



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

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

(Friday the 24th day of December, 2021)

APPEAL No.738/2019
(Old No. ATA.970(7) 2012)

Appellant M/s. Kerala Institute of Local Administration,
Mulankunnathukavu, Thrissur,
Kerala – 680 581

By Adv. C.B. Mukundan

Respondent The Assistant PF Commissioner
EPFO, Sub Regional Office
Kochi -682017.

By Adv. Sajeev Kumar K Gopal

This case coming up for final hearing on 28/09/2021 and this Tribunal-cum-Labour Court on 24/12/2021 passed the following:

ORDER

Present appeal is filed from order No. KR / KC/ 15911/ Damages Cell /2012/7722 dt. 07/09/2012 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 01/2003 to 11/2009. The total damages assessed is

Rs. 2,78,132/-. The interest demanded U/s 7(Q) of the Act for the same period is also being challenged in this appeal.

2. The appellant is an autonomous body constituted by Government of Kerala and is covered under the provisions of the Act. The institution is established with main objective of imparting training to functionaries of Local Self Government institutions, Members of Legislative Assembly, Members of Parliament and other non-officials concerned with the administration of local body in the area of Public Administration and Management. The appellant was regular in compliance. The dispute involved in this case is with regard to levying damages and interest against the arrears of payment made in respect of two non-enrolled employees. The two employees namely Smt. KA Janaki and Smt. C.K. Sulochana were originally employed with M/s. Keltron power device which is also a Government of Kerala undertaking. Both of them worked in the appellant organization on deputation during the years 1995-1998. Both of them left the parent organization under voluntary retirement scheme on 30/05/1998. They requested the appellant establishment to provide employment and the appellant permitted them to continue in the organization on daily wage basis. They were enrolled to provident fund and the contribution was paid till May 2003. The true

copies of challans with supporting documents are produced Annexure A3 series. The Finance Inspection Wing of government during their audit objected to enrolling them to provident fund membership. On further examination it was found that the 2 employees in question were retired persons and therefore they come under the category of excluded employees and hence they need not be enrolled under EPF Scheme. Accordingly the appellant establishment stopped contribution to provident fund in respect of these two employees. The employees took up the matter with the respondent and the respondent vide their letter dt. 12/05/2010 advise the appellant that the dues have to be paid from the month of May 2003. A copy of the letter dt. 12/05/2010 is produced and marked as Annexure A4. On the basis of the said instruction from the respondent, the appellant remitted the contribution of these 2 employees. The relevant challans are produced and marked as Annexure A5. Subsequently the appellant received a notice dt. 31/05/2012 alongwith a delay statement informing the appellant that the respondent proposed to levy of damages and interest for the alleged delay in payment of the said contribution. A copy of the notice dt. 31/05/2012 is produced and marked as Annexure A6 series. A representative of the appellant attended the hearing and submitted a written submission dt. 30/6/2012. A copy of the said

submission is produced and marked as Annexure A7. Without considering any of the submissions the respondent issued the impugned orders. The alleged delay in remittance of contribution in respect of 2 employees was neither willful nor intentional. Therefore there is no willful defiance of law. There was no contumacious conduct on the part of the appellant. The total amount of contribution belatedly remitted by the appellant establishment in respect of 2 employees is only 1,43,396/- But the respondent levied damages to the tune of Rs. 2,78,132/- which comes to 194 % of the principle amount. As per sec 14B damages exceeding the principal amount cannot be imposed. Since there is no default, the action of the respondent in assessing damages is not in order. Sec 14B and Para 32A authorizes the respondent to levy damages only for default of contribution. The said provision have not authorized the respondent to levy damages on any other dues other than contribution. The loss of interest to the respondent authority is already covered by interest U/s 7Q. It is a settled position of law that only wilful negligence or disobedience of law on the part of the appellant in making timely compliance will attract damages U/s 14B. It is needless to submit that a penalty can be imposed only for a culpable offence or delay. The respondent authority failed to consider the written submissions filed by the appellant before him. The appellant was liable to pay

contribution only from June 2003 but due to oversight paid the arrears for April and May 2003 resulting in double payment of Rs. 3056/-.

3. The respondent filed counter denying the above allegation. Appellant is an establishment covered under the provisions of the Act w.e.f 01/10/1993. Belated remittance will attract damages U/s 14B of the Act at the rates prescribed under Para 32A of EPF Scheme. Since there was delay in remittance and enquiry U/s 14B of the Act was initiated. The appellant was given an opportunity for personal hearing on 14/06/2012. A detailed statement showing the month wise details of the belated remittance was also send along with the notice. The appellant filed a written statement dt. 30/06/2012. According to the written statement EPF dues relating to 2 employees Smt. KA Janaki and Smt. C.K. Sulochana were made for some period. Compliance was discontinued based on the inspection observation of the Finance Inspection Wing by Government of Kerala. Later on clarification that they are required to be enrolled since they did not attain the age of 55 years, it was decided to remit the contribution from 06/2003 onwards. It was also mentioned that arrears have been remitted from 04/2003 to 06/201 on 18/01/2011 instead of 06/2003 to 06/2010. The appellant never raised any dispute

regarding the delay statement forwarded along with the notice. There was considerable delay in remittance of provident fund dues for the period from 01/2003 to 11/2009. The appellant though provided some reasons for delay, no records were produced to authenticate their contention for delayed remittance. The appellant is duty bound to deduct the provident fund contribution from the salary of the employees working under him every month and is liable to remit the contributions so deducted including that of the employer before 15th of next month. The appellant was provided with ample opportunities to defend his case. A detailed delay statement was also forwarded along with the details of calculation of damages and interest. No dispute was raised with regard to any details indicated in the damages statement. The appellant admitted the delay contending that the delay was not intentional but due to special circumstances. Ignorance of law cannot be a valid ground for delay in remitting statutory provident fund dues. The appellant is not prompt in remittance as claimed in this appeal. There was an earlier assessment of damages for default for the period from 09/2014 to 11/2016 which is pending before this Tribunal. There was also an earlier proceedings wherein damages and interest levied for the period 02/2010 to 07/2012. Damages have been levied strictly in accordance with rates laid down in Para 32A of EPF Scheme. The

facts and circumstances leading to the belated payment on statutory dues were solely within the control of the appellant. Hence the appellant cannot plead that there was no intentional delay in remitting contribution. In **Chairman, SEBI Vs Sreeram Mutual Fund and another**, 2006 (5) SCC 361, the Hon'ble Supreme Court held that mensrea is not an essential ingredient for contravention of provisions of civil Act. With regard to the contention of the appellant that they have remitted excess amount of 2 months could not be considered as Smt. A.K. Janaki has already settled her provident fund amount of Rs.3,13,862/-. The Hon'ble High Court of Kerala in **Ernakulam District Co-Operative Bank Vs RPFC**, 2000 (1) LLJ 1662 held that though there is sufficient reason for the appellant to make belated payment it is not a ground for granting exemption for paying penalty or damages.

4. Appeal against sec 7Q order is not maintainable as there is no provisions U/s 7(I) to challenge an order U/s 7(O) in appeal.

5. According to the learned Counsel for the appellant the present appeal is filed against an order issued U/s 14B of the Act and also demand of interest U/s 7Q of the Act. According to the learned Counsel for the respondent appeal from Sec 7Q is not maintainable. With regard to the order assessing damages U/s 14B

the learned Counsel for the appellant pointed out that the same pertains to belated remittance of contribution in respect of 2 employees, Smt K.A Janaki and Smt. C.K Sulochana. According to him these 2 employees were enrolled to provident fund . These 2 employees came on deputation from another Government of Kerala undertaking and took voluntary retirement on 30/05/1998. Their contribution was being paid regularly till May 2003. On the basis of the observation of the Finance Inspection Wing of Government of Kerala they stopped remitting contribution for these 2 employees. These 2 employees took up the matter with the respondent and the respondent vide their Annexure A4 letter 12/05/2010 it was clarified that the provident fund membership in respect of those 2 employees will have to be continued from May 2003 as they took voluntary retirement before attaining the age of 58 years. On the basis of the clarification issued by the respondent the appellant remitted an amount of Rs.1,53,014/- on 21/01/2011. Thereafter the respondent initiated action for assessing damages for belated remittance of contribution. The learned Counsel for appellant raised 3 grounds while challenging the impugned order Sec 14B. According to him, the arrears of contribution paid in respect of those 2 employees worth only Rs.1,46,396/- where as the damages levied is Rs.2,78,132/-, which amounts to 194% of the principle amount.

The learned Counsel for the appellant pointed out that the damages U/s 14B cannot exceed the principal amount. According to the learned Counsel for the respondent the delay statement showing the amount due, the due date of payment, the actual date of payment and the delay in remittance along with proposed damages and interest was forwarded to the appellant along with the notice, which is produced and marked as Annexure A6 in this appeal. The representative of the appellant who attended the proceedings did not raise any objection regarding the statement and in fact admitted the delay as reflected in the delay statement. However on a perusal of the Annexure A6 delay statement it is seen that the delayed remittance mainly pertains to the contribution arrears paid in respect of two employees. Apparently there are only 3 payment pertaining to 03/2009,08/2009 and 11/2009 which may not be directly related to the arrears of contribution paid to the two employees. In these three payments the delay in remittance varies to 6 days to 10 days. In such a situation it was up to the respondent to explain how the penal damages component is 194% of the actual delayed contribution made by the appellant. The written statement filed by the respondent is also completely silent on this aspect which requires a clarification.

6. Another ground pleaded by the learned Counsel for the respondent is that there was no intentional delay in remittance of contribution and therefore there was no mensrea.

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 RPF**, 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. The third ground raised by the learned Counsel for the appellant is against the levy of interest U/s 7Q of the Act. As rightly pointed out by the learned Counsel for the respondent there is no provision to challenge a demand issued U/s 7Q of the Act cannot be challenged in an appeal U/s 7(I) of the Act. 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. In **M/s ISD Engineering School Vs EPFO**, WP(C) No. 5640/2015(D) and also in **St. Mary's Convent School Vs APFC**, WP (C) No. 28924/2016 (M) held that the order issued U/s 7Q of the Act is not appealable.

9. Considering the facts, circumstances pleading and evidence in this appeal, I am not inclined to uphold the order U/s 14 B of the Act .

Hence the appeal against Sec14B order is allowed the impugned order is set aside and the matter is remitted back to the respondent authority to examine whether the calculation of damages U/s 14B beyond 100% of the contribution is correct after issuing notice to the respondent. The appeal against sec 7Q order is dismissed as not maintainable.

Sd/~

(V. Vijaya Kumar)
Presiding Officer