



सत्यमेव जयते

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

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

(Friday the 27<sup>th</sup> day of November, 2020)

**APPEAL No.363/2018**  
(Old No.334(7)2002)

Appellant : M/s.Hope Plantations  
Glenmary Estate  
Peerumade  
Idukki - 685531

Respondent : The Regional PF Commissioner  
EPFO, Regional Office  
Kottayam - 686001

By Adv.Joy Thattil Ittoop

This case coming up for final hearing on 04.11.2020 and this Tribunal-cum-Labour Court on 27.11.2020 passed the following:

**ORDER**

Present appeal is filed from order no.KR/KTM/395-A/PD/ENF-I(6)/2002/2819 dt.28.05.2002 assessing damages U/s 14B of EPF & MP Act, 1952 (hereinafter referred to as 'the Act') for the belated remittance of provident fund and other contribution for the period from 03/2000 to 08/2001. The total damages levied is Rs.1,19,608/-.

2. The appellant is a unit of Hope Plantations, a company incorporated as per the provisions of Companies Act, 1956. The appellant is engaged mainly in tea plantations and manufacturing of black tea sold all over India. Due to globalisation and other factors the tea industry in India especially in Kerala was passing through tremendous crisis and was incurring huge cash loss. The petitioner incurred a loss of around 8 Crore in 2000-01 and 2001-02. Because of the financial difficulties there was delay in remittance of provident fund. The delay in remittance of provident fund contribution was not intentional.

3. The respondent filed counter denying the above allegations. The appellant is an establishment covered under the provisions of the Act. There was delay in remittance of provident fund contribution from 03/2000 to 08/2001 which attracts damages U/s 14B of the Act read with Para 32A of EPF Scheme. A notice dt.03.05.2002 was issued to the appellant along with a delay statement directing the appellant to appear before the respondent on 14.05.2002 to explain the delay in remittance of provident fund contribution. The appellant failed to avail the opportunity. None of the contentions raised in the appeal were raised before the 14B authority and as such the appellant cannot take those grounds in this appeal. The plea of financial difficulty is not supported by any evidence. The plea of financial difficulty is not properly

pleaded since the material facts, reasons and circumstances of the financial difficulties are neither pleaded nor proved. Non production of any evidence to prove financial difficulty should result in an adverse inference against the appellant. There is no averment that the financial difficulty was there despite exercise of due diligence and reasonable care in managing the affairs of establishment. As per Para 38 of EPF Scheme 1952 the appellant is liable to remit the contribution and administrative charges within 15 days from the end of each month. In **Calicut Modern Spinning & Weaving Mills Ltd Vs RPFCL**, 1982 LAB IC 1422 the Hon'ble High Court of Kerala held that Para 38 of EPF Scheme obliges the employer to make the payment of provident fund contribution within 15 days of close of every month and Para 30 of the Scheme cast an obligation on the employer to pay both the contributions payable by himself and on behalf of the employees in the first instance. There was a delay in remittance of contribution and hence the impugned orders were issued after complying with the requirements of natural justice.

4. The only ground pleaded in this appeal for belated remittance of contribution is that of financial difficulties. The appellant did not produce any document or appear before the respondent though he acknowledged the summons for personal appearance. In this appeal also the appellant has produced only minutes of a meeting of a Tripartite Industrial Committee on

Plantation Industry held on 03.04.2002 in New Delhi under the chairmanship of the then Labour Minister. The above document gave an indication of the financial crisis faced by the plantation industry in India as a whole. The appellant failed to produce any document to support his claim of financial difficulties for the belated remittance of provident fund contribution during the relevant point of time. At the time of hearing of this appeal the learned Counsel for the appellant produced a judgment of Hon'ble High Court of Kerala dt.25.02.2020 in Writ Petition no.17176/2016. In the above judgment the Hon'ble High Court of Kerala has directed the Additional Secretary, Ministry of Labour and Employment, Govt of India to consider a representation dt.12.02.2020 submitted by the appellant under 16(2) of EPF & MP Act and dispose of the petition within a period of 2 months after hearing the petitioner as well as the EPFO. The learned Counsel for the appellant pleaded that this appeal may be kept in abeyance pending a final decision by the Govt of India. The learned Counsel for the appellant could not clarify how the above direction of the Hon'ble High Court is related to the present appeal. Further as per Sec 16(2) of the Act " if the Central Govt is of the opinion that having regard to the financial position of any class of establishment or other circumstance of the case, it is necessary or expedient so to do so, it may by notification in the official gazette and subject to such conditions as may be

specified in the notification, exempt whether prospectively or retrospectively that class of establishments from the operation of this Act for such period as may be specified in the notification ". As per the above provision, the Central Govt can exempt any class of establishments from the provisions of the Act prospectively or retrospectively for a specific period of time. The claim of the appellant is probably that they have already given a request for exemption U/s 16(2) of the Act and pending a final decision by the Government, a final decision in this appeal can be deferred. I do not find any logic in the above argument. The impugned order is for assessment of damages for belated remittance of contribution for the period from 03/2000 to 08/2001. If the Govt by a notification exempts the appellant from the provisions of the Act during the above period it is automatic that any decision in this appeal will be subject to the said decision of the Govt of India.

5. The learned Counsel of the respondent submitted that he will be filing a statement regarding the implication, if any, of the judgment in W.P.(C) 17176/2016 in this appeal. However no such statement is seen filed by the respondent.

6. From the minutes of the meeting dt.03.04.2002 produced by the appellant there is a general indication that the plantation industry was going through a very bad phase financially, during the relevant point of time. The

appellant ought to have produced documentary evidence to support their claim of financial difficulties before the authority U/s 14B or at least in this appeal. Considering the fact that the plantation industry was going through financial difficulties at the relevant point of time, the appellant is entitled to some relief, though the appellant failed to substantiate their financial difficulties.

7. Considering the facts, 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 75% of the damages assessed U/s 14B of the Act.

Hence the appeal is partially allowed, the impugned order is modified and the appellant is directed to remit 75% of the damages.

Sd/-

(V. Vijaya Kumar)  
Presiding Officer