



सत्यमेव जयते

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

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

(Friday the 23rd day of April, 2021)

APPEAL No.304/2019

Appellant : M/s. Centre for Water Resources
Development and Management
(CWRDM), Kunnamangalam
Kozhikode District-Pin 673571.

By Adv. Sadasivan.P

Respondent : The Assistant PF Commissioner
EPFO, Sub-Regional Office
Eranhipalam P.O
Kozhikode-673 006.

By Adv. Dr. Abraham Meachinkara

This case coming up for final hearing on
22/03/2021 and this Tribunal-cum-Labour Court on
23/04/2021 passed the following:

ORDER

Present appeal is filed from Order No. KR / KKD /
4938 / Enf-2 (1) / 2019 / 2136 dt. 03/07/2019 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 08/2015 to 10/2018. (Remittance made during the period from 01/4/2018 to 31/03/2019). The total damages assessed is Rs. 5,94,887/-.

2. The appellant is an institution under Kerala Counsel for Science, Technology and Environment. The appellant enrolled 20 employees in November 2018 and an amount of Rs.17,38,526/- being both the contributions was remitted with the Respondent's office on 21/01/2018 & 22/01/2019. All the 20 employees were classified as excluded employees as defined under Para 2(f) of EPF Scheme. All the above employees were enrolled during the period from 03/08/2015 to 23/02/2018. The appellant had no legal obligation to enroll these employees as they were excluded employees under the provisions of the Act and Scheme. Since no other social security schemes are available to these employees, the appellant decided to extend the social security benefit under the Act and Schemes to these employees from their date of eligibility and remit the contributions. As per circular dt.10/05/2017 all R&D centres are directed to take necessary

action to enroll the employees who joined after 05/10/2010 but before 31/03/2013 to provident fund. As per circular dt.17/10/2018 issued by Kerala State Council for Science, Technology and Environment, the appellant was directed to take action to enroll all employees who joined after 01/04/2013 also to provident fund. The above circulars are produced and marked as Exbt A4 & A5 respectively. On the basis of the above instruction the appellant enrolled all the above employees to provident fund and remitted their contribution. There was no willful latches or negligence on the part of the appellant in belated remittance of contribution. The respondent issued a notice dt. 22/05/2019 to show cause why damages as envisaged U/s 14B of the Act shall not be levied against the appellant. The appellant was also given a personal hearing on 25/06/2019. A representative of the appellant attended the hearing and explained the reasons for delay and also submitted a written explanation. The written statement given to respondent authority is produced as Exbt A3. The respondent authority failed to exercise his discretion

U/s 14 B taking into account the circumstances in which there was delay in remittance of contribution.

3. The respondent filed counter denying the above allegations. The appellant establishment is covered under the provision of the Act. There was delay in remittance of contribution for the period from 08/2015 to 10/2018. The respondent therefore issued a notice dt.22/05/2019 to show cause why damages shall not be levied for belated remittance of contribution. The appellant was also given a personal hearing on 25/6/2018. A representative of the appellant attended the hearing and filed a statement dt. 15/06/2019, according to which delay happened consequent on the policy decision of the Head Office to enroll the employees to provident fund as there is no other social security scheme available to the employees. As the Respondent organization has to pay interest from the due date and since there is no provision to waive damages the respondent authority issued the impugned order. As per Para 34 of EPF Scheme the appellant ought to have taken the declaration in Form 11 from the concerned employees to know whether they were

members of provident fund at any point of time. Such employees who were having a membership shall retain the membership in the fund even though he subsequently resigned and took employment in a different establishment. The appellant enrolled all these employees to provident fund belatedly and remitted contribution also belatedly. The claim of the appellant that the delay in remittance was due to the policy decision to enroll the excluded employees is not correct. The so called excluded employees were not actually excluded employees and the appellant is liable to remit contribution in respect of all the above employees. In ***Associated Industries Pvt. Ltd Vs RPFC***, 1963(2) LLJ 652 the Hon'ble Court held that employers are under statutory obligation to deposit their contribution within the stipulated time. **PF Inspector VS Ramkumar**, 1983 LAB IC 717 (P&H) the Hon'ble High Court of Punjab and Haryana held that the Act come in to operation by its on vigor and its operation is not dependent on any decision being taken by the authority under the Act. The appellant is under legal obligation to deposit their share of contribution to the fund within the time prescribed, the

moment the Act and Schemes become applicable to the appellant establishment.

4. Appellant is an establishment under the management and control of Kerala Council for Science, Technology and Environment. The appellant establishment decided to enroll 20 employees to provident fund membership, though all the 20 employees were excluded U/s 2(f) of EPF Scheme 1952 as they were drawing more than the statutory limit of Rs.15000/- as Basic + DA. The policy decision to that effect was taken by the parent establishment M/s. Kerala State Science, Technology and Environment on 17/10/2018 vide Exbt.A5 communication. The appellant also remitted both the contributions of employer as well as employees on 21/01/2019 and 22/01/2019. The employees were enrolled retrospectively from August 2015 to October 2018. The respondent issued notice U/s 14B of the Act read with Para 32A of EPF Scheme directing the appellant to show cause why damages as stipulated under the Act shall not be levied. The appellant was also given an opportunity for

personal hearing. A representative of the appellant attended the hearing and explained the circumstances leading to the belated remittance of contribution. Without considering the representation, the respondent issued the impugned order. According to the learned Counsel for the appellant all the 20 employees are excluded employees as the Basic + DA drawn by them were beyond the statutory limit of Rs.15000/-. Considering the fact that these employees were otherwise not entitled for any social security benefit, the parent establishment of the appellant took a policy decision to enroll all those employees to the benefits of the Act and Schemes thereunder. Accordingly all those 20 employees were enrolled to provident fund from their due date of eligibility. The respondent took a view that the claim of the appellant that this 20 employees are excluded employees is not substantiated by the appellant. The appellant ought to have produced Form 11 of all these employees to confirm that they were not members of provident fund earlier which will entitle them for continued membership in the appellant establishment also, eventhough the salary of these employees

are shown to be above the statutory limit. If that be so the respondent ought to have insisted for Form 11 of these employees to confirm that these employees are required to be enrolled since they were members of provident fund earlier. Hence there is a truth in the claim of the appellant that there was no intentional delay in delayed remittance of provident fund contribution in respect of these 20 employees. The learned Counsel for the appellant also relied on the decision of Supreme Court in ***Assistant PF Commissioner Vs Management of RSL Textile Ltd***, AIR 2017 SC 679 to argue that mensrea is a relevant consideration while deciding the quantum of damages. It is felt that the dictum laid down the Hon'ble Supreme Court is applicable to the present facts and circumstances of the case. It is seen that the delay in remitting contribution varies from 68 days to 1224 days. When there is such a delay, the interest component collected U/s 7Q of the Act may not be adequate to compensate the loss of interest paid to the employees. Hence the appellant is liable to compensate a part of the loss.

5. Considering the facts, circumstances and pleadings in this case, I am inclined to hold that interest of justice will be met if the appellant is directed to remit 60% of damages.

Hence the appeal is partially allowed, the impugned order is modified, the appellant is directed to remit 60% of the damages assessed U/s 14B of the Act.

Sd/-
(V. Vijaya Kumar)
Presiding Officer