



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

Present: Shri.V.Vijaya Kumar, B.Sc., LLM, Presiding Officer.
(Monday the 3rd day of May, 2021)

APPEAL No.79/2019

(Old No. ATA 15 (7) 2014)

Appellant

M/s.Thiruvananthapuram Taluk
Educational Co-operative Society
Limited No. T 690,
Thampanoor,
Thiruvananthapuram- 695 001.

By Adv. S.M. Prem &
Adv. P. Ramachandran

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
19/03/2021 and this Tribunal-cum-Labour Court on
03/05/2021 passed the following:

O R D E R

Present appeal is filed from order No. KR/5682/RO
TVM/PD/2013/4705 dt. 21/10/2013.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 04/1997 to 03/1999. The total damages assessed is Rs. 1,89,597/-.

2. The appellant is an educational co-operative society registered under Kerala Co-operative Societies Act 1969. The object and function of the appellant establishment is to create employment for educated youths by conducting educational activity such as imparting training to students doing various courses for pre degree to post graduate level offered by University of Kerala through private registration. The only source of income for the appellant is the fee collected from the students. The number of students vary from year to year and therefore the income also varies proportionately. Hence there was delayed payment of salary to its employees. There is no distinction of employer and employee as the employees themselves are managing the affairs of the appellant society. The appellant voluntarily opted to join EPF Scheme in 1982. The appellant received a notice dt. 17/07/2013 from the respondent alleging delay in remittance of provident fund contribution. A copy of the notice is produced and marked as Annexure A1. Immediately on receipt of Annexure A1 notice, the appellant

remitted the interest U/s 7Q of the Act. A representative of the appellant attended the hearing and filed a written statement. A copy of the written statement is produced and marked as Annexure A2. Without considering the pleadings of the appellant the respondent issued the impugned order. There was no willful default on the part of the appellant in making in delayed remittance of contribution. The imposition of damages inflicts unmerited a punishment and burden on the beneficiaries who themselves are running the management of the appellant establishment.

3. The appellant establishment is covered under the provision of the Act. There was delay in remittance of contribution for the period from 04/1997 to 03/1999. When there is delay in remittance of contribution damages U/s 14B read with Para 32A of EPF Scheme is attracted. Hence a notice dt. 17/07/2013 was issued to the appellant to show cause why damages U/s 14B of the Act shall not be levied for belated remittance of contribution. A monthwise detailed delay statement was also forwarded to the appellant. Appellant was also given an opportunity for personal hearing on 30/08/2013. A representative of the appellant attended the hearing and admitted the delay. He also deposited

the interest due U/s 7Q of the Act. The representative also filed a written statement claiming the delay in remittance of contribution was not intentional. The respondent issued the impugned order after considering the written statement of the appellant establishment.

4. The only ground pleaded by the appellant in this appeal for delayed remittance of contribution is that of financial difficulties. The learned Counsel for the respondent pointed out that the same was pleaded by the appellant before the respondent authority as well. However the appellant failed to produce any documents to substantiate their claim of financial difficulties. Even in this appeal the appellant failed to produce any document to substantiate their claim of financial difficulties. The appellant establishment is a co-operative society registered under Co-operative Societies Act. All the employees are therefore the members of the co-operative society and the selected representative from among the employees managed the affairs of the appellant establishment. According to the appellant after delinking of pre-degree from colleges and due to the introduction of self-financing colleges, the number of students in the appellant dropped from around 1000 to around 300. This affected the

revenue of the appellant establishment as the fee collected from the students is the only source of income of the appellant establishment. It was also contended that the appellant society freezed the salary for the employees for certain months to get over the financial crisis of the appellant establishment. According to the learned Counsel for the respondent the appellant failed to produce any document to substantiate the above claims. 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 RPFC***, 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.

Considering the fact that the appellant is a co-operative society and the employees representative managed the affairs of the appellant establishment, it is but natural that the employees' welfare will be a priority with the management of the appellant establishment. The claim of the appellant that the society decided to freeze the salary of the employees for few months is not supported by any evidence. However, taking into account the overall situation of the appellant establishment it is felt that the appellant deserves some consideration in the levy of damages.

5. Considering all the facts, circumstance, evidence and pleadings in this appeal, I am inclined to hold that interest of justice will be met, if the appellant is directed to remit 70% of the damages assessed as per the impugned Order.

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