



सत्यमेव जयते

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

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

(Monday the 4th day of January, 2021)

APPEAL No.698/2019

Appellant : M/s.Mess Attached to Government
Medical College Men's Hostel
Medical College P.O.
Trivandrum - 695011

By Adv.Pallichal S. K. Pramod

Respondent : The Assistant PF Commissioner
EPFO, Regional Office, Pattom
Trivandrum - 695004

By Adv.Ajoy P. B.

This case coming up for final hearing on 01.12.2021 and this Tribunal-cum-Labour Court on 04.01.2021 passed the following:

ORDER

Present appeal is filed from order no.KR/TVM/3891/DAMAGES CELL/2019-20/2546 dt.07.08.2019 assessing damages U/s 14B of EPF & MP Act (hereinafter referred to as 'the Act') belated remittance for the period from 12/2016 to 02/2019. The total damages assessed is Rs.1,85,480/-.

2. The appellant is a men's hostel attached to the Trivandrum Medical College for providing accommodation to the students studying in the college. Trivandrum Medical College is a purely government owned institution and the services rendered are not with any profit motive. It is a mandatory requirement for Medical Colleges to have hostels, under the guidelines of Indian Medical Council. The mess attached to the Medical College is functioning using the funds of the students by way of common dividing system. A committee is governing the day to day affairs of the hostel. The hostel is covered under the provisions of the Act and was regular in compliance. While so the respondent issued a notice alleging delay in remittance of contribution. The appellant was also given an opportunity for personal hearing and a representative of the appellant attended the hearing on 24.07.2019 and submitted a request for waiver of damages as there was no wilful delay and the delay in remittance of contribution was due to lack of Govt funds. The respondent issued the impugned order without considering the submissions made by the appellant. The respondent ought to have noticed that the delay in remittance was only due to the financial constraints. The funds for running the hostel is being collected from the students by way of common dividing system. The respondent also failed to consider that the appellant establishment was wrongly covered under the provisions of the Act. The appellant is not a chronic defaulter and there

was no delay in remittance of contribution for the period from 2004-2016. The impugned order is not at all speaking.

3. The respondent filed counter denying the above allegations. The appellant delayed the remittance of contribution from 12/2016 to 02/2019. Hence the appellant was summoned vide notice dt.18.06.2019 for a personal hearing on 24.07.2019. The appellant was represented in the enquiry and the representative of the appellant did not deny the delay in remittance of statutory dues. The delay was upto 516 days and the appellant is a chronic defaulter. Accordingly the respondent issued the impugned order. Any establishment which is covered under the provisions of the Act is liable to remit contribution within 15 days of close of every month. Any delay in remittance will attract damages U/s 14B read with Para 32A of EPF Scheme. The appellant was a chronic defaulter and there was delay in remittance of contribution during various months from 04/2011 to 12/2013. The so called financial difficulties due to non receipt of Govt funds was not proven and no documents were filed by the representative of the establishment during the hearing. Further lack of Govt funds cannot be an excuse for delayed remittance of contribution. The claim of the appellant that there was delay in realising the money from the students by common dividing system was also not substantiated by the appellant. The appellant even failed

to remit the contribution deducted from the salary of the employees in time. The Hon'ble Supreme Court of India in **Organo Chemical Industries Vs UOI** 1979 (2) LLJ 416 SC held that " even if it is assumed that there was loss as claimed, it does not justify the delay in deposit of provident fund money which is an unqualified statutory obligation and cannot be allowed to be linked with the financial positions of the establishment over different points of time. Besides 50% of the contributions deposited are represented by the employees' share which have been deducted from the employees' wages and was a trust money with employer for deposit in the statutory fund. The delay in deposit of this part of contribution amounts breach of trust and does not entitle the employer to any consideration for relief ". In **Chairman, SEBI Vs Sriram Mutual Fund**, Civil appeal no.9523-9524/2003 the Hon'ble Supreme Court held that mensrea is not an essential ingredient for contravention of provisions of a civil Act.

4. The only ground pleaded in this appeal for delayed remittance of contribution is the delay in getting the funds from the Govt. During the proceedings U/s 14B, it was submitted that the delay in remittance of contribution was due to the delay in collecting money from the students who stayed in the hostel. However in this appeal, it is pleaded that there was also delay in getting the money from the Govt. As rightly pleaded by the learned Counsel for the respondent, the appellant failed to produce any records before

the 14B authority as well as in this appeal to substantiate the claim of financial difficulties. In **M/s.KEE Pharma Ltd Vs APFC**, 2017 LLR 871 the Hon'ble High Court of Delhi held that the employer shall substantiate their claim of financial difficulties before the authority under 14B and any failure to do so, this entitled them from claiming any relief. However considering the fact that the hostel mess is run by students on a common dividing system, a delay in collecting the money from the students is quite possible. Taking into account the above circumstances, the appellant is entitled for some relief as far as penal damages are concerned.

5. Considering the facts, circumstances and pleadings in this appeal, I am inclined to hold that interest of justice will be met if the appellant is directed to remit 60% 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 60% of the damages assessed U/s 14B of the Act.

Sd/-

(V. Vijaya Kumar)
Presiding Officer