



सत्यमेव जयते

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

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

(Thursday the 20th day of February, 2020)

APPEAL No.405/2018

Appellant : M/s.KMCT Medical College Hospital
West Mampatta, Manassery
Kozhikode - 673602

By Adv.K.K.Premalal

Respondent : The Assistant PF Commissioner
EPFO, Regional Office
Kozhikode - 673006

By Adv.(Dr.)Abraham P. Meachinkara

This case coming up for final hearing on 09.01.2020 and this Tribunal-cum-Labour Court on 20.02.2020 passed the following:

ORDER

Present appeal is filed against order no.KR/KK/23852/DAM 2 (2)/ 14B/ 2018/4995 dt.08.10.2018 assessing damages U/s 14B of the EPF & MP Act, 1952 for belated remittance of contribution for the period from 12/2016 TO 04/2018. The total damages assessed is Rs.8,25,861/-.

2. The appellant establishment is a medical college and is covered under the provisions of EPF & MP Act, 1952. The payment so made pertains to a period covered by the Employees Enrollment Campaign 2017. The

appellant received a notice dt.30.05.2018 directing the appellant to appear before the respondent on 19.07.2018. The appellant appeared before the respondent on the date and time fixed by the respondent. But it was informed that hearing of the case was adjourned for administrative reasons. The appellant has not received any further notice regarding the hearing and without hearing the appellant, the respondent passed an order dt.08.10.2018 directing the appellant to remit an amount of Rs.8,25,861/-. The major part of the assessment is covered by Employees Enrolment Campaign when the appellant was given an option to enroll members. As per the provisions of Employees Enrolment Campaign, the appellant is not liable to pay damages for the remittance made as per the Scheme. The remaining payments referred to, in Annexure1 notice, are due to acute financial shortage of the appellant in view of unexpected and inevitable developmental expenses in the institution.

3. The respondent filed counter denying the above allegations. The appellant delayed remittance of contribution for the period from 12/2016 to 04/2018. When there is delay, the appellant is liable to remit damages as provided U/s 14B of the Act read with Para 32A of the Scheme. The Employees Enrolment Campaign 2017 was meant to ensure the enrollment of all un-enrolled employees working in various establishments. The appellant submitted a declaration on 16.02.2017, but the payment was

made on 27.03.2017 after 15 days of submitting the declaration. As per the Scheme, the appellant is liable to make the payment within 15 days of submitting the online declaration. The respondent also seriously contested the claim of the appellant that the delay in remittance of contribution was due to financial difficulties of the appellant establishment.

4. When the appeal was taken up for hearing on 02.09.2019, the learned Counsel for the appellant submitted that he had no notice regarding the posting before the Sec 14B authority on 27.09.2018. The original hearing was scheduled on 19.07.2018 and the same was adjourned by the respondent due to administrative reasons. Hence he was expecting a further notice of hearing. However he received the impugned order dt.08.10.2018. The appellant came to know about the posting on 27.09.2018 only from the impugned order as he was not intimated the next date of hearing on 19.07.2018 or through a further notice. Though the appellant has taken this position in the appeal memo, the counter affidavit filed by the respondent is totally silent on this aspect. Hence the learned Counsel for the respondent was directed to clarify whether any notice was issued for the hearing on 27.09.2018, through a specific order on 02.09.2019. No clarification was forthcoming on the next posting date on 18.10.2019. Hence the matter was further adjourned to 09.01.2020. The learned Counsel for the respondent could not clarify whether any notice or intimation is given to the appellant

for the posting on 27.09.2018. Hence it is presumed that no notice was given to the appellant regarding the posting on 27.09.2018 when the matter was finalized by the respondent.

5. In a penalty proceedings U/s 14B of EPF & MP Act, it is mandatory that a notice is issued to the appellant and he is heard properly before the final orders are issued. In this case, it is seen that the original hearing was scheduled on 19.07.2018. Though a representative of the appellant attended the office on 19.07.2018, he was informed that the enquiry was adjourned due to administrative reasons. The respondent fixed the next date of hearing on 27.09.2018 for which no notice is issued to the appellant. Hence it can be safely concluded that there is a clear violation of natural justice in issuing the impugned order, without hearing the appellant and without affording an opportunity to the appellant.

6. Taking into account the facts and circumstances of this case I am inclined to remit the matter back to the respondent to re-assess the dues after affording the appellant a proper opportunity of being heard. The other issues raised in the appeal are kept open to be adjudicated by the respondent.

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 notice and delay statement to the appellant, within 3 months from the date of receipt of this order.

Sd/-

(V. Vijaya Kumar)
Presiding Officer