



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

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

(Tuesday the 31st day of May, 2022)

APPEAL No.74/2021

Appellant

M/s. Vyasa Vidya Mandir,
Koonayil, Paravoor P.O
Kollam- 691 301.

By Adv. B.Mohanlal

Respondent

The Assistant PF Commissioner
EPFO, Regional Office
Parameswar Nagar
Kollam – 691 001

By Adv. Pirappancode V.S Sudheer
Adv. Megha A

This case coming up for final hearing on 18/05/2022
and this Tribunal-cum-Labour Court on 31/05/2022 passed
the following:

ORDER

Present appeal is filed from Order No. KR / KLM /
25206 / PD / 2020-21 /1350 dt. 23/02/2021 assessing
damages U/s 14B of EPF & MP Act, 1952 (hereinafter referred to
as ‘the Act’) for belated remittance of contribution for the period

06/2009 to 10/2020. The total damages assessed is Rs.1,37,547/-.

2. Appellant is a school conducting classes from LKG to Std VII. The appellant establishment is regular in compliance. The respondent issued a notice dt. 22/01/2021 to the appellant U/s 14B of the Act directing to show cause why damages shall not be levied for belated remittance of contribution. The appellant was also given opportunities for personal hearing. The appellant appeared before the respondent and submitted that the total strength of the students in the school is less than 140 and less 10 teachers are working in the school. Further two new schools which came up near the appellant also affected the strength of students of the appellant establishment . The appellant school is running under loss from the year 2009 onwards. The appellant is running the school with the help of some well wishers. Many of the staff are also doing honorary service. Ignoring the contentions of the appellant the respondent issued the impugned order. The delay in remittance was only due to the financial difficulties and there was no deliberate Act or willful defiance of law from the side of the appellant. Sec 14B is purely punitive in nature and therefore the decision of the

Hon'ble Supreme Court of India in **Hindustan Steel Ltd Vs State of Orissa**, AIR 1970 SC 253 is applicable to the proceedings under 14B also. In **Harrisons Malayalam Ltd Vs RPFC**, 2012 (1) KHC 243, the Hon'ble High Court held that merely because of there is delay in payment of contribution, liability of damages does not arise automatically.

3. The respondent filed counter denying the above allegations. The appellant establishment is covered under the provisions of the Act from 17/06/2009. The appellant establishment delayed remittance of contribution for the period 06/2009 to 10/2020 and therefore the respondent initiated action for assessment of damages vide notice dt.22/01/2021. The employer was afforded an opportunity of being heard on 02/02/2021. A representative of the appellant attended the hearing on 10/02/2021. The representative admitted the delay but pleaded that the delay in remittance of contribution was due to financial constraints. No documents were produced to substantiate the claim. Sec 14B of the Act was inserted with an object to act as a deterrent measure on the employer to prevent them from not carrying out their statutory obligations to make payments to provident fund. In the absence of such a provisions

the employers will be utilizing the contributions of the employees as well as their own contribution in their business. Remittance of contribution in time is an unqualified liability on the part of the employer. The Division Bench of the Hon'ble High Court of Punjab and Haryana in **Elsons Cotton Mills Vs RPFC**, 2001 (1) SCT 1101 (P&H) (DB) rejected the plea of financial crisis as a ground for delayed remittance of contribution. Poor financial capacity can be of no assistance when the employer is found to be a habitual defaulter. The Hon'ble High Court of Madhya Pradesh in **Steel Tools of India Ltd Vs Assistant PF Commissioner**, 2012 (132) FLR 1057 held that there is no provision whereunder the explanation for delay of payment of amount due to financial difficulties as claimed by the establishment can be a ground to reduce penalty in the context as envisaged. The Hon'ble Supreme Court of India in **Hindustan Times Ltd Vs Union of India**, 1998 (2) SCC 242 held that financial problems is not a relevant explanation to avoid the liability for payment of dues.

4. The appellant establishment delayed remittance of provident fund contribution for the period 06/2009 to 10/2020. The respondent initiated action U/s 14B to assess damage for belated remittance of contribution. Issued notice to the appellant

along with the detailed delay statement. A representative of the appellant attended the hearing and pleaded financial difficulties. The appellant failed to produce any document to support the claim of financial difficulties. The respondent therefore issued the impugned order.

5. In this appeal, the learned Counsel for the appellant submitted that the delay in remittance was due to financial difficulties of the appellant establishment during the relevant point of time. The appellant however failed to produce any document to support the claim of financial difficulties.

6. In **M/s. Kee Pharma Ltd Vs APFC**, 2017 LLR 871 the Hon'ble High Court of Delhi held that the employers will have to substantiate their claim of financial difficulties if they want to claim any relief in the levy of penal damages U/s 14B of the Act. In **Sree Kamakshi Agency Pvt Ltd Vs EPF Appellate Tribunal**, 2013(1) KHC 457 the Hon'ble High Court of Kerala held that the respondent authority shall consider the financial constraints as a ground while levying damages U/s 14B **if the appellant pleads and produces documents to substantiate the same**. In **Elstone Tea Estates Ltd Vs RPF**, W.P.(C) 21504/2010 the Hon'ble High Court of Kerala held that financial constraints have to be

demonstrated before the authorities with all cogent evidence for satisfaction to arrive at a conclusion that it has to be taken as mitigating factor for lessening the liability.

7. The learned Counsel for the appellant also argued that the appellant was not given adequate opportunity .It is seen that the appellant acknowledged the receipt of the notice for hearing on 02/02/2021. The appellant did not attend the hearing but send on email dt.02.02.2021 seeking adjournment. Hence the enquiry was adjourned to 10/02/2021 and was heard through video conferencing in view of the Covid-19 pandemic. A representative of the appellant attended the hearing and admitted the delay and failed to produce any document and sought no many further adjournments for production of documents. Hence it is not correct on the part of the appellant to argued that it was not provided adequate opportunity for hearing.

8. The learned Counsel for the appellant also argued that there was no intentional delay or mensrea in belated remittance of contribution.

9. The learned Counsel for the respondent submitted that the appellant has no case that the salary of the employees were not paid in time. When the salary of the employees are paid, the

employees' share of the contribution is deducted from the salary of the employees. Non remittance of employers' share of contribution deducted from the salary of the employees is an offense of breach of trust U/s 405 & 406 of Indian Penal Code.

10. 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”

11. 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