



सत्यमेव जयते

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

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

(Thursday the 22nd day of October, 2020)

APPEAL No.260/2019

Appellant : M/s.The Kerala Minerals & Metals Ltd
Sankaramangalam
Chavara
Kollam - 691583

By M/s.B.S.Krishnan Associates

Respondent : The Regional PF Commissioner
EPFO, Regional Office
Kollam - 691001

By Adv.Pirappancode V.S.Sudheer &
Megha A.

This case coming up for final hearing on 11.03.2020 and this Tribunal-cum-Labour Court on 22.10.2020 passed the following:

ORDER

Present appeal is filed from order no.KR/KLM/10315/PD/2018-19/1669 dt.01.02.2019 assessing damages U/s 14B of the EPF & MP Act, 1952 (hereinafter referred to as 'the Act') for belated remittance of contribution for the period from 01/2009-9/2011. The delay in remittance of contribution was due to the delay in retrospective implementation of pay revision of the

employees of the appellant establishment. The total damages assessed is Rs.51,88,365/.

2. The appellant is a Govt company registered under Companies Act, 1956. The appellant is covered under the provisions of the Act. Out of the 3 Schemes under the Act, the company is exempted from EPF and EDLI Schemes as per Sec 17 of the Act, as they are having separate schemes of their own. The appellant has opted for Employees Pension Scheme from 1995.

3. The wage revisions of the workers category of employees is effected through Long Term Agreement (LTA) arrived at through negotiations between the company and trade union representatives, every 4 years, subject to approval by the Govt of Kerala. The LTA for the period from 01/2009 to 12/2012 was arrived at on 11.02.2011. The wage revision of non workmen category of employees is effected through Board resolution every 5 years subject to approval by the Govt. The wage revision for officers for 5 years from 2010-2014 was decided by Board of Directors on 17.02.2011. The Govt approved the proposal vide Annexure 1 G.O. dt.26.02.2011. 80% of the pay revision arrears were disbursed to the employees pursuant to the approval by the Govt of Kerala as per Annexure 2. The appellant remitted the pension contribution the full arrears in the month of November 2011, anticipating approval for remaining 20%. The challans having remitted the contribution

are produced and marked as Annexure 3 and 4. The 20% pay revision arrears were released to the employees after the Govt approved the proposal for pay revision vide G.O. dt.12.10.2012 marked as Annexure 5. The appellant remitted the pension contribution in respect of superannuated employees during the above period on 19.11.2012 and 18.12.2012 through Annexure 6 and 7 challans. The respondent issued show cause notice on 17.04.2005 proposing to impose damages alleging delay in remitting pension contribution. An opportunity of personal hearing was also afforded on 13.05.2015. In response to the notice, the appellant submitted a detailed representation which is marked as Annexure 9. Without considering any of the grounds pleaded in the representation, the respondent issued the impugned order. It was also brought to the notice of the respondent that in an identical situation in the immediately preceding wage revision of employees, the claim for damages and interest raised by the respondent was challenged before the Hon'ble High Court of Kerala in W.P.(C) no.14294/2015 and the Hon'ble High Court of Kerala accepted the challenge against the damages. A copy of the judgment of the Hon'ble High Court of Kerala in W.P.(C)no. 14294/2015 is produced as Annexure 11.

4. The respondent filed counter denying the above allegations. The appellant is covered under the provisions of the Act and exempted from the

provisions of EPF and EDLI Schemes. However the provisions of Employees Pension Scheme, 1995 is applicable to the appellant. Hence a part of contribution representing 8.33% of employees pay has to be remitted by the appellant establishment to the Employees Pension Fund within 15 days of the close of every month. There was delay in remittance of contribution for the period from 01/2009 to 09/2012. The remittance were made through two bulk remittances and the appellant reported that those remittances were towards pay revision arrear payments. On the request of the appellant a revised notice dt.19.01.2017 was issued to include only long term settlement arrear payments. The appellant was also given an opportunity for hearing on 20.02.2017. The appellant vide letter dt.31.03.2017 informed that the remittances made were in respect of arrears of pay in view of the revision of pay approved by the Govt. The representative of the appellant also pointed out that the judgment of the Hon'ble High Court of Kerala in W.P.(C)no.14294/2015 which rejected the levy of damages in respect of pay revision implemented by the appellant immediately prior to the present pay revision. The dues statement was also revised since there was some correction in the date of remittance. After considering all the submissions made by the appellant the impugned order was issued. The pension in respect of the retired employees of the appellant was also revised with retrospective effect

subject to payment of interest and penal damages in accordance with provisions of the Act. If the appellant failed to remit the damages, it is possible that the revision of pension of the retired employees will also be affected. The reluctance of the appellant to pay damages as required under the Act will defeat the very intention of the welfare legislation. In W.P.(C)no.14294/2015 the learned Single Judge interfered with the imposition of damages holding that the appellant could not be held liable for damages U/s 14B since there was no mensrea to sustain the imposition of damages. Since the directions contained in the judgment regarding the imposition of damages had an all India implication, the matter was referred to the Zonal office of the respondent and the Zonal office advised the respondent not to prefer an appeal against the said judgment. Each notice issued U/s 14B of the Act are separate cause of action and therefore the judgment in W.P.(C) no.14294/2015 is not binding in the facts and circumstances of this appeal.

5. There is no dispute regarding the facts. The revision of pay and allowance of employees of workmen category of the appellant was due from 01/2009 and that of the officers category from 01/2010. The revision is being carried out by the appellant establishment every 4 years and 5 years respectively. Govt approved sanction to disburse 80% of the arrears to both

group of employees vide G.O. dt.14.10.2011 marked as Annexure 2 in the appeal. The appellant disbursed the revision arrears in the month of 11/2011 and the pension contribution was remitted on 15.11.2011 and 16.11.2011 vide Annexure 3 and 4 challans. Govt of Kerala vide G.O. dt.12.10.2012, marked as Annexure 5 approved the pay revision and the pension contribution in respect of superannuated employees were paid on 19.11.2012 and 18.12.2012 which are evidenced by Annexure 6 and 7 challans. The respondent initiated action U/s 14B of the Act and issued the impugned order levying damages U/s 14B read with Para 32A of the Scheme.

6. The learned Counsel for the appellant pointed out that there was a similar dispute regarding damages U/s 14B of the Act during the earlier pay revision from 2005-2009. The assessment of damages made by the respondent was challenged before the Hon'ble High Court of Kerala in W.P.(C) no.14294/2015 and the Hon'ble High Court vide its order dt.29.06.2017 quashed the demand for damages on the ground that there was no wilful default on the side of the appellant. The Hon'ble High Court of Kerala in the above judgment found that the appellant remitted the contribution immediately after the Govt approved the pay revision for the employees of the appellant establishment. The learned Counsel for the respondent argued that the Hon'ble High Court of Kerala in the above case

has not considered the financial implication and was decided only on the question of mensrea. In the present case also it is not possible to allege any mensrea against the appellant in view of the facts of this case. There is no evidence before this Tribunal to arrive at a conclusion regarding the financial implication of the retrospective revision of pension to the retired employees of the appellant establishment. Hence I don't find any reason to deviate from the stand taken by the Hon'ble High Court of Kerala in a similar situation, particularly in view of the fact that the respondent has taken a conscious decision to accept the decision.

7. The learned Counsel for the respondent passionately argued that the appellant is allowed to contribute to Pension Fund in excess of wage ceiling and the pensioners will be receiving huge pensionary benefits compared to other establishments which are contributing to Pension Fund on statutory limit. The pensionary benefits are directly proportional to the contribution remitted by the employers. When pensionary benefits are calculated on the basis of actual salary in excess of statutory wage limit, the process ends up in cross subsidising the higher waged employees. In this case, an employee retires in the year 2005 and his pay revision was effected in the year 2010 with retrospective effect from 2005 the contribution for the last 5 years is received in 2010 and the employees' request for revision of

pension w.e.f. 2005. When the enhanced pension to the employee effected the computation of pension from 2005 onwards is done adjusting the arrear amount received against each due month since 2005 whereas the contribution is received in his account only in the year 2010. In such cases EPFO loses the quantum of value it could have earned had the remittance made in time. If the above position is allowed, the low waged pensioners would cross subsidise the high wage employees which would be inequitable, unjust and unfair. In that eventuality the cross subsidy would flow in the reverse direction defeating the very purpose of the social security legislation. Employees Pension Scheme is a contributory scheme and is running in deficit as per the latest actual real valuation. The above argument of the learned Counsel for the respondent is really persuasive but the data available is not sufficient to decide the quantum of outflow in case of retrospective revision of pension. It is also clear that the pension amount is required to be paid for the life of the pensioner and subsequently to the widow and children as provided in the EPF Scheme. The learned Counsel for the respondent argued that the entire corpus under Employees Pension Scheme, 1995 is obtained out of the contribution remitted by the employers on behalf of their employees. It is mandatory on the part of the respondent to ensure that the money is spent

only for the purpose for which it is intended and also to indemnify and recoup the excess payment made along with interest.

8. The pay revision is a recurring process in the appellant establishment which is being carried out every 4 years for the workers category and 5 years for the non workers category. This issue is bound to come up every 5 years. Hence the right course of action open to the respondent will be to allow the remittance of lumpsum contribution only from the date the decision is taken by the Govt. If the appellant insists for retrospective bifurcation of the contribution, the respondent can always insist that they should accept to compensate the financial loss to the respondent organisation. The respondent can also calculate the actual financial loss in an appropriate case and contest the matter on merit.

9. Considering the facts, circumstances, evidence and pleadings, I am inclined to hold that the impugned order cannot be sustained and therefore impugned order is set-aside.

Hence the appeal is allowed.

Sd/-
(V. Vijaya Kumar)
Presiding Officer