times Vs RPF**, AIR 1998 SC 688 held that default on the part of the employer based on the plea of financial difficulties cannot be a justifiable ground for the employer to escape the liability. In **Calicut Modern Spinning and Weaving Mills Vs RPF**, 1982 LAB IC 1422 the Hon'ble High Court of Kerala held that Para 38 of EPF Scheme obliged the employer to make the payments within 15 days of the close of every month and Para 30 of the Scheme cast an obligation to pay both the contributions payable by himself and on the behalf of the member employed by him, in the first instance. Hence the appellant cannot get away with damages since there is undue delay in a remitting contribution.

4. There is no dispute regarding the fact that there was delay in remittance of contribution for the period 08/2007 to 07/2018. Since there was delay in remittance of contribution the respondent initiated action for assessment of damages for belated remittance of contribution. During the proceedings U/s14B, the appellant filed Annexure A1 representation before the respondent authority. The only ground pleaded in the Annexure A1 representation is that of financial difficulties. No supporting documents whatsoever, was produced before the respondent authority. The respondent authority therefore concluded the proceedings and assessed the damages as per Para 32A of EPF Scheme. In this proceedings the appellant produced income and expenditure statement for the period from 31/03/2014 to 31/03/2018. According to the learned Counsel for the appellant, these documents would prove the financial position of the appellant establishment and therefore the respondent authority ought not have levied maximum damages as provided under Para 32A of EPF Scheme. The documents now produced, the income and expenditure statement for the year ended on 31/03/2014 to 31/03/2018 is also a single page statement from which the actual

financial position of the appellant establishment cannot be established. For the year ended 31/03/2014 the depreciation shown is Rs.11,69,675.96 and the excess of expenditure over income is shown as Rs.7,73,048.49. Similarly for the year ended 31/03/2015 the depreciation shown on the expenditure side is Rs.27,71,021.35 and the excess of expenditure over income is Rs.19,04,690.35. For the year ended 31/03/2016 the depreciation shown is Rs.35,85,302.48 and the excess of expenditure over income is 31,51,956.48. For the year ended 31/03/2017 the depreciation is Rs.32,11,273/-and the excess of expenditure over income is Rs.31,71,714/-. Further, for the year ended on 31/03/2018 the depreciation is Rs.28,82,371/- and excess of expenditure over income is Rs.30,37,866/-. Unless, the accounting, particularly the depreciation, is properly explained, it is not possible to accept the income and expenditure account now produced by the appellant as an evidence to establish the financial position of the appellant establishment. The Hon'ble Supreme Court in **Aluminium Corporation Vs Their Workmen**, 1963 (2) LLJ 629 SC held that mere statements in balance sheet as regards current assets and current liabilities cannot be taken as sacrosanct. The correctness of the figure as shown in the balance sheet itself are to be established by proper evidence in court by those responsible for preparing the balance sheet or by other competent witnesses. The learned Counsel for the respondent also pointed out that from the documents now produced by the appellant, it is clear that the appellant establishment was paying salary to its employees in time. When the salary is paid employees' share of contribution is deducted from the salary of the employees. Non-remittance of employees' share of contribution, deducted from the salary of employees is an offence of breach of trust U/s 405 & 406 of Indian Penal Code. Having committed an offence of breach of trust, the appellant cannot plead that there was no mensrea in belated remittance of contribution atleast to the extent of 50% of the total contribution which accounts for the employees share of contribution. The learned Counsel for the respondent further pointed out that from Annexure R1 delay statement forwarded along with the summons dt. 05/04/2019, it can

be seen that the delay in remittance of contribution was more than 6 years and the appellant establishment was withholding the employees' share of contribution deducted from the salary of the employees for such a long time. According to the learned Counsel for the respondent, the appellant deserves no sympathy since the employees' share of contribution withheld by them would have doubled by the time they remitted the contribution. The learned Counsel for the appellant however pointed out that the appellant establishment is a school in a remote area and was running under heavy loss as reflected in Annexure A4 income and expenditure statements. It was also pointed out that the school was run by the present Manager, Smt. Kochuthresia Paulose and handed over the management of the school to the diocese of Idukki from 01/04/2018 because of the financial problems. Taking into account the above factors, it is felt that the appellant deserves some consideration as far as assessment of damages is concerned.

5. 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 direct to remit 75 % of the assessed damages.

Hence the appeal is partially allowed, the impugned order is modified and the appellant is direct to remit 75% of the damages U/s 14B of the Act .

Sd/-

(V.Vijaya Kumar)
Presiding Officer