

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

No. EPF Appeal No.- 66/2017

Present – P.K. Srivastava

H.J.S. (Retd.)

**M/S Holy Cross Girls Higher Secondary School
Post Gholeng, Distt.- Jashpur (Chhattisgarh)
Through : Principal
Sister Lucina**

Appellant

Vs.

**The Assistant Provident Fund Commissioner
O/o. Employees Provident Fund Organization
Regional Office- Block D, Scheme No.-32,
Indira Gandhi Vyavsayik Parisar, Pandri
Raipur (C.G.)**

Respondent

Shri M.K. Vyas	:	Learned Counsel for Appellant.
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Shri J.K. Pillai	:	Learned Counsel for Respondent.
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JUDGMENT

I. Under challenge in this appeal is composite order dated 03.09.2012 passed by the Respondent Authority under Section 7Q and 14B of the Employees Provident Fund and Misc. Provisions Act, 1952, hereinafter referred to the word “Act”, whereby the Respondent Authority has held the Appellant Establishment liable for payment of damages in the form of penalty for the period April-1982 to July-2010, April-2011 to May-2011, September-2011, November-2011 and February-2012 and interest under Section 7Q of the Act for the said period amounting to Rs. 37,35,025/-as damages under Section 14B and

Rs. 35,75,054/- as interest under Section 7Q of the Act for defaulting payment of employees provident fund dues of its employees within the stipulated period.

2. **Facts connected**, in brief, are that the Respondent Authority issued a letter on 02.08.1982 informing the Appellant Establishment that it has come into coverage of provident fund contribution and PF Code no.-M.P./4037 has been allotted to it. It was further mentioned in the notice that the Appellant Establishment failed to deposit the EPF dues of its employees for the period from April to June 1982. This was challenged by the Appellant Establishment before the Respondent Authority in the reply to the notice. The Respondent Authority passed the order under Section 7A of the Act affirming the provident fund coverage. The Respondent Authority initiated proceedings for assessment of EPF dues from 04/82 to 03/90 vide its notice dated 28.09.1991 and passed an ex-parte order on 26.03.1992 holding the Appellant Establishment liable to pay EPF dues Rs. 4,03,790/-. An application was moved by the Appellant Establishment for setting aside this order which was never decided. The Appellant Establishment deposited this amount on 27.03.2008 and also requested the District Education Office to transfer the amount of PF deposited in the Contributory Provident Fund kept in the Bank vide applications dated 15.03.2008, 25.03.2008 & 27.04.2010, this permission was granted on 19.05.2010 and an amount of 40,48,203/- was transferred from Bank account to the Respondent Authority. Thereafter, the Respondent Authority issued a notice on 15.06.2012 mentioning that there were delayed deposit of EPF dues of employees of the Appellant Establishment for the period 04/1982 to 07/2010, 04/2011, 05/2011, 09/2011, 11/2011 and 02/2012, and required the Appellant Establishment to show cause as to why interest under Section 7Q and damages under Section 14B of the Act not be recovered from the Appellant Establishment. It is the case of the Appellant Establishment the impugned order was passed by Respondent Authority ignoring the facts put up by Appellant Establishment before the Authority, hence is bad in law.

3. **The grounds of the appeal** taken in the Memo of Appeal are mainly that the impugned order is bad in law and facts and as such is

illegal, that it is a non speaking order without considering the submissions of Appellant Establishment and settled proposition of law laid down by Hon'ble the Apex Court in various cases viz; **Assistant Commissioner Commercial Tax Vs. Shukla & Others (2010) 4 SCC 784, Organo Chemical Industries Vs. Union of India AIR 1979 SC 1803, also Halwasia Vidya Vihar vs. R.P.F.C. (2006) 4 SCC 46.**

4. In its **counter/reply**, the Respondent Authority has defended the impugned order on the ground that the applicability of the Act could be decided in the light of the provisions of the Act. Letter of coverage is a simple reminder. The liability of the Appellant Establishment to pay the employees provident fund dues of its employees has been adjudicated in separate proceedings under Section 7A of the Act and is final between the parties. Payment of damages and interest are consequential to the main order, thus according to the Respondent Authority, there is no error of law and fact in the impugned order.
5. I have heard arguments of Mr. M.K. Vyas, learned Counsel for the Appellant Establishment and Shri J.K. Pillai, learned Counsel for the Respondent Authority. Both the sides have filed written arguments. I have gone through the record and the written arguments as well.
6. After perusal of the record in the light of rival arguments, the following point arises for determination :-

“Whether the finding of the Respondent Authority that the Appellant Establishment is liable to pay damages under Section 14B and interest under Section 7Q of the Act for delayed payments of employees provident fund contributions of its employees between the period September 2002 to September 2007 and the assessment can be faulted in law or fact or not ?”
7. Both the learned Counsel have attacked and defended the impugned finding in their arguments. The main contention of learned Counsel for respondent is that imposition of interest under Section 7Q of the Act is only consequential when the liability to pay employees provident fund dues by the Appellant Establishment for the period in question has been settled and has become final. The Appellant Establishment cannot escape from paying interest on damages under Section 7Q of the Act. This is also because the Respondent Authority has

to pay interest to the contributions on their deposits. The arguments of learned Counsel for Appellant Establishment on this point is mainly that the Appellant Establishment cannot be held liable to pay interest for pre discovery period.

8. Section 1(3) of the Act requires to be reproduced here, which is as follows :-

3) Subject to the provisions contained in Section 16, it applies-

(a) to every establishment which is a factory engaged in any industry specified in Schedule I and in which 6[twenty] or more persons are employed, and

(b) to any other establishment employing 7[twenty] or more persons or class of such establishments which the Central Government may, by notification in the Official Gazette, specify in this behalf:

Provided that the Central Government may, after giving not less than two months' notice of its intention so to do, by notification in the Official Gazette, apply the provisions of this Act to any establishment employing such number of persons less than 8[twenty] as may be specified in the notification.

9. A simple reading of this provision makes it clear that an establishment is under obligation to pay employees provident fund dues of its employees and is covered under the Scheme automatically as and when conditions mentioned as above are satisfied. Thus the arguments of learned Counsel for respondent that the Appellant Establishment is covered under the Act for Provident Fund deposits when the conditions under Section 3a and 3b as mentioned above are satisfied and letter of coverage does not make any difference in this liability, is liable to be accepted accordingly.

10. This is also to be mentioned here that liability to pay interest under Section 7Q is a consequential one. In the case in hand, when the liability to pay Employees Provident Fund dues for the period in question has become final between the parties, the Appellant Establishment is under obligation to pay interest for late deposits under Section 7Q of the Act, hence the finding of the Respondent Authority with regard to liability

under Section 7Q of the Act and assessment cannot be faulted in law or fact and is affirmed accordingly.

11. As regards the liability of the Appellant Establishment to pay damages under Section 14B of the Act for the late deposits and assessment, the learned counsel for the appellant has referred to decision of Hon'ble the High Court of M.P. in **Naveen Vidya Bhawan Vs. Union of India (2015)(III) CLR 484, Manu/MP/0814/2015**, the facts of the case referred are identical with the case in hand. In the referred case, Hon'ble High Court of M.P. has reduced the damages under Section 14B of the Act to 25% of the assessed amount. Keeping in view the facts and circumstances which are similar to the case in hand, para 7 & 9 of this judgment are being reproduced as follows:-

A Division Bench of this Court in Assistant Provident Fund Commissioner vs Ashram Madhyamik : Writ Appeal No.454/2006 decided on 2.1.2007 [2007-III-LLJ 372] had an occasion to dwell upon the aspect as raised and after taking into consideration the decision by the Supreme Court in RPF Commissioner vs S.D. College (1997) 1 SCC 241 and Halwasia Vidya Vihar vs Regional P. F. Commissioner (2006) 4 SCC 46, the Division Bench affirmed the verdict by learned Single Judge of reducing the damage to 25%. It was held -

*"2. This appeal under [Section 2](#) of the M.P. Uchcha Nyayalay (Nyayalayapeeth ko Appeal Adhinyam, is directed against the order dated September 5, 2006 passed in W.P.2564/2005 by the learned Single Judge whereby learned Single Judge has reduced the damages imposed by the Assistant Provident Fund Commissioner to 25% on deposit of dues of provident fund by the employer (petitioner before the Single Judge). The original petitioner was granted coverage under the Act for payment of Employees Provident Fund as per the provisions of Act. It was not disputed that pursuant to the letter dated January 27, 2000(Annexure P/1) the petitioner was asked to deposit the contribution for the period July 10, 1983 to September 22, 1997 on or before April 15, 2000 whereas it was actually deposited on June 30, 2000 that too a small sum of Rs.13,303/-. Further, a sum of Rs.43,362/- was deposited on July 17, 2000. Learned Assistant Commissioner, finding that admittedly there was delay in depositing the provident fund, invoked the provisions of [Section 14-B](#) of Employees Provident Funds and Miscellaneous Provisions Act, 1952 (for short the Act) and impose the damages in the sum of Rs.37,590/-. This amount was reduced by the learned single Judge to 25% of the damages and the interest charged under [Section 17-Q](#) of the Act was maintained. In doing so, learned single Judge fortified his order by the decision in **RPF Commissioner vs SD College AIR 1997 SC 3645 : (1997) 1 SCC 241 : 1997-II-LLJ-55 and Halwasis Vidya Vihar Haryana vs Regional Provident Fund Commissioner AIR 2006 SC 1767 : (2006) 4 SCC 46 : 2006-II-LLJ-497**. Contention of learned counsel, however, is that once there was violation/delay in deposit of employees provident fund, there is no choice but*

to impose damages to the maximum extent under said provision. Section 14-B of the Act reads as under:

Power to recover damages. - Where an employer makes default in the payment of any contribution to the Fund (The Family 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 to impose. Thereafter taking note of this order on 17 September 2014, a Coordinate Bench of this Court has disposed of more than 10 identical writ petitions and in those cases, following directions were issued in para 3 :-

3. From perusal of provisions as extract herein above, though it is clear that the department has power to impose damages in case of non- deposit/delayed deposit of the provident fund, it is only discretionary to impose damages as is clear from the word "may" used in the Provision. We are, therefore, not impressed by the submission that full damages are compulsory under Section 14-B of the Act. Learned Judge has maintained the damages to the extent of 25% of the original demand and has maintained the interest charge under Section 17-Q. We are, therefore, of the view that the learned single Judge in his discretion, has rightly acted within the parameters of the provisions. We, therefore, do not find any substance in this appeal. Both the appeals are, therefore, dismissed."

To maintain parity with the decision in Assistant Provident Fund Commissioner vs Ashram Madhyamik (supra), the damages levied in these batch of writ petitions is reduced to 25%."

12. In the light of the case referred above, holding the findings of the Respondent Authority regarding the liability of the Appellant Establishment to pay damages under Section 14B of the Act for delayed payments is justified in law and fact. The assessment of penal damages under Section 14B of the Act is reduced to 25% of the assessed amount. As regards the assessment order Under Section 7Q of the Act relating to interest on delayed deposits of EPF dues, mentioned above in the impugned order, since this order is consequential to the order regarding coverage of the Appellant Establishment under the Act, which is not disturbed till now, cannot be interfered by this Tribunal in this appeal. and also because no appeal

13. **Point for determination is decided accordingly.**

- 14.* No other point was pressed.
- 15.* In the light of the above discussion, the appeal succeeds partly.

ORDER

Appeal succeeds partly. The liability and the assessment of amount under Section 7Q of the Act in the impugned order is affirmed. The liability and assessment of amount under Section 14B of the Act in the impugned order is reduced to 25% of the assessed amount.

No order as to costs.

Date:- 26 /06/2024

**P.K. Srivastava
(Presiding Officer)**

Judgment Signed, dated and pronounced.

Date:- 26/06/2024

**P.K. Srivastava
(Presiding Officer)**