



सत्यमेव जयते

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

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

(Wednesday the 12<sup>th</sup> day of May, 2021)

**APPEAL No.251/2019**

(Old No. ATA 255(7) 2015)

Appellant

M/s. Kerala State Defence Service  
Co-operative Housing Society Ltd .,  
Kochi – 682016.

By Adv. Ashok B. Shenoy &  
Adv. P.S. Gireesh

Respondent

The Assistant PF Commissioner  
EPFO, Sub Regional Office,  
Kaloor, Kochi 682017

By Adv. Sajeev Kumar K Gopal

This case coming up for final hearing on  
26.03.2021 and this Tribunal-cum-Labour Court on  
12.05.2021 passed the following:

**ORDER**

Present appeal is filed from order No. KR/ KCH /  
13896/Damages Cell/Ex-Parte/ 2014 / 8714 dt. 14/11/2014  
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 02/2009 to 06/2012. The total damages assessed is Rs.1,07,134/-.

2. The appellant is a co-operative housing society registered and functioning under Kerala Co-operative Societies Act 1969. Its members are ex-servicemen and their dependent family members. It employs only 2 employees and one being Secretary and other Peon. The appellant society is giving loans and financial help for construction of house and also facilitate finding of jobs for ex-servicemen and their dependent family members. The appellant entered into agreement, from time to time, with Kerala State Financial Enterprises to supply manpower to KSFE Ltd on contract basis. In view of the above, the appellant establishment is covered under the provisions of the Act with effect from 30/09/1993. While so in April 2014 the appellant was served with a summons dt. 03.04.2014 proposing to impose damages on delayed remittance of contribution for the period from 01/04/1996 to 17/03/2014. A tabular statement for the period from 02/2009 to 06/2012 was also enclosed. Both the summons and the statements were not readable. The appellant was also offered a personal hearing. A true copy of the summons and the tabular statement is produced and marked as

Annexure A1. The appellant vide Annexure A2 dt. 10/04/2014 informed the respondent that the summons and statements were not readable. Without adverting to or considering the Annexure A2 letter and also without affording a legible readable summons and statement, the respondent authority issued the impugned order dt. 14/11/2014 imposing damages on the appellant for the period from 02/2009 to 12/2013. The appellant was not provided any details of such assessment. The true copy of the impugned order is produced and marked as Annexure A3. The impugned order issued in clear violation of principles of natural justice and appellant was not aware of due particulars or details of delay, rate of damages etc before passing the order. The personal hearing afforded to the appellant was an empty formality. The delay statement enclosed alongwith the summons is for the period 02/2009 to 04/2012 whereas the damages are assessed for the period from 02/2009 to 12/2013 as per the impugned order. The impugned order is based on facts which were not disclosed to the appellant. The respondent authority also failed to adjudicate the question as to whether imposition of damages is justifiable in the present case. The respondent authority also failed to consider that the

appellant establishment was under heavy loss during the relevant point of time. The audit certificate and audit memorandum for the 2012-13 would clearly establish that the appellant was under a heavy loss of Rs.58.12 lakhs during the relevant point of time. The audit report is produced and marked as Annexure A4. There was no finding by the respondent authority that there is a deliberate and willful delay in remittance of provident fund contribution. As per Para 38 of the EPF Scheme contributions are payable within 15 days of the close of the month in which wages are paid and deductions towards contributions is made. As wages to the employees to each month are being paid by the appellant in the succeeding month with deductions towards employees' contribution also is being made in the succeeding month only. The respondent also failed to provide five days grace period allowed to the employers for payment of contribution as per circular No.E.128(1)60-III dt. 19/3/1964 and the modified circular No. E11/128 (sec 14 B amendment dt. 24/10/1973).

3. The respondent filed counter denying the above allegations. The appellant establishment is covered under the provisions of the Act with effect from 30/9/1993. The appellant

defaulted in payment of contribution for the period 02/2009 to 06/2012. Belated remittance will attract damages U/s 14B of the Act read with Para 32A of EPF Scheme. The respondent authority therefore issued a summons dt. 03/04/2014 to show cause why penal damages shall not be levied on the appellant establishment. The appellant was also given an opportunity for personal hearing on 21/05/2014. A detailed damages statement showing the monthwise details of the belated remittance for the defaulted months was also sent with the summons. The summon dt. 03/04/2014 was acknowledged by the appellant . There was no representation for the appellant at the time of hearing. Since there was no request for adjournment or written statement from the appellant the enquiry was concluded on 21/05/2014. The Annexure 2 letter claimed to have been sent by the appellant is not seen received by the respondent. Since there was no reason to delay the assessment of damages, the respondent issued the assessment order levying damages as proposed in the notice. The appellant is not entitled for the grace period of 5 days as the delay in remittance is more than 15 days and therefore the appellant is liable to pay damages from the due date of remittance. In **Organo Chemical**

**Industries Ltd Vs Union of India**, 1979(2) LLJ 416 the Hon'ble Supreme Court held that the reason for introduction of Sec 14B was to deter and thwart employers from defaulting in forwarding contribution to the funds, most often with the ulterior motive of misutilising not only their own, but also the employees contributions. The total amount of contribution payable by the appellant in terms of Sec 6 of the Act includes employees share of contribution also. Approximately 50% of the contribution payable by the appellant represents the employees' share of provident fund contribution, deducted from the salary of employees.

4. The basic issue on which this appeal is based, is violation of principles of natural justice. The appellant has also challenged the impugned order on the ground that the financial constrains of the appellant establishment was not considered by the respondent authority while levying maximum damages stipulated under Para 32A of EPF Scheme. With regard to the first issue it is pointed out by the learned Counsel for the appellant that they were in receipt of a summons from the respondent dt. 03/04/2014. A delay statement in tabular form was also enclosed alongwith the notice. Both these documents

were not legible. Hence the appellant vide letter 10/04/2014 which is produced as Annexure 2, requested the respondent to provide a readable copy of the summons as well as the statement. There was no response from the respondent. According to learned Counsel for the respondent they were not in receipt of the Annexure A2 letter. Nobody representing the appellant attending the hearing on 21/05/2014. The respondent therefore issued the ex-parte order assessing damages. The learned Counsel for the appellant also pointed out that the summons issued and the tabular delay statement enclosed alongwith that though not clear and readable has indicated that the assessment of damages was for the delayed remittance of contribution for the period 02/2009 to 06/2012. However as per the impugned order the damages is assessed for the period from 02/2009 to 12/2013. The change of period of assessment is made without any notice to the appellant. Though the appellant has made a specific pleading in this regard, in the appeal memorandum, no reply in this regard is mentioned in the written statement filed by the respondent. In the 1<sup>st</sup> page of the impugned order, it is stated that the appellant failed to remit the contribution in time during 02/2009 to 06/2009. In the last

page of the impugned order it is stated that damages is assessed for the period 02/2009 to 12/2013. Hence it is not clear for which period the damages is assessed as per the impugned order. As there was no representation from the side of the appellant, he could not plead the financial difficulties before the respondent authority and therefore the same was not considered by the respondent authority in the impugned order.

5. This is a clear case where the principles of natural justice is completely violated by the respondent. The respondent issued a summons to the appellant which was not readable. The appellant requested for a legible copy which was not provided to him. The enquiry was finalized in the first instance without providing an opportunity to the appellant to come up their case. When the delay statement is not legible and readable the very purpose of affording opportunity is lost. Only after verifying the date of remittance in the delay statement the appellant will be in a position to respond to the correctness of the calculation made by the respondent authority. Hence non furnishing of a legible copy of the delay statement will definitely impact the appellant in providing a proper response at the time of the enquiry. Further the respondent also could not explain the anomaly in



the period of assessment as per the notice as well as in the impugned order. As rightly pointed out by the learned Counsel for the appellant the period of assessment and damages in the summons is 02/2009 to 06/2012 and in the impugned order the date of assessment of damages is from 02/2009 to 12/2013.

6. Considering the facts, circumstances and pleadings in this appeal, I am not inclined to upholding impugned order.

Hence the appeal is allowed, the impugned order is set aside and the matter is remitted back to the respondent to re-assess the damages after issuing a legible copy of the summons and delay statement, within a period of 6 months from the date of receipt of this order. In view of the findings on the violation of the principles of the natural justice the other issues raised by the appellant in this appeal is kept open to be considered by the respondent at the time of adjudication of the matter.

(Sd/-)

**(V. Vijaya Kumar)**  
Presiding Officer