



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

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

(Thursday the 6th day of January, 2022)

Appeal No. 05/ 2020

Appellant : M/s. Hotel Saj Lucia,
East Fort,
Thiruvananthapuram- 695023.

By Adv. Ajith S Nair

Respondent : The Assistant PF Commissioner
EPFO, Regional Office
Pattom,
Thiruvananthapuram- 695004.

By Adv. Ajoy P.B

This appeal came up for hearing on 07/10/2021 and this Industrial Tribunal cum Labour Court issued the following order on 06/01/2022.

ORDER

Present appeal is filed from Order No. KR/TVM/10249/PD/2019-20/4468 dt. 11/11/20-19 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

10/2014 to 08/2015, 03/2016 & 12/2016. The total damages assessed is Rs. 33,935/-.

2. Appellant is an establishment covered under the provisions of the Act. The employees of the appellant establishment are covered under the provisions and distinctive numbers are issued to each along with the code number allotted to the appellant till UAN is introduced in the organization. The allotment of the numbers by the appellant created some confusion and due to wrong allotment of numbers and the same number was allotted to 2 members. The Enforcement Officer of the respondent organization during his inspection, pointed out that contribution in respect of Mr.Arun Kumar is not paid by the appellant establishment. He investigated the complaint filed by Shri.Arun Kumar. In fact the appellant remitted the contribution and it was found that Shri. Arun Kumar was allotted the code number previously given to one Shri. Anil Kumar who left the establishment in January 2006. The appellant requested the respondent to make the necessary corrections. However the respondent organization in fault that Shri.Anil Kumar in whose account the amount was deposited has been withdrawn by him. The appellant thereafter remitted the dues in the account of

Shri. Arun Kumar. The appellant establishment remitted the amount even though there was no legal obligation to do so. The appellant received a notice from the respondent authority alleging delay in remittance of contribution. The representative of the appellant attended the hearing and placed the above facts before the respondent authority ignoring the contentions the respondent issued the impugned order. The contention of the respondent that there was delay in remittance of contribution is not correct. There was actual payment but the payment was remitted to a wrong account. The remittance of the contribution is taken as an admission of delay by the respondent authority.

3. The respondent filed counter denying the above allegations. The appellant establishment delayed remittance of contribution and therefore the respondent issued a summons directing the appellant to attend the hearing and show cause why damages shall not levied on the appellant. The appellant was given a heard on 03/09/2019. A representative of the appellant attended and filed a written statement. According to the appellant the delay in remittance is not in respect of regular dues by inadvertent mistake committed by the appellant. There was no compulsion on the part of the respondent to remit the

contribution belatedly. After hearing the appellant and considering the same and the respondent issued the impugned order. The delay in remittance of EPF dues of an employee which was inadvertently remitted to another employee cannot be justify and the appellant is legally bound to pay damages for belated remittance. The request of the appellant establishment for transferring the wrongly remitted amount could not be consider due to the fact that the employee has already withdrawn the money in the form of a loan. The appellant is therefore liable to make the loss suffered by the organization. The impugned order was also issued after hearing the appellant and affording adequate opportunity. Para 32A of EPF Scheme clearly envisages that whenever an employee makes default in payment of any contribution to the fund or in payment of any charges payable under any other provisions of the Act or the Scheme. The respondent can recover from the appellant by way of penalty damages at the rates given in the table. The Hon'ble Supreme Court of India in **Chairman, SEBI Vs Sri Ram Mutual Fund**, 2006 (5) SCC 361 held that mensrea is not an essential ingredient for contravention of the provisions of civil Act. It was also clarified that penalty is attracted as soon as the contravention of the statutory obligation as contemplated

by the Act and regulation is established and hence the intention of parties committing such violation becomes wholly irrelevant.

4. One of the employees of the appellant establishment complained that his provident fund contribution is not being remitted by the appellant establishment. An Enforcement Officer was deputed to investigate the complaint. On verification of the records of the appellant establishment the Enforcement Officer found that the contribution in respect of Shri. Arun Kumar, the employee who complained was being remitted by the appellant establishment wrongly in the account of Shri. B Anil Kumar an ex employee of the appellant establishment. The appellant requested the respondent that the amount remitted in the account of Shri. Anil Kumar may be transferred to Shri. Arun Kumar. On verification of the records the respondent authority found that Shri. B. Anil Kumar had already withdrawn the amount in the form of a loan and there was no possibility on transferring the amount. The learned Counsel for the appellant contended that the appellant had no obligation to further remit the contribution as they had already remitted the same. It is difficult to accept the contention of the learned Counsel for the appellant as wrong payments cannot be accounted as remittance into

the account of the members and therefore the appellant was liable to correct his mistake by depositing the amount. The learned Counsel for the appellant further argued that in the circumstances of this case there is no mensrea in belated remittance of contribution and therefore the damages levied as per the impugned order may be waived. The Hon'ble Supreme Court of India in a recent decision examine the applicability of mensrea in Sec14 B proceedings. 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”.

5. In view of the legal position explained above I am not inclined to interfere with the impugned order .

Hence the appeal is dismissed

Sd/-
(V. Vijaya Kumar)
Presiding Officer