



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

Present: Shri.V.Vijaya Kumar, B.Sc., LL.M, Presiding Officer.
(Thursday the 22nd day of October, 2020)

Appeal No.556/2019

(Old No. 538(07)2010)

Appellant : M/s. Institute of Integrated
Management and Safety
Valakottu Buildings,
Pullikkanakku P.O
Kayamkulam-690 537

By Adv. S.P. Arora

Respondent : The Assistant PF Commissioner,
EPFO, Kaloor
Kochi -682017.

By Adv. Sajeev Kumar K Gopal

This appeal came up for hearing on 02/03/2020 and this Industrial Tribunal cum Labour Court issued the following order on 22/10/2020.

ORDER

Present appeal is filed from KR/KC/21222/PD/B/T(1) 2010/6607 dt. 26/7/2010 assessing damages U/s 14B of EPF & MP Act,1952 (hereinafter referred to as 'the Act) for belated

remittance of Provident Fund contribution the period from 03/2006 to 03/2008. The total damages assessed is Rs.1,68,313/-The interest demanded U/s 7Q of the Act for the same period also is being challenged in this appeal.

2. The appellant is a proprietary concern engaged in the supply of manpower to government offices/ public undertakings and public enterprises for the purpose of security and surveillance. The payments from the government organizations, becomes due and payable after the expiry of each month and bills are raised accordingly against the services rendered. But the payments are delayed from these organizations. As a result there will be cash crunch during some times and the salary & wages also get delayed. The appellant received a notice from the respondent alleging delay in remittance of Provident Fund contribution for the period from 03/2006 to 02/2008. The notice also contained a detailed delay statement showing the due date the date of payment, the amount paid and delay in remittance. The delay in remittance of Provident Fund was only due to position of funds, due to delay in getting the payment from various

government organizations. The Division Bench of the Hon'ble High Court of Delhi in **Systems & Stamping Vs EPF Appellate Tribunal** held that the rate of interest prescribed U/s 7Q of the Act is already inbuilt in Para 32A along with the quantum of damages. The validity of circular dt. 29/05/1990 was under challenge which was upheld by the Court. In the circular dt. 28/11/1990 issued by the Assistant Provident Fund Commissioner, Delhi there was a time stipulation of 3 years for finalizing 14B proceedings. No opportunity was given to the appellant to represent before the 7Q order is issued. In **Karnataka Agro Industries Corporation Vs RPFC**, 1979 LIC 72 the Hon'ble High Court of Karnataka held that the 14B authority can recover reasonable amount of damages from the defaulting employer having regard to the facts of that case. In **Mysore Bangle Works Vs State of Mysore**, 40 FLR 247 (MYS.DB) the Hon'ble High Court of Karnataka held that 14B does not envisage determination of damages by a rigid formula without regard to the facts and circumstances of the case.

3. The respondent filed counter denying the above allegations in the appeal memorandum. The appellant

establishment is a chronic defaulter in remittance of statutory contribution under the Act. The appellant defaulted in payment of contribution for the period 03/2006 to 03/2008. Belated remittance of statutory dues provided U/s 6 of the Act will attract damages U/s 14B of the Act read with Para 32A of EPF Scheme. The respondent issued notice to the appellant directing the appellant to show cause, with documentary evidence, as to why damages should not be levied for belated remittance of provident fund contribution. The appellant was also afforded an opportunity for personal hearing on 30/06/2010. A detailed delay statement showing the due date of payment the date of remittance, the dues defaulted and period of delay was also forwarded to the appellant along with the notice. A representative of the appellant appeared before the respondent on 30/6/2010 and pointed out some differences in the date of remittances and also produced copies of challans as proof. The representative of the appellant admitted the delay of remittance of contribution except the correction pointed out above. After considering the documents produced by the appellant, the respondent issued the

impugned order. It was also noticed that the appellant failed to remit even the monthly contribution deducted from the salary of the employees in time. Para 30 & 38 of EPF Scheme cast a statutory liability upon the appellant to remit the monthly contribution within 15 days of close of every month. The liability of appellant under the Act arises the moment the wages are earned by the members irrespective of whether it is actually paid or not. Any delay in remittance beyond the stipulated date results in default. The only ground pleaded by the appellant in this appeal is the delay in getting the payments from Govt. agencies. It is up to the appellant to ensure that the statutory liability vested in him by the statute is honored by him in letter and spirit. The respondent cannot be held hostage in the dispute between the appellant and his clients. The Hon'ble High Court in **Hindustan Times Vs Union of India**, AIR 1998 SC 688 held that the Act provides for no limitation and any delay in assessing damages is only a "Boon of Delay" to the employers. The Hon'ble High Court in **Hindustan Times** case (Supra) held that financial difficulties cannot be a reason for reducing or waving damages.

4. According to the appellant there was no intentional delay in remittance of contribution and the delay was only due to the delay in getting payments from various clients. The appellant has not substantiated his claim of financial difficulties neither before 14B authority nor in this appeal. It is seen that the claim of financial difficulties was not even made before the respondent authority during the hearing afforded to the respondent. In **ESS DEE Carpet Enterprises Vs Union of India**, 1985 LIC 1116 the Hon'ble High Court of Rajasthan held that the issues that were not raised before the Regional Provident Fund Commissioner cannot be raised in Writ Petition for the first time. Though the appellant raised the issue of financial difficulties in this appeal, he did not produce any evidence to prove his plea. According to the learned Counsel for the respondent even the employees share of contribution deducted from the salary of the employees, which amounts to 50% of total contribution was not paid by the appellant in time. Though there was a pleading in the appeal that there was delay in payment of wages to its employees there is no proof in support of the same. Non

remittance of employees share of contribution deducted from the salary of the employees is an offence U/s 405 & 406 of Indian Penal Code. Having committed an offence of breach of trust the appellant cannot plead that is no mensrea in belated remittance of contribution.

5. Considering the facts and circumstances, I am not inclined to interfere with the impugned U/s 14B of the Act.

6. 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), 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 SC295 the Hon'ble High Court held that no appeal is maintainable from an order issued U/s 7Q of the Act. In **District Nirmithi Kendra Vs EPFO**, W.P.(C) 234/2012 the Hon'ble High Court of Kerala held that no appeal is maintainable against a 7Q order. The Hon'ble High Court of Kerala in **RPFC Vs Harrison's Malayalam Ltd** 2013 KLT 790 held that "that definitely was not to be left to the description of the authorized office since it does not call for any adjudication and accrued of interest in

the employees account is liable to be compensated by the employer who caused the delay. Hence, Sec 7Q is automatically imposed on any delay, without any reference to mitigating circumstances; but with reference only to the period of delay and rates specified. Even the previous and subsequent conduct of the employer in making prompt remittance of contribution will not be relevant in the imposition of 7Q". Hence the appeal against 7Q order is not maintainable.

Hence the appeal against Sec.14B order is dismissed and appeal against Sec.7Q order is dismissed as not maintainable.

Sd/-

(V.Vijaya Kumar)
Presiding Officer

