



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

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

(Friday the 25th day of February, 2022)

APPEAL No.722/2019
(Old No. ATA 218(7)/2012)

Appellant

Mary Matha College of Engineering &
Technology
Dalummugham, Neyyattinkara
Thiruvananthapuram – 695 121.

By Adv. R .Lakshmana Iyer &
Adv. T.L.Sreeram

Respondent

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

By Adv. Ajoy P.B

This case coming up for final hearing on
29/12/2021 and this Tribunal-cum-Labour Court on
25/02/2022 passed the following:

ORDER

Present appeal is filed from order No.
KR/16826/RO/TVM/PD/NS/2011/10332 dt. 28/10/2011
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 08/2003 to 10/2008. The total damages assessed is Rs. 13,34,768/-.

2. The appellant is an Engineering College covered under the provisions of the Act. The respondent issued an ex-parte order dt. 05/01/2007 against the previous management for an amount of Rs.11,23,388/- for the period from 12/2004 to 11/2006. Copy of the said order is produced and marked as Annexure A1. The appellant remitted an amount of Rs.3,76,469/-thereafter the payment was effected against Annexure A1 vide receipt dt. 31/03/2007. Copy of the said receipt is produced and marked as Annexure A2. The present management took over the administration of the appellant establishment with effect from 05/06/2008. The respondent authority initiated recovery action on 18/06/2008 for an amount of Rs.14,90,047/-with interest. Copy of the said proceedings is produced and marked as Annexure A3. The appellant remitted an amount of Rs.12,98,000/- against the above recovery action. Since the above amount pertained to the period when the previous management was in charge, the appellant was not aware of the period for which the recovery action was related to. In the month of July 2008 an order U/s 7A was issued demanding an amount of

Rs.48,89,747.55 as arrears for the period from 06/2003 to 10/2007. The matter was taken up before the Hon'ble High Court of Kerala and the Hon'ble High Court of Kerala directed the respondent to issue fresh orders after affording an opportunity to the appellant. The respondent initiated a fresh enquiry as per the direction of the High Court and reduced the amount to Rs.14,36,486.80. The respondent authority issued another order 08/02/2011 for a further amount of Rs.4,21,094.50. Photocopies of said two proceedings are produced and marked as Annexure A4& A5 respectively. Hence the total for the period 08/2003 to 10/2008 was Rs.18,57,580/-. The appellant remitted the amount in four instalments for the period from 06/07/2009 to 20/10/2009. The respondent authority thereafter issued a notice dt. 22/07/2011 U/s 14B demanding an amount of Rs.20.08,792/- towards interest and damages. Representative of the appellant attended the hearing and pointed out that an amount of Rs.12,98,000/- was recovered from the appellant towards contribution for the period 12/2004 to 11/2006 and damages and interest for the period 11/2005 to 11/2006 and also damages for 06/2004 to 10/2005. A copy of the impugned order is produced as Annexure A6. The respondent authority failed to consider the remittance of Rs.12,98,000/- made by the

appellant. The appellant also failed to consider the remittance of Rs.3,76,469/- in response to Annexure A1 Order dt. 05/01/2007. The respondent authority collected Rs.12,98,000/- and Rs.14,36,486/- for the same period from 08/2003 to 10/2007. The delay statement enclosed along with the notice is also not correct. The previous management remitted the contribution for the period from 2003 to 2004 and 2004 to 2005. The photocopy of the Form 6A from April 2004 to March 2005 is produced and marked as Annexure A7.

3. The respondent filed counter denying the above allegations. The appellant establishment M/s Mary Matha College of Engineering and Technology is covered under the provisions of the Act with effect from 04/08/2003. There was delay in remittance of contribution by the appellant during the period 08/2003 to 10/2008. The respondent therefore issued the notice dt. 22/01/2011 directing the appellant to show cause why damages as envisaged U/s 14B of the Act shall not be levied. A detailed delay statement was also forwarded notice. The appellant was given an opportunity for personal hearing on 01/08/2011. A representative of the appellant attended the hearing and submitted that a new management was taken over the college with

effect from 05/06/2008. The recovery proceedings dt. 18/06/2008 involving an amount of Rs.12,98,000/- is not related to the damages for the period from 08/2003 to 10/2008. The appellant establishment defaulted in contribution for the period from 12/2006 to 10/2007. The respondent received complaints from Mary Matha College of Education Society Staff Union to the effect that large number of employees were not enrolled. The respondent initiated an enquiry U/s 7A of the Act. The appellant was given eight opportunities to appear and produce relevant records for assessment of the dues. The appellant did not attend the hearing. The respondent was therefore compelled to issue an order on the basis of the documents produced by the union for the regular dues as well as in respect of non-enrolled employees. The enquiry culminated in an order assessing an amount of Rs.48, 89,747.55. The review application filed U/s 7A (4) of the Act was also rejected by the respondent. The appellant approached the Hon'ble High Court of Kerala in W.P.(C) No. 29926/2008 challenging the above said order. The Hon'ble High Court of Kerala vide judgment dt.13/10/2008 set aside the order and directed the respondent to re-hear the matter after affording an opportunity to the appellant. The appellant and the union leaders appeared before the respondent and on the basis

of the documents produced by the appellant, the respondent issued an order assessing regular dues for the period 12/2006 to 10/2007 and dues in respect of non-enrolled employees for the period from 08/2003 to 10/2007. The total dues assessed was Rs.14,36,486.80. The appellant is a habitual defaulter and defaulted in remittance of contribution for the period from 11/2007 to 10/2008. The respondent initiated an enquiry U/s 7A and determined the dues in respect of non-enrolled employees for the period from 11/2007 to 10/2008 and regular dues for the period from 11/2007 to 10/2008. The total dues assessed is Rs.4,21,094.50. The delay in remittance of contribution attracts damages for the period 08/2003 to 10/2008. The respondent therefore issued a notice dt.22/07/2011 directing the appellant to show cause why damages shall not be levied for belated remittance of contribution. After hearing the appellant, the respondent issued the impugned order. None of the remittance made by the appellant relate to the assessment of damages as per the impugned order. Rs.12,98,000/- remitted by the appellant is not related to the impugned order. The remittance of Rs.12,98,000/- was against the order U/s 7A dt.22/01/2007 for Rs.11,23,388/-, 14B order dt.19/05/2006 for 66,887/- and 14B order dt.11/12/2006 for Rs.61330/- and the balance of

Rs. 46000/- was adjusted against the liability of its sister concern, Mary Matha Central Residency School. Further the remittance of Rs.14,36,486/- is against the non-enrolled employees for the period from 08/2003 to 10/2007 and regular dues for the period from 12/2006 to 10/2007 and it has got nothing to do with the assessment as per the impugned order. It is relevant to pointed out that in all proceedings U/s 7A of the Act, the appellant as well as the union of its employees also attended and the assessment was made on the basis of the documents produced by the appellant. It is true that the appellant remitted the contribution for the period from 08/2003 to 10/2008. However the appellant has no case that damages for belated remittance is paid for the above said period.

4. According to the learned Counsel for the respondent the appellant establishment is a chronic defaulter. The appellant establishment delayed remittance of regular dues and also failed to enroll eligible employees from due date of their eligibility. The respondent initiated action for assessing and recovery of dues. Even in the proceedings U/s 7A, the appellant did not co-operate initially. There were complaints from the union of employees and they were present during the assessment of dues. However later

when the matter is remitted back by the Hon'ble High Court of Kerala, the appellant also co-operated with the respondent authority by producing records called for, for assessing dues. According to the learned Counsel for the appellant there is a change of management during 05/06/2008 and the previous management failed to hand over documents regarding the provident fund and there was lot of confusion in this regard. According to the learned Counsel for the respondent there was no change in management and there was only a re-constitution of the trust of a running Engineering College.

5. According to the learned Counsel for the appellant there is duplication in the assessment of dues and consequently there is excess payment by the appellant against the contribution. The learned Counsel for the respondent pointed out that this issue was very clearly clarified in the impugned order by the respondent authority and previous remittance were made against assessments U/s 7A of the Act on defaulted regular dues and also against non-enrolled employees for various periods. The present proceeding is only with regard to assessment of damages U/s 14B for belated remittance of contribution made by the appellant establishment. It is argued by the learned Counsel for the

appellant that the impugned order is silent with regard to the amounts remitted U/s 7A of the Act. On a perusal of the impugned order it is seen that the respondent authority has elaborately discussed the remittances made by the appellant establishment and as to how the amounts were adjusted against the assessment orders issued under Sec 7A of the Act. Hence there is no merit in the contention of appellant establishment. All the earlier remittances are made against Sec 7A order and not U/s 14B order.

6. The learned Counsel for the appellant argued that there was no intentional delay in remittance of provident fund contribution by the appellant. The learned Counsel for the learned Counsel objected to the same stating that there is deliberate delay in remitting the regular contribution. It was also pointed out that the appellant failed to enroll the eligible employees to provident fund membership leading to complaints from the employees union, and therefore the appellant cannot plead that there was no intentional delay in remittance of provident fund contribution.

7. 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”.

8. It is seen that the appellant establishment is a chronic defaulter in terms of enrolment of eligible employees and remittance of contribution. The respondent authority initiated action for assessing dues and recovering the same. The exhibits

produced by the appellant itself would establish seriousness of default committed by the appellant.

9. Considering the facts, circumstances and pleadings in this appeal, I am not inclined to interfere with the impugned order.

Hence the appeal is dismissed.

Sd/~

(V. Vijaya Kumar)
Presiding Officer