

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

**NO. CGIT/LC/EPFA-25-2018**

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

**M/s Gandhi Medical College**

**APPELLANT**

**Versus**

**Assistant Provident Fund Commissioner**  
**Bhopal(M.P.)**

**RESPONDENT**

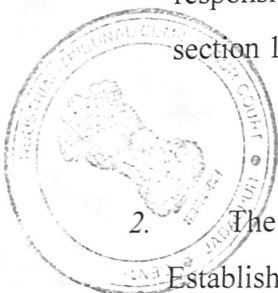
**Shri P.C.Chandak** : **Learned Counsel for Appellant.**

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

**(J U D G M E N T)**

**(Passed on this 20<sup>th</sup> day of October-2021)**

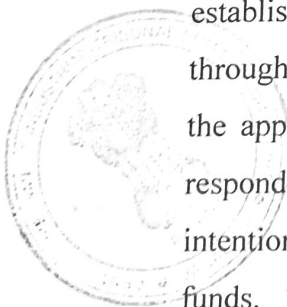
1. The present appeal is directed against the order dated 25-9-2018 passed under Section 14-B of the Employees Provident Fund and Misc. Provisions Act,1952(hereinafter referred to as the word Act), whereby the Respondent Authority as held the appellant establishment guilty in late deposit of employees provident fund dues for the period 28-4-2014 to 29-5-2018 and is saddled with the responsibility to pay the damage of Rs.20,50,410/- as damages under section 14-B of the Act.



2. The facts connected in brief are mainly that the Appellant Establishment is a Medical College situated in Bhopal which provides specialist medical services and education. Some

P

employees lodged a complaint before the Respondent Authority that proper quantum of contribution was not remitted by the appellant establishment or their employer. This complaint was inquired into and the appellant was directed to remit the employees provident fund contribution amounting to Rs.16,04,738 which was deposited by the appellant. Thereafter the Respondent Authority issued a show cause notice under Section 7Q and 14-B of the Act for imposing penal interest and damages for late deposit . It is the case of the appellant establishment that it attended the notice and submitted a reply to the notice taking a stand that the employees provident fund dues and interest was to be deposited by the contractor who had engaged these employees for the contract work given to them by the appellant establishment. Also it was pleaded that the appellant establishment is a government organization and there can be no intention for late deposit of employees provident fund dues. Delay if any was due to procedural reasons but the Respondent Authority imposed penal interest of Rs.16,51,559/- under Section 7Q and damages Rs.20,50,410/- holding the appellant establishment guilty of late depositing the employees provident fund dues. The grounds of appeal are mainly that the impugned order is bad in law because the non-remittance of employees provident fund dues was bonafide in delay and without any mensrea which was overlooked by the Respondent Authority. The Respondent Authority also failed to appreciate that the appellant had remitted the entire amount of contribution without reducing employees share. The Respondent Authority also failed to appreciate that the appellant establishment is a government organization which runs on funds received by the State Government. Any imposition of interest and damages would affect its functioning. The Respondent Authority further failed to appreciate that appellant establishment received funds from Public Ex-chequer, salary is paid through Government Treasury which in turn remits the amount to the appellant establishment and thereafter it is deposited with the respondent. The delays are due to complicated process and not intentional, rather it was bonafide due to deficiency of staff and funds. The Respondent Authority also failed to appreciate, that it



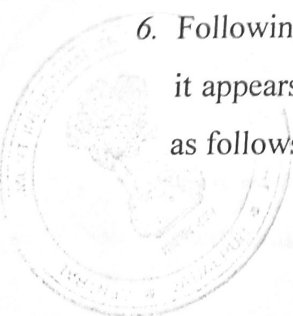
P. S.

was required to act as a watch dog of the interest of employees and employer both and not to act like a blood hound to achieve targets. The Respondent Authority also erred in fact and law in not considering the factum of mensrea in the late deposit.

(2) Whether the appellant is entitled to any relief?

3. In its reply/counter, the Respondent Authority has mainly defended the impugned order, with a case that as per para 38(1) of Employees Provident fund Scheme 1952" every deposit is required to be made within 15 days of every month." The Appellant Establishment failed to do so. The ground that appellant is a government body on the basis of funds received from State Government or the contribution is done at by Treasury office, which in turn remits the amount to appellant and on receipt of the money the employee contribution along with employer contribution is remitted to respondent, hence delay in this process due to deficiency of staff and funds which has occurred is not an excuse for holding absence of required mensrea. It has been further been stated by Respondent that appeal against order under Section 7Q is not maintainable and only against order under 14-B of the Act is maintainable.
4. The Appellant has filed its rejoinder wherein it has mainly reiterated its case taken in the Memo of appeal.
5. I have arguments of learned counsel for the appellant Shri Uttam Maheshwari and Shri J,K,Pillai, learned counsel for the Respondent.
6. Following points come up for determination in the present appeal as it appears from perusal of record in the light of the rival arguments as follows:-

PAC

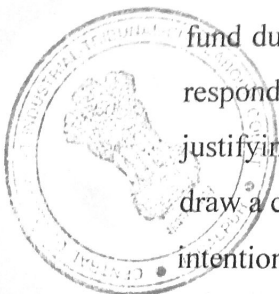


(1) Whether the order of the Respondent Authority passed under Section 14 B of the Act, holding the appellant establishment liable to pay damages is correct in law and fact?

(2) Whether the appellant is entitled to any relief?"

**7. POINT NO.1:-**

As it appears from the perusal of impugned order under Section 14B of the Act, the representative of the appellant establishment appeared last time on 19-6-2018 and requested for date and last opportunity was granted to them for 20-9-2018, on this date, none appeared for the appellant establishment, the respondent authority held that since several and sufficient opportunities were given to the appellant establishment to have its say with respect to the show cause notice dated 30-6-2018 but no material was produced by the appellant establishment, hence assuming that the appellant establishment has nothing to say in this matter, the respondent Authority proceeded to pass the impugned order. It is apparently clear from the impugned order that the appellant authority failed to put up its case and explained the grounds of late deposits before the Respondent Authority inspite of opportunity being given. The burden to show the mitigating circumstances, showing lack of required mensrea for late deposit was on the appellant establishment which it failed to discharge. Employees Provident Fund Scheme ,1952 requires that employees provident fund dues should be deposited within 15 days of next month. In the case in hand , there has been late deposits for as long as four years. Late deposits of one month or two months may be taken as incidental, but continuously not depositing employees provident fund dues in time for four years that to without putting before the respondent authority any excuse or mitigating circumstance justifying it would compel the Respondent Authority to reasonably draw a conclusion and a finding that the late deposits are nothing but intentional and the delay was with required mensrea. Hence the



*P. S.*





10. Accordingly, the finding of the respondent authority cannot be erred in fact or law and is affirmed. Point No.1 is answered accordingly.

**11. POINT NO.2:-**

In the light of the findings recorded above, the appellant is not entitled to any relief. Point No2 is answered accordingly.

12. Consequently the appeal lacks merit and is liable to be dismissed with costs,

**ORDER**

Dismissing the appeal with costs, the impugned order dated 25-9-2018.under 14B of the Act passed by the Respondent Authority is confirmed.

~~No order as to costs.~~



(P.K.SRIVASTAVA)

PRESIDING OFFICER

JUDGMENT SIGNED , DATED AND PRONOUNCED.



(P.K.SRIVASTAVA)

PRESIDING OFFICER

Date:20-10-2021

