



सत्यमेव जयते

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

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

(Tuesday the 25th day of May, 2021)

APPEAL No.278/2018

(Old No. A/KL-55/2017)

Appellant

M/s. Trichur District
Co-operative Hospital
No. R.306, Shornur Road
Thrissur – 680 001

By Adv. George Poonthottam

Respondent

The Regional PF Commissioner
Employees Provident Fund Organisation
Sub Regional Office,
Bhavishyanidhi Bhavan,
Kaloor, Kochi – 682 017

By Adv. Thomas Mathew Nellimoottil

This case coming up for final hearing on
30/03/2021 and this Tribunal-cum-Labour Court on
25/05/2021 passed the following:

ORDER

Present appeal is filed from order
No.KR/KCH/4515/DAMAGES CELL/ T(1)/ 2016-17/16671
dt.22/02/2017 (hereinafter referred to as 'the Act') for assessing

damages U/s 14B of EPF & MP Act 1952 for delay in remittance of contribution for the period from 02/2014 to 11/2014. The total damages assessed is Rs.3,84,564/-.

2. The appellant is a primary co-operative hospital society as defined under Rule 15(6)(2) of the Co-Operative Societies Rules, under the provisions of the Kerala Co-operative Societies Act. The appellant hospital is functioning under co-operative sector. The appellant establishment is running under heavy loss for the past few financial years. The appellant suffered a total loss of Rs. 1,06,99,599.84/- Crores during the financial year 2012-13. A true copy of the Profit & Loss account of the appellant establishment for the year 2012-13 is produced and marked as Annexure A1. The appellant suffered a loss of Rs. 2,77,81,127.52/- during the year 2013-14. The true copy for the Profit & Loss account of the year 2013-14 and 2014-15 are produced and marked as Annexure A2. Rule 188 of Co-Operative Societies Rule requires every society to adopt the staff pattern as specified therein. The rules however permit the societies to change the staff pattern with the approval of the Registrar of Co-operative Societies. The true copy of staff

pattern as approved by the Joint Registrar of Co-operative Societies is produced and marked as Annexure A3. The permitted staff was not adequate to run the day to day affairs of appellant hospital. Hence to meet the shortage of nurses the appellant engaged some nurses on contract basis. Though the provident fund contribution in respect of wages of regular employees were paid in time, the contribution in respect of contract employees' were delayed due to financial constraints of appellant establishment. The respondent issued a show cause notice dt.20.01.2017 directing the appellant to show cause why damages shall not be levied for belated remittance of provident fund contribution. The appellant was also given an opportunity to appear in person on 08.02.2017. The appellant appeared before the respondent and explained that the remittance was delayed due to financial constraints of the appellant establishment. Ignoring the contentions of the appellant the respondent issued the impugned order, assessing damages at the maximum rate. The respondent has the discretion to consider the financial difficulty of the appellant establishment and waive or reduce damages as per Sec 14B of the Act and also Para 32A of EPF Scheme. As per Para 30 of the EPF Scheme,

the appellant is liable to pay contribution only when the wages are paid to the employees. The respondent failed to consider the fact that there was delay in payment of wages and therefore the contribution was also delayed.

3. The respondent filed counter denying the above allegations. The appellant establishment is covered under the provisions of Act. The appellant is liable to remit the contribution within 15 days of close of every month irrespective of whether wages are paid or not. There was delay in remittance of contribution by the appellant establishment. The respondent therefore issued a notice to the appellant as to why damages shall not be levied for belated remittance of contribution. A detailed delay statement showing the delay in remittance of contribution, the actual date of contribution, the delay in remittance of contribution and the proposed damages was also forwarded to appellant hospital. A representative of appellant attended the hearing and pleaded financial difficulty as a reason for delayed remittance of contribution. The representative of the appellant hospital however admitted the delay and stated that the delay in remittance was due to the mismanagement of the

affairs of the appellant hospital by the then Secretary. Financial hardship cannot be taken as a license or reason to commit default in respect of payment under the Act. The Hon'ble High Court of Gujarat in **C.P Kotak Balmandir Vs RPFC**, SCA no 3749 of 2011 held that financial difficulty by itself is not a sufficient explanation for default unless it is also proved that there was delay in payment of wages to the employees. The appellant failed to produce any documents to prove their claim of financial difficulty. The Hon'ble High Court of Kerala in **Ernakulam District Co-Operative Bank Vs RPFC** 2000(1) LLJ 1662 held that, even though there may be sufficient reasons for the appellant to make belated payments, that is not a ground for granting exemption for paying damages under the provisions of the Act. The appellant failed to submit any valid reasons for the delay and it is seen that the circumstances leading to the belated payment of PF contributions is not proved by the appellant. The claim of appellant that, there was delay in payment of wages to the contract employees is not substantiated by any evidence. The contributions delayed by the appellant includes the employee's share of contribution deducted from the salary of the employees and therefore the

appellant cannot plead that there was no intentional delay in remittance of contribution. The appellant cannot ignore the statutory liability cast upon him as an employer under Para 30, 36 and 38 of EPF Scheme to remit the monthly contribution payable under various accounts invariably within 15 days of close of every month in respect of all eligible employees. The liability of employer under the Act arises the moment the wages are earned by the employees irrespective of whether salary is paid or not. As held by Hon'ble Supreme Court, the right to receive wages is a fundamental right of employees and the employer's cannot be given any accommodation for violating Article 21 of the Constitution.

4. It is seen from the facts of the case that there was delay in remittance of provident fund contribution by the appellant establishment. According to the learned Counsel for appellant, the delay in remittance of contribution was due to financial constraints of the appellant establishment. It is pointed out by the learned Counsel for the respondent that the appellant failed to produce any documents to substantiate the claim of financial difficulty before the respondent authority. The appellant

however produced the Profit & Loss account and the audit report of the appellant establishment for the years 2011-12, 2013-14, 2014-15 in this appeal. On perusal of the Profit & Loss account, it is seen that there is an accumulated loss of Rs.1.06 Crore in the year 2012-13 and Rs.2.78 Crore in the year 2013-14 and Rs.3.01 Crores in the year 2014-15. However on perusal of the audit report of the appellant establishment, it is seen that the loss of appellant establishment was only due to the mismanagement of the appellant establishment and it is also seen from the audit report of 2014-15 that the Secretary and Assistant Secretary of the appellant society is suspended from the service. According to the learned Counsel for the respondent, the financial constraints now pleaded by the appellant is only due to the mismanagement and is not the real financial constraints of the appellant. According to him no accommodation can be given to the appellant establishment for mismanagement of their financial matters. The learned Counsel for the appellant pleaded during the course of arguments that there was delay in payment of wages to contract employees which lead to delay in remittance of contribution of these employees. The appellant

failed to produce any evidence to support their case of belated payment of wages to the contract employees. The documents produced by the appellant in the appeal also would not support the claim of the appellant.

5. As rightly pointed out by the learned Counsel for the respondent, the financial difficulty of the appellant establishment is the creation of the mismanagement of appellant. However it is a fact that the appellant was facing financial constraints during the relevant point of time which is supported by evidence now produced in the appeal. The appellant is thereafter entitled for some accommodation as far as levy of damages under Sec 14B, is concerned.

6. Considering the facts, circumstances, pleadings and evidences in this appeal, I am inclined to hold that interest of justice will be met if the appellant is directed to remit 70% of assessed damages.

Hence the appeal is partially allowed, the impugned order is modified and appellant is directed to remit 70% of damages assessed under Sec 14B of the Act.

Sd/-
(V.Vijaya Kumar)
Presiding officer