CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL/EMPLOYEES PROVIDENT FUND APPELLATE TRIBUNAL, JABALPUR

EPF Appeal No.- 167/2017
Present – P.K. Srivastava
H.J.S. (Retd.)

Sha-Shib College, Nagar Nigam Colony,
Near Ashoka Garden, Bhopal, M.P.

Appellant

V/s

Assistant Provident Fund Commissioner,
Employees Provident Fund Organization,
Sub-Regional Office, 59 Arera Hills,
Bhopal (M.P.)

Respondent

Shri Pranay Choubey : Learned Counsel for Appellant.

Smt Rashmi Pathak : Learned Counsel for Respondent.

JUDGMENT

(Passed on 20th day of April, 2026)

The present appeal is directed against the order dated 12.10.2015, passed by Respondent Authority under section 14-B of ***The Employees Provident Fund & Miscellaneous Provisions Act, 1952***, hereinafter referred to as the ***'Act'***, communicated to Appellant Establishment on 27.11.2015, preferred by the Appellant Establishment. The Respondent Authority has recorded a finding in the impugned order that the Appellant Establishment has failed to remit the PF contribution of its employees for the period August, 2002 to October, 2015 in time and has directed the Appellant Establishment to pay damages u/s 14-B of the Act, assessed the amount at Rs. 4,89,217/-.

The skeletal facts connected to present appeal are mainly that, the Appellant Establishment is an Educational Institution which is run by the Institute of Management & Technology, a registered Non-Profit Society and is covered under the Act. It has been allotted separate PF

Code number. Due to bad financial condition arising out of cut-throat competition in private educational institution, revenue of the College dropped and PF dues of its employees could not be deposited in time. The Respondent Authority issued an order dated 02.05.2014 stating that the Appellant Establishment has committed default in depositing of PF dues of its employees in time and directed to pay Rs. 97,247/- as damages and interest. Thereafter, the Respondent Authority again issued a notice on 03.11.2014 stating that the Appellant Establishment has defaulted the deposit of PF dues of its employees by way of not remitting the dues in time and directed to pay Rs. 5,60,690/- as damages vide order dated 03.11.2014. Thereafter, they issued another calculation sheet/order dated 19.05.2015 holding default by Appellant Establishment by way of late deposit of PF dues for the period and assessed the amount of damages at Rs. 6,49,503/-. It is further submitted that the respondent officer by an order dated 12.10.2015 directed to pay Rs. 4, 89,217.00 (Rupees Four Lakh Eighty-Nine thousand Two Hundred and Seventeen only) as damages (impugned order), hence this Appeal.

Grounds of Appeal, taken in the memo of appeal are mainly that the Respondent Authority committed error in law in conducting the proceedings in utter violation of the Act and Rules and not following the principles of natural justice while passing the impugned order. The proceedings were initiated after Nineteen years which shows the lack of bona fide on the part of Respondent Authority. The Respondent Authority further failed to look into the fact that there was in fact no *mens rea* in delayed deposit of PF dues and acted against the settled principles of law in this respect, particularly in case of ***Terrace Estate, Unit Of United Plantation Ltd. v/s Assistant Provident Fund Commissioner 2011 (2) C.L.T. 185 laid down by Hon'ble High Court of Madrass,*** also that no proper show cause notice was issued by the Respondent Authority and no enquiry was conducted as prescribed u/s 7-A of the Act, no witness was examined no document was marked and considered. Thus, the Respondent Authority passed just a mechanical order which is bad in law. The Appellant Establishment is an educational institution and is not a commercial establishment rather not a profit society, it could not deposit the dues in time due to its bad financial condition, this fact was also not considered by the Respondent Authority.

In its counter to appeal, the has Respondent Authority taken a case that the Act is a piece of beneficial social legislation hence, any

provision capable to two interpretations, the interpretation which favours the beneficiaries will be accepted as laid down in the case of ***Regional Provident Fund Commissioner, Punjab v/s Shibu Metal Workers, 1964 (27) FJR 491, laid down by the Hon'ble Supreme Court.***

It if further the case of Respondent Authority that the Appellant Establishment is covered under the Act and has been allotted PF code as per the EPF Scheme, it is required to deposit PF dues during the next 15th day of the month in which they failed, resulting into loss of interest to the beneficiaries, they could not establish any cogent ground for delayed deposit. Hence, the impugned order and findings are perfect in law and fact, they need not be disturbed.

I have heard argument of Mr. Pranay Choubey, Learned Counsel for the Appellant Establishment and Mrs. Dr. Rashmi Pathak, Learned Counsel for the Respondent Authority. I have gone through the record as well.

On perusal of the record in light of rival arguments following point comes up for determination.

> ***"Whether the finding of the Respondent Authority that the Appellant Establishment has defaulted the deposit of PF dues of its employees for the period between 8/2002 to 10/2013 by way of not depositing it within time prescribed and the assessment of damages have been recorded correctly in law and fact?"***

As mentioned earlier, the main ground advanced on behalf of Appellant Establishment is that they were in bad financial position hence they could not deposit the dues in time. ***Secondly***, that there was no *mens rea* in delayed deposit of PF dues also that principle of natural justice have not been followed during the enquiry.

According to the Appellant Establishment, the show cause notice included the assessment also hence it is bad in law as it showed that the Respondent Authority had already made up its mind against the Appellant Establishment.

It has been submitted on behalf of Respondent Authority that the Act is a beneficial legislation covered under the Act. Para 36 and 38 of ***The Employees' Provident Funds Scheme, 1952*** (in short the '***Scheme***') requires establishment to deposit PF dues on the basis of wages payable

to the employees on last day of the month till 15th day of the next month, failure to deposit will attract damages u/s 14-B of the Act, also that there is nothing to establish that the Appellant Establishment was in bad financial condition. Hence, the excuse taken is not established at any stage, the default is recurring which itself showed the required *mens rea*. Hence, finding as well assessment has been perfectly recorded in law and fact.

Before proceeding, para 36 and 38 of the Scheme & section 14-B of the Act are being reproduced as under:-

"36. Duties of employers

(1) Every employer shall send to the Commissioner, within fifteen days of the commencement of this Scheme, a consolidated return in such form as the Commissioner may specify of the employees required or entitled to become members of the Fund showing the basic wage, retaining allowance if any and dearness allowance including the cash value of any food concession paid to each of such employees:

Provided that if there is no employee who is required or entitled to become a member of the Fund, the employer shall send a 'NiL' return.

(2) Every employer shall send to the Commissioner within fifteen days of the close of each month a return-

(a) in Form 5, of the employees qualifying to become members of the Fund for the first time during the preceding month together with the declarations in Form 2 furnished by such qualifying employees, and

(b) in such form as the Commissioner may specify, of the employees leaving service of the employer during the preceding month:

Provided that if there is no employee qualifying to become a member of the Fund for the first time or there is no employee leaving service of the employer during the preceding month, the employer shall send a 'NIL' return.

(c) Provided further that a copy of the forms as mentioned in clauses (a) & (b) above shall be provided by the employer to concerned employees immediately after joining the service or at the time of leaving the service, as the case may be.

(3) Omitted

(4) Every employer shall maintain an inspection note book in such form as the Commissioner may specify, for an Inspector to record his observation on his visit to the establishment.

(5) Every employer shall maintain such accounts in relation to the amounts contributed to the Fund by him and by his employees as the Central Board from time to time, direct, and it shall be the duty of every employer to assist the Central Board in making such payments from the Fund to his employees as are sanctioned by or under the authority of the Central Board.

(6) Notwithstanding anything hereinbefore contained in this paragraph, the Central Board may issue such directions to employers generally as it may consider necessary or proper for the purpose of implementing the Scheme, and it shall be the duty of every employer to carry out such directions.

38. Mode of payment of contributions

(1) The employer shall, before paying the member his wages in respect of any period or part of period for which contributions are payable, deduct the employee's contribution from his wages which together with his own contribution as well as an administrative charge of such percentage of the pay basic wages, dearness allowance, retaining allowance, if any, and cash value of food concessions admissible thereon) for the time being payable to the employees other than excluded employee and in respect of which provident fund contribution payable, as the Central Government may fix. He shall within fifteen days of the close of every month pay the same to the fund electronic through internet banking of the State Bank of India or any other Nationalized Bank or through PayGov platform or through scheduled banks in India including private sector banks authorized for collection on account of contributions and administrative charge:

Provided that the Central Provident Fund Commissioner may for reasons to be recorded in writing, allow any employer or class of employer to deposit the contributions by any other mode other than internet banking.

(2) The employer shall forward to the Commissioner, within twenty-five days of the close of the month, a monthly abstract in such form as the Commissioner may specify showing the aggregate amount of recoveries made from the wages of all the members and the aggregate amount contributed by the employer in respect of all such members for the month:

Provided that an employer shall send a Nil return, if no such recoveries have been made from the employees :

Provided further that in the case of any such employee who has become a member of the pension fund under the Employees' Pension Scheme, 1995, the aforesaid form shall also contain such particulars as are necessary to comply with the requirements of that Scheme.

(3) The employer shall send to the Commissioner within one month of the close of the period of currency, a consolidated annual Contribution Statement in Form 6- A, showing the total amount of recoveries made during the period of currency from the wages of each member and the total amount contributed by the employer in respect of each such member for the said period. The employer shall maintain on his record duplicate copies of the aforesaid monthly abstract and consolidated annual contribution statement for production at the time of inspection by the Inspector.

Provided that the employer shall send to the Commissioner returns or details as required under sub-paragraph (2) and (3) above, in electronic format also, in such form and manner as may be specified by the Commissioner.

14-B. Power to recover damages.—

Where an employer makes default in the payment of any contribution to the Fund , the [Pension Fund or the Insurance Fund or in the transfer of accumulations required to be transferred by him under sub-section (2) of section 15 or sub-section (5) of section 17 or in the payment of any charges payable under any other provision of this Act or of any Scheme or Insurance Scheme or under any of the conditions specified under section 17, the Central Provident Fund Commissioner or such other officer as may be authorised by the Central Government, by notification in the Official Gazette, in this behalf may recover from the employer by way of penalty such damages, not exceeding the amount of arrears, as may be specified in the Scheme:

Provided that before levying and recovering such damages, the employer shall be given a reasonable opportunity of being heard:

Provided further that the Central Board may reduce or waive the damages levied under this section in relation to an establishment which is a sick industrial company and in respect of which a scheme for rehabilitation has been sanctioned by the Board for Industrial and Financial Reconstruction established under section 4 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986), subject to such terms and conditions as may be specified in the Scheme."

Learned Counsel for the Appellant Establishment has further submitted that the opening words of section 14-B, show that imposition of damages is not mandatory rather it is discretionary and inspite of the principles of law laid down by ***Hon'ble Apex Court in case of Horticulture Experiment Station Gonikoppal, Coorg v/s The Regional Provident Fund Commissioner in Civil Appeal No. 2136/2012, (2022) 4 SCC 516***, wherein it has been laid down by a Division Bench of Hon'ble Supreme Court that *mens rea* loose significance in the case of breach of civil liability, the

mitigating and aggravating circumstances with respect to late deposit were required to consider by the Respondent Authority by not considering these factors, the Respondent Authority has committed error in law in recording the finding and assessment.

As regards, impugned finding and assessment with respect to order under section 14-B of the Act, Learned Counsel for the Appellant Establishment has referred to judgment of ***Hon'ble High Court of Chhattishgarh, in the case of Regional Provident Fund Commissioner Employees' Provident Fund v/s Bilaspur Spinning Mills & Industries Ltd. & Ors., (2022), SCC Online CHH 635,*** in this case, the Single Bench of Hon'ble High Court of Chhattishgarh has after considering the legal effect of ***Hon'ble Apex Court in case of Horticulture Experiment Station Gonikoppal, Coorg v/s The Regional Provident Fund Commissioner in Civil Appeal No. 2136/2012, (2022) 4 SCC 516***, and Judgment of ***Hon'ble High Court of Kerala in the case of Regional Provident Fund Commissioner v/s Bake 'N' Joy Hot Bakery & Anr., (2024) SCC online Ker 11,*** in this respect, in these two cases the order of this Tribunal reduced the amount of damages was upheld.

In another judgment ***Hon'ble High Court of Madras in the case of Assistant Provident Fund Commissioner v/s M/s Salem Textiles Limited, W.P. No. 14255/2020 with other writs; neutral citation 2025:MHC:221,*** following principles of law have been laid down with respect to 14-B after considering the judgment of ***Horticulture Experiment Station Gonikoppal, Coorg v/s The Regional Provident Fund Commissioner in Civil Appeal No. 2136/2012, (2022) 4 SCC 516,*** relevant paragraphs are being reproduced as under:-

> ***19. From the above stated legal position, in case of Horticulture (Supra), it is quite vivid that mens rea is not an essential element for imposing penalty/damages for breach of civil obligation/liabilities by the Provident Fund authorities. But it is incumbent upon the authorities while imposing damages should consider the other relevant factors namely number of defaults, the period of delay, frequency of default and the amount involved, reason for delay remittance of provident fund contribution, which are paramount duty of the authority while imposing damages which the authority has failed to discharge, therefore, considering these aspects of the matter, the learned Tribunal has passed the impugned order."***

In other judgment of ***Hon'ble High Court of Madras in the case of Assistant Provident Fund Commissioner v/s M/s Salem Textiles Limited, W.P. No. 14255/2020 with other writs; neutral citation 2025:MHC:221, para 7.1 to 7.3*** are being reproduced as under:-

> ***"7.1. It is true that in Employees' State Insurance Corporation (cited supra) and certain other cases, earlier the Hon'ble Supreme Court of India had held that unless it is established that failure to contribute was attributable to mens rea on the part of the employer, levying of damages does not arise. The same was also held in the case dealing with the Provident Fund. This position later stood altered in view of the judgment of the Hon'ble Supreme Court of India in Horticulture Experiment Station, Gonikoppal, Coorg (cited supra), whereby it is held that these judgments did not take into account the earlier authoritative pronouncements and held that mens rea and actus reus are not relevant considerations for levy of statutory damages in these beneficial enactments. Under these circumstances, the matter has been dealt with in detail and answered by the Full Bench of this Court in Sun Pressings (P) Ltd., (cited supra). The Full Bench, speaking through Hon'ble Justice S.S.Sundar, framed the questions in paragraph No.5 and it is useful to extract the same as follows:-***
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> > ***"5.This Court, having regard to the scope of Section 14-B, the relevant provisions of the Act, the EPF Scheme, and the arguments on either side relying upon several precedents, found it appropriate to frame the following issues for consideration :***
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> > ***(a) Whether an element of mens rea or actus reus is essential for levy of damages under Section 14-B of the Act or whether the default or delay in payment of the EPF contributions by the employer attract levy of damages under Section 14-B of the Act without an element of mens rea ?***
> >
> > ***(b) Whether levy of damages is compulsory in all cases even if it is held that mens rea is not essential ? In what cases levy of damages should be avoided ?***
> >
> > ***(c) What are the principles to be followed while determining the quantum of damages under Section 14-B of the Act ?"***
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> ***7.2. After considering all the relevant decisions in detail, the Hon'ble Full Bench answered the questions and it is relevant to extract paragraph Nos.38 and 39 which read as follows:-"***

"38.In Para 32-B of the Employee-s Provident Funds Scheme, 1952, the Central Board has authorised to reduce or waive damages. In respect of sick companies, 100% of the damages can be waived. Similarly, waiver of damages upto 100% can be allowed as per the recommendations of the Board of Industrial and Financial Reconstruction (BIFR). There may be situations and variety of reasons which would justify the non-payment of contribution within the prescribed time by the employer. There cannot be a discrimination between a sick company and sick industry which does not fall under SICA. After the SARFAESI Act, to save the industry, an employer may be forced to pay huge amounts by accepting OTS proposals. There may be similar circumstances where the employer has no option but to borrow money from private financiers. A decision of a private employer to save the industry will instantly save the employment of seizable number of employees. For variety of reasons, there may be default, despite an employer has always been honest but unable to pay the Provident Fund dues. There may be cases where the industrial operation is suspended temporarily or permanently due to power cut or labour strike or other valid reasons. In the absence of surplus funds available with the employer, it is quite possible that an employer is put to helpless situations. Therefore, there cannot be a straight jacket formula or a table which should be prescribed for levying damages under Section 14-B of the Act.

39.Therefore, following the principles reiterated by the Hon-ble Supreme Court and different High Courts including our High Court in similar circumstances, this Court hold that Section 14-B of the Act is an enabling provision and it does not envisage any compulsion to levy damages in all cases, and is inclined to frame the following guidelines:-

(i)Before levying damages in terms of Section 14-B of the Act, every authority is required to follow principles of natural justice. The particulars of the default, period, etc., and every adverse information that may be relied upon for levying damages should be indicated or furnished to the employer and a fair opportunity should be given to the employer to put forth his case in defence to the proposed action.

(ii)The authority, while exercising power under Section 14-B, shall keep in mind that the liability as per the table given in Para 32A of the Scheme, should be

treated as upper limit within which damages can be levied for the delay in making contributions by the employer.

(iii) In appropriate cases where the employer is able to provide sufficient reasons or cause justifying the delay with verifiable materials, the authority is competent to waive or fix the quantum of damages less than what is shown in the table under Para 32A of the Scheme.

(iv)When an employer is not in a position to make payment in order to save the industry from closure or on account of protecting the industry or establishment from being put to face proceedings under the SARFAESI Act or other inevitable circumstances which compels the employer to divert the funds only to save the industry and the employees, there cannot be a levy of damages.

(v)The authority under the Act has to consider all the mitigating circumstances including financial difficulties projected by the employer and pass a reasoned order.

(vi)When the employer is able to produce all the documents or verifiable material within his reach to substantiate any mitigating circumstance, the authority exercising power under Section 14-B has to pass orders giving reasons, if he is unable to find truth or bona fides in the claim of the employer.

(vii)There shall be proper application of mind objectively on the merits of each case and in any case, the authority cannot resort to the arithmetical calculation or for levying damages as per Para 32A of the Scheme without considering the mitigating circumstances.

(viii)While assessing the quantum of damages, the past and present conduct of the employer also should be taken note of. For example, there can be levy of damages as per Para 32-A of EPF Scheme in every case when the employer is a chronic defaulter despite having surplus funds or found to have diverted funds.

(ix) There may be variety of circumstances to which the employer is put to while managing an industrial establishment or a factory within the purview of the Act. The proviso to Section 14-B gives a special power to the Board to waive damages when a rehabilitation scheme is pending before the BIFR. There may be similar circumstances for the employer of any industry to save the industry from the clutches of private/public financial

institutions and the employer might be facing proceedings under the SARFAESI Act. Whenever the employer is forced to make huge amounts by mobilizing funds from other resources to save the industry from closure or to avoid similar situations, such payment need not be considered as an act to avoid payment of provident fund dues.

(x)The delay in payments by profit making establishments has to be seriously viewed and every profit making employer is bound to pay the provident fund contributions promptly, unless there are strong reasons or circumstances that prevent the employer from making the payment on the due dates. If there is an element of willful negligence in payment of Provident Fund dues, the Assistant Provident Fund Commissioner or the competent authority can levy damages exercising his discretion.

(xi)Though mens rea is not an essential ingredient, there cannot be levy of damages at the maximum limit merely because there is a default. Before levying damages, there must be definite finding or reason, after considering the explanation or reasons given by the employer for the delay in payment of dues and other mitigating circumstances. The discretion vested with the Assistant Provident Fund Commissioner or the competent authority shall be exercised judiciously in tune with the settled principles of law and keeping in mind the interest of the employees concerned."

7.3. Thus, it can be seen that the legal position as it holds today is that mens rea or willfulness is not an essential ingredient for invoking Section 14-B and levying damages. However, the same can be a relevant factor as a mitigating circumstance while deciding on the exercise or quantum.

Thus, in light of judgments, it is established that this Tribunal as well the Authority will be within their powers to look into the mitigating and aggravating circumstances while considering the penal damages under section 14-B of the Act.

Now coming on the facts of the case in hand in light of aforesaid settled principles, it comes out that there is nothing on record before this Tribunal as well before the Respondent Authority produced by the Appellant Establishment to substantiate its ground of bad financial condition hence this ground is held not established.

No doubt aggravating and mitigating circumstances with respect to late deposit may be taken into consideration as laid down in the cases

referred to above, but in the case in hand, since the default have been recurrent for years and the excuse of bad financial condition could not be established, this action of Appellant Establishment itself shows the required *mens rea* in delayed deposit.

Hence on the basis of above discussion, the impugned finding and assessments are held to have been recorded correctly in facts and law and are affirmed.

Point for determination stands answered accordingly.

No other point was pressed.

In light of the above discussions and findings, holding the Appeal sans merit, it is held liable to be dismissed.

ORDER

Appeal Dismissed.

No order as to cost.

Date:- 20/04/2026 **P.K. SRIVASTAVA**
(PRESIDING OFFICER)

Judgment Signed, dated and pronounced.

Date:- 20/04/2026

P.K. SRIVASTAVA
(PRESIDING OFFICER)