

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
CUM LABOUR COURT/EPF APPELLATE TRIBUNAL,
JABALPUR

NO. CGIT/LC/EPFA-101-2017

PRESENT: P.K.SRIVASTAVA
H.J.S.(Retd.)

Jabalpur Sahkari Dugdh Sangh

APPELLANT

Versus

Assistant Provident Commisioner,
JABALPUR(M.P.)

RESPONDENT

Shri Uttam Maheshwari : Learned Counsel for Appellant.

Shri J.K.Pillai :Learned Counsel for Respondent.

(J U D G M E N T)

(Passed on this day of 16TH December-2021)

- 1.* Under challenge in this appeal is order dated 18-10-2013 passed by the Respondent Authority under Section 14B of the Employees

Provident Fund And Misc. Provisions Act,1952, herein after referred to the word Act”, levying an amount of Rs.3,26,998/- towards damages and interest for the period 7/2002 to 4/2009 for belated remittance of provident fund dues.

2. The settled facts between the parties are mainly that one employee of the of the Appellant R.K.Jamindar was retired compulsorily by appellant establishment and he preferred a writ petition before Hon’ble the High Court of Madhya Pradesh which was 7009/2002 which was dismissed by Hon’ble the High Court after hearing . The Division Bench of Hon’ble the High Court set aside the order of compulsory retirement in Writ Appeal No.1339/2006 and also ordered 20% of back wages. Hon’ble the Apex Court modified the order of Hon’ble High Court in Civil Appeal No.2442/2009 by upholding the order of Hon’ble Division Bench setting aside the compulsory retirement by enhancing the back wages up to 50%. This order was complied with by the Appellant Establishment and Dr. Jamindar was reinstated with 50% back wages after adjusting the amount towards gratuity and notice pay. The Respondent Authority initiated proceedings for imposition of penal interest and damages. The Appellant Establishment took the plea that the wages were paid under the order of Hon’ble the Apex Court, hence there was no delay in depositing employees provident fund dues because there was no wage paid during the period prior to order of the Hon’ble Apex Court, hence no action for penalty under Section 14-B of the Act. This plea was not accepted

by the Respondent Authority and the impugned order was passed holding the appellant responsible to pay penalty under Section 14-B of the Act. In its counter the appellants have generally defended the impugned order with a stand that since the member did not work for appellant nor did he earn any wages for the period between July-2002 to April-2009 in which he was out of service is under misconception because one of the Member has been reinstated with back wages . He is entitled to benefits flowing under EPF Scheme at 50% back wages irrespective of the fact whether he worked and earned or not . It is also stated that the appellant establishment filed a Review Petition against the order before the Hon'ble Apex Court which was dismissed by Hon'bl the Apex Court on 17-1-2010. This was with a view to further frustrate the payment of back wages and provident fund benefits. Accordingly, it has been submitted that the appeal be dismissed .

3. Appellant has filed its rejoinder wherein it has reiterated its case.
4. I have heard arguments of Shri Uttam Maheshwari, learned counsel for the appellant and Shri J.K.Pillai, learned counsel for the respondent.
5. Following point come up for determination, from perusal of the record in the light of rival arguments:-

“Whether the finding of the Respondent Authority that the Appellant Establishment committed default in payment of EPF dues of its employee within the period when he was out of service and hence was liable to pay penalty under Section 14-B of the Act is justified in law or fact or not ?”

6. As per para 38 of Employees Provident Fund Scheme 1952, employer is under legal obligation to deposit the EPF dues within 15 days of the next month of payment of wages. In the case in hand , since the Member was paid his wages under the order of Hon’ble the Apex Court and he was out of service during the period of litigation as mentioned above , the principle regarding payment will be counted from the date on which the wages became due and on which date the wages were paid. In the case in hand , the wages became due after final order of Hon’ble the Apex Court passed in its Review Order. Hence the stand of the Respondent Authority that the wages became due within the period when the employee was out of service only because he was reinstated with 50% back wages under order of Hon’ble the Apex Court, cannot be held justified in law. Accordingly, the finding of the Respondent Authority that the Appellant Establishment committed willful default regarding payment also cannot be held justified in law. **The point for determination is answered accordingly.**

7. In the light of the above discussion, the appeal is liable to be allowed, setting aside the impugned order.

ORDER

Allowing the appeal, the impugned order under Section 14-B of the Act passed by the Respondent Authority is quashed.

No order as to costs.

(P.K.SRIVASTAVA)

PRESIDING OFFICER

JUDGMENT SIGNED , DATED AND PRONOUNCED.

(P.K.SRIVASTAVA)

PRESIDING OFFICER

Date:16-12-2021