BEFORE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT No.-2, DELHI

Appeal no. D-2/18/2020

M/s. Bata India Ltd. ……Appellant

Through:- Sh. Anil Bhatt, Ld. counsel for the appellant.

Vs.

RPFC, Faridabad …..Respondent

Through:- Sh. Chakradhar Panda, Ld. counsel for the respondent.

Order Dated:- 13.06.2025

A very short question is involved in this appeal whether a lump sum compensation given to the workmen in pursuance of the settlement arrived at in **LPA no. 111/2010** before the Punjab and Haryana High Court in the year 2016 attracts damages and interest recovered under sections 14B and 7Q of the **Employees Provident Fund and Misc. Provisions Act, 1952 (Hereinafter referred as 'the Act').**

The factual matrix of this appeal doesn't need a big canvass. The appellant is engaged in the manufacturing of the footwear products, with its factories located in different parts of the country. One of the factories was situated in Faridabad. On 24.02.1999, the workers employed in this factory resorted to an illegal and unjustified strike, in view of a grim situation created by the workers and as a consequence, the appellant was compelled to declare lockout at the factory on 25th February, 1999, which continued till 19th August 1999.

The trade union representing the workers raised a dispute regarding the issue, which was referred to Ld. Industrial adjudicator, Faridabad under reference no. 49/1999. The said

tribunal passed an award dated 23.04.2001 wherein it was held that the strike resorted by the workers was illegal and unjustified, whereas the lockout declared by the management was legal and justified. It was further held that, in view of the same, the workers were not entitled to any wages for the said period.

The union challenged the said award dated 23.04.2001 passed by the Ld. Industrial Industrial-cum-Labour Court through writ petition no. 7243 of 2002 before the Hon'ble Punjab and Haryana High Court at Chandigarh. The Hon'ble High Court passed a judgment on 15.07.2009, whereby the award of the Ld. Industrial Tribunal was modified to the extent that workers would be entitled to 50% wages for the said period. Aggrieved by this judgment, the appellant challenged the same before the Hon'ble Division Bench of the High Court via LPA no. 111/2010. The Division Bench stayed operation of the judgment passed by the Hon'ble Single Judge vide order dated 22.02.2010. However, in the interim, the Division Bench directed the appellant to pay 50% of the amount as awarded by the Hon'ble Single Judge.

Subsequently, the Division Bench of High Court vide clarificatory order dated 28.04.2010, directed the appellant to deposit the wages before the Ld. Industrial Tribunal within two weeks. In compliance, the appellant deposited the entire amount before the Ld. Tribunal on 13.05.2010.

During the pendency of LPA No. 111 of 2010, the Appellant and the Union reached a settlement on 23.12.2016, whereby all the disputes between the parties including those related to strike and lockout were resolved. The Hon'ble High court accepted the settlement and disposed of the LPA accordingly. As per the settlement, the Union duly admitted that the strike was illegal and unjustified whereas the lockout was legal and justified. It was also agreed that the employees were not entitled to any wages or statutory benefits for the said period of strike and lockout.

However, the appellant submitted that he received a notice No. **HR / FBD / 0000048 /000/ Enf.5091 / Damages / 13985** dated 06.02.2015 under Section 14B and 7Q of the Act, wherein it was alleged that the appellant had delayed the contribution of provident fund between 01.04.1996 to 06.02.2015, and it was

notified that the Appellant was liable to pay **Rs.2,10,778/-** on account of damages and **Rs.3,13,549/-** towards interest on the alleged late contribution of the Provident Fund.

The appellant filed a reply challenging the notice, whereby it was stated that the respondent completely ignored the fact that the Ld. Industrial Tribunal, Faridabad, passed an award in favour of the Appellant holding that the employees were not entitled to any wages for the relevant period. Although, this was modified by the Hon'ble Single Judge, its operation was stayed by the Hon'ble Division Bench of the High Court, meaning that the award of the Ld. Industrial Tribunal would remain operational and as per the same, the employees were not entitled to any wages and therefore, it did not attract any contribution of provident fund.

The appellant further pointed out that the respondent completely failed to appreciate that the Hon'ble Division Bench of the High court vide its order dated 22.02.2010 in LPA No. 111 of 2010 directed the appellant to make payment amount as awarded by the Ld. Single Judge i.e. 25% of amount as per the judgment of Hon'ble Single Judge as an interim payment which was payable only to the existing employees who were working in the factory at the time of the passing of the order; and that it is the settled position of law that when a court grants back wages to employees when they didn't performed their duties, the same cannot be treated as wages.

The respondent filed a reply opposing the appellant's prayer. It was submitted that damages under section 14B are a part of sum recoverable under section 14(2) of the Act and it is an insegregable part of total amount due from employer establishment. It is further argued that financial loss of the appellant establishment does not justify delayed payments and that the appellant establishment has not provided any books of account to reflect that financial constraint was responsible for delay in remittance of dues. However, it didn't dispute the factual matrix. It was also submitted that the appellant was a habitual defaulter in remitting statutory dues.

I have heard the arguments presented by both parties, and examined the impugned orders under challenge. The appellant

challenged both orders passed under section 14B and 7Q of the Act. Before proceeding further in the appeal, the definition of 'basic wages' as provided in section 2b and 'contributions payable by the employer' as provided in section 6 of the Act is required to be reproduced herein:

> ***2(b). Basic wages" means all emoluments which are earned by an employee while on duty or on leave or on holidays with wages in either case in accordance with the terms of the contract of employment and which are paid or payable in cash to him, but does not include—***
>
> ***(i) the cash value of any food concession;***
>
> ***(ii) any dearness allowance (that is to say, all cash payments by whatever name called paid to an employee on account of a rise in the cost of living), house-rent allowance, overtime allowance, bonus, commission or any other similar allowance payable to the employee in respect of his employment or of work done in such employment;***
>
> ***(iii) Any presents made by the employer.***
>
> ***6. The contributions which shall be paid by the employer to the fund shall be ten (or twelve) percent of the basic wages, dearness allowance and retaining allowance (if any) for the time being payable to each of the employees (whether employed by him directly or by or through a contractor). The employee's contribution shall be equal to the contribution payable by the employer in respect of him.***

Section 2(b) of the Act makes it clear that basic wages are those which are earned by an employee. Since it is admitted that the workers during the lockout period didn't work, no basic wages

were earned, and therefore, no provident fund contributions were required. The strike was declared illegal by the Industrial Tribunal, Faridabad in 2001. 50% of wages was deposited in terms of the High Court order in 2012. Ultimately, both parties reached settlement in 2016, and the workers agreed to accept a lump sum ex-gratia amount which was paid by the appellant.

The terms and conditions of settlement are as follows:

i. The Union acknowledges that the Workers had resorted to go slow in the month of February, 1999 and thereafter the strike on 24th February, 1999 was resorted to by the Workers / Union under some misconception and as unwarranted which Justifiably resulted into lockout in the factory by the Management from 25.02.1999 to 24th / 25th October, 1999.
ii. That in view of the facts and circumstances as above, the Union / Workers have accepted that the period between 24th February, 1999 to 25th October, 1999 is liable to be treated as break in service however it has been agreed by the union/workers to treat the said period from 24th February, 1999 to 25th October, 1999 as a notional break of all the Workers, who were on the rolls of the factory at the relevant period.
iii. That the Union / Workers duly accepted that the Workers shall not be entitled to any wages or any statutory benefits for the period that is treated as a notional break as detailed hereinabove. The Management has agreed not to recover any amount from the workers who have already been paid certain amounts for the said period.

Therefore, there was no obligation to deposit provident fund contributions for this period. Even if contributions were deposited belatedly, no damages can be levied because the amount doesn't come within the definition of 'basic wages' which has to be taken into consideration by the respondent authority.

In this respect, the judgment of the Gujarat High Court in **Swastik Textile Engineers Pvt. Ltd. vs. Virjibhai Mavjibhai Rathod**

and Anr. (2007 SCC Online Guj 313), delivered on 27-28.09.2007, is relevant, the Hon'ble Justice Sh. R.M. Rohit held:

> *When court awards the back wages for the period the employee was kept away from duty, when the court does it to award damages assessed in terms of whole or part of the wages, the workman would have earned had he been continued in service without interruption. It is not the same as payment of wages for the duties performed or for the period deemed to have been spent on duty. The amount of damages or the compensation awarded by a court would not constitute the 'basic wages' as envisaged by the Act.*

During the course of arguments, counsel for the respondent submitted a chart showing delayed remittance of dues for the wage months of **June 1998**, **December 2000, April 2002, June 2002, August 2002, January 2010, March 2012** and **November 2013** which was not the lockout period. The counsel for the appellant submitted that his arguments are limited to the period when the lockout was in effect, and the appellant's factory was closed due to strike.

Considering above facts and law, the order passed by the Ld. RPFC under section 14B and 7Q of the Act dated 18.02.2020, is set aside to the extent that the appellant is liable to pay the damages and interest only for the wage months of **June 1998**, **December 2000, April 2002, June 2002, August 2002, January 2010, March 2012** and **November 2013** as reflected in the Annexure-A supplied by the respondent with his written synopsis/arguments**.** So far so levy of damages and interest in respect of period of Feb 1999 to Oct 1999 is concerned, it is set aside and recalled.

The appellant had already deposited 10% of assessed amount under section 14B, which shall be adjusted while seeking payment for the remaining period. If any excess amount has been

deposited, the RPFC is directed to refund the same within six weeks. Ordered accordingly.

Sd/-

(Atul Kumar Garg)
Presiding Officer