



सत्यमेव जयते

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

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

(Monday the 1st day of March, 2021)

APPEAL No.259/2018
(Old no.A/KL-37/2017)

Appellant : M/s.Kendriya Vidyalaya Parent
Teacher Association Sub
Committee for Bus maintenance
Puranattukara
Thrissur - 680551

By Adv.C.B.Mukundan

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

By Adv.Thomas Mathew Nellimoottil

This case coming up for final hearing on 02.02.2021 and this Tribunal-cum-Labour Court on 01.03.2021 passed the following:

ORDER

Present appeal is filed from order no.KR/KCH/29442/DAMAGES/2016-17/15121 dt.23.01.2017 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 01.04.2013 to 31.01.2014. The total damages assessed is Rs.40,507/-. The interest demanded U/s 7Q of the Act is also being challenged in

this appeal. The appeal against Sec 7Q order had already been rejected while admitting the appeal vide order dt.17.05.2017 in view of the decision of the Hon'ble Supreme Court of India in **M/s.Arcot Textile Mills Vs RPFC**, AIR 2014 SC 295.

2. The appellant, sub committee for bus maintenance had been constituted for the maintenance and operations of the buses for the transportation of the students of Kendriya Vidyalaya, Kulanattukara pursuant to the judgment dt.08.01.2010 of the Hon'ble High Court of Kerala. The ownership of the vehicles is vested in the Chairman, Vidyalaya Managing Committee who is the District Collector of Trichur. The Parent Teacher Association of the school used to manage the affairs relating to the operation of the buses. Later when the Parent Teacher Association discontinued the operation of the buses, transportation of students also stopped. Some of the parents approached the Hon'ble High Court of Kerala and the Hon'ble High Court of Kerala directed the District Collector, Trichur to resolve the issue. In view of the discussions a sub committee was constituted to revive the operation of the buses. Accordingly management of the bus operations is done by the appellant committee. The committee is extending a purely honorary service. On the basis of an inspection report given by an Enforcement Officer, the respondent covered the appellant vide notice dt.11.02.2014 w.e.f. 02.08.2010. A copy of the coverage

memo is produced and marked as Annexure A4. On receipt of the coverage memo, the appellant remitted both the shares of contributions from the month of 04/2013. The appellant also remitted the employees' share of contribution for the period from 08/2010. The appellant did not deduct the employees' share of contribution for the period prior to 04/2013. While so the appellant received a notice dt.15.01.2015 from the respondent alleging delay in remittance of contribution and to show cause why damages shall not be levied for belated remittance of contribution. The appellant was also given an opportunity for hearing on 26.02.2015. An authorised representative of the appellant appeared before the respondent and explained the reasons for belated remittance of contribution. Without considering any of the representations, the respondent issued the impugned order. It is pointed out that the expenses for operation of buses have been partly met out of the caution deposit received from the students. The caution deposit collected from students had to be refunded on completion of their courses or transfer of students to any other educational institution. Total deposit to be refunded to the student as on 31.03.2014 was Rs.60,29,515/- whereas the balance available is only Rs.35,38,958/-. There is a shortage of Rs.24,90,557/- which is clear from the certificate issued by the Chartered Account dt.02.03.2016 which is produced and marked as Annexure A6. The respondent assessed damages and

interest even for pre-discovery period inspite of the circular nos.15921 dt.17.01.2006 and 11025(2587)SS dt.06.08.2009 that no damages and interest need be levied for pre-discovery period. There is no wilful defiance of law or contumacious conduct on the part of the appellant in belated remittance of contribution. There is no finding that there was wilful delay in remittance of contribution. The respondent also failed to notice that the appellant sub committee was facing acute financial crisis during the relevant point of time.

3. The respondent filed counter denying the above allegations. The appellant is covered under the provisions of the Act and therefore the appellant is liable to pay the contributions within 15 days of close of every month. It is seen from the records that the appellant failed to make the contribution as stipulated, for the period from 01.04.2013 to 31.01.2014. Belated remittance of contribution will attract damages U/s 14B of the Act read with Para 32A of the EPF Scheme. Hence a notice was issued to the appellant to show cause why damages shall not be levied for belated remittance of contribution. A delay statement showing the due date, the actual date of payment, the amount paid and the delay in remittance was also forwarded to the appellant. The appellant was also given an opportunity for personal hearing. A representative of the appellant attended the hearing. It is submitted that the appellant cannot ignore the statutory liability cast upon him under Para 30

and 38 of EPF Scheme to remit the monthly contribution payable under the Act and Schemes within 15 days of close of every month. It is also pointed out that the appellant has not disputed the delay in remittance of contribution. Out of the total amount of contribution payable by the employer in terms of Sec 6 of the Act, employees' share of contribution is approximately 50% of the total contribution. The monthly contribution from the employees is deducted from the salary of the employees and the appellant cannot attribute any financial difficulty for not remitting the same in time. In **Chairman, SEBI Vs Sriram Mutual Fund**, AIR 2006 SC 2287 the Hon'ble Supreme Court of India held that mensrea is not an essential ingredient for contravention of the provisions of a civil Act and that the penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act is established.

4. According to the learned Counsel for the appellant, a sub committee constituted by the District Collector, Trichur as per the direction of the Hon'ble High Court of Kerala is looking after the transportation requirements of the students of Kendriya Vidyalaya. According to him, the appellant establishment is covered retrospectively from 02.08.2010 vide coverage memo dt.11.02.2014. According to the appellant they remitted both the contributions, employer as well as employees from the month of 04/2013 and the employer's share of contribution from 08/2010 onwards. However it is seen from the letter

dt.30.01.2017 given by the appellant to the respondent during the course of the 14B proceedings that the appellant was deducting contribution from the employees from the due date of coverage and the same was remitted with the respondent on 26.03.2014 immediately after allotment of provident fund code number. In the above referred letter, it is stated that “ As mentioned above, it is pertinent to note that to remit the contributions, it was essential that we be given the requisite code and account number. The liability towards such statutory dues was voluntarily disclosed by us and account code number was requested. Knowing that this will be applicable from the date of operation where more than 20 persons were employed, we had started deducting from such applicable date. It is not practically possible to recover in lumpsum after receipt of code number since the beneficiaries are from low income group. As intimated in para 10 of your letter dt.11.02.2014, the applicability is from 02.08.2010. Had we not made recoveries in advance, it could not have been possible for the beneficiaries to pay their contribution in one lumpsum at such short notice. Understanding the statutory commitment and immediately on receipt of communication in 02/2014, action was taken to remit the recoveries made for the period from 04/2013 to 01/2014 to EPF authorities “. From the above letter, it is clear that the appellant was deducting provident fund contribution from the employees at least for the period from 04/2013. The

learned Counsel for the appellant also submitted that the expenditure for running the transportation facility is met from the caution deposit collected from the students. According to the certificate issued by the Chartered Accountant, it is seen that there is already a deficit of Rs.24,90,557/- in the caution deposit account in view of the expenditure involved in arranging the transportation facility to the students of Kendriya Vidyalaya. According to the learned Counsel for the respondent, the appellant is liable to remit contribution the moment the statutory requirements are met. EPF & MP Act, acts on its own force and the appellant committed a mistake in waiting for a code number to be allotted to start compliance in spite of the fact that they started deducting the contribution from the employees. According to the Counsel for the respondent, the non payment of the 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 pleaded that there was no mensrea in belated remittance of contribution.

5. Considering the facts, circumstances, pleadings and evidence in this appeal, I am inclined to hold that interest of justice will be met if the appellant is directed to remit 50% of the damages assessed U/s 14B of the Act.

6. As already stated, the appeal filed against Sec 7Q order is not maintainable as there is no provision U/s 7I to file an appeal from an order

issued U/s 7Q. This is already confirmed by the Hon'ble Supreme Court in **M/s.Arcot Textile Mills** case (Supra).

Hence the appeal is partially allowed, the impugned order is modified and the appellant is directed to remit 50% of the damages assessed U/s 14B of the Act. The appeal against 7Q order is dismissed as not maintainable.

Sd/-

(V. Vijaya Kumar)
Presiding Officer