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

**NO. CGIT/LC/EPFA-65/2017**

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

**M/S Gyanoday Public School**

**APPELLANT**

**Versus**

**The Assistant P.F.Commissioner,Indore**

**RESPONDENT**

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**Shri Manoj Chaturvedi**

**: Learned Counsel for Appellant.**

**Shri J.K.Pillai**

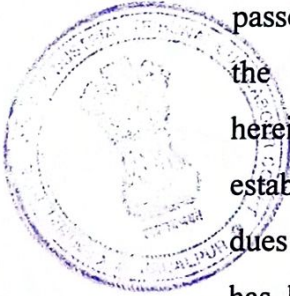
**: Learned Counsel for Respondent.**

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

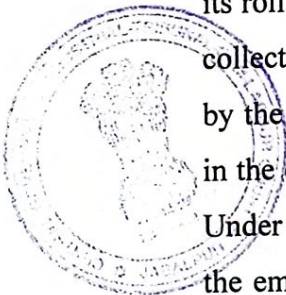
**(Passed on this 10<sup>th</sup> day of October,2022 )**

1. The present appeal is directed against the order dated 13-8-2012 passed by the Respondent Authority under Section 14B and 7Q of the Employees Provident Fund And Misc. Provisions Act,1952, herein after referred to the word Act”, whereby holding the appellant establishment in defaulting deposit of employees provident fund dues from July-1997 to August-2010. The Respondent Authority has held the Appellant Establishment liable to pay the damages under Section 14B for amount Rs.4,62,096/- and interest under Section 7Q computed at R.2,45,351/- total amounting to Rs.8,87,847/-.



2. Facts in brief are that the Appellant Establishment is an institution imparting education situated in country side of the State. It was held covered under the Act with retrospective effect by the Respondent Authority. Though the Appellant Establishment had not deducted any deduction from the salary of the employees even then it deposited the entire amount as per Section 7A of the Act as determined by the Respondent authority. The Respondent authority served a notice under Section 14B and 7Q of the Act for default in deposit of employees provident fund dues in pre-discovery period. The Appellant Establishment submitted a reply that since it was relating to the pre-discovery period contribution, no damages or interest can be levied on this amount. According to the Appellant Establishment, the impugned order is against settled law on this point as laid down in various decision of the Apex Court like **Popular Saw Mill Vs. RPFC (1996) 1 LLJ 201 SCC** and **RPFC West Bengal Vs. Delta Jute Industries (1997) 10 SCC 384**, the impugned finding and assessment is against the finding of this Tribunal in EPF Appeal No.232(9)/2004. The impugned order is illegal, unjust and improper. There is error of approach in facts in passing the impugned order. The impugned order is baseless, incorrect and perverse.

3. . The case of the Respondent Authority in its counter to the reply is mainly that the Act is a social welfare legislation and is applicable on establishments engaging twenty or more persons on any day on its roll. The provident fund and other allied contributions have to be collected by the employer of the establishment and to be deposited by the 15<sup>th</sup> of every next month in which the employee has worked in the establishment and the dues become payable to him. An order Under Section 7A of the Act was passed on 29-12-2000 determining the employees provident fund dues to the tune of Rs.1,64,079/- for the period between July,1997 to July-2000. This order was reviewed on application of the Appellant Establishment under

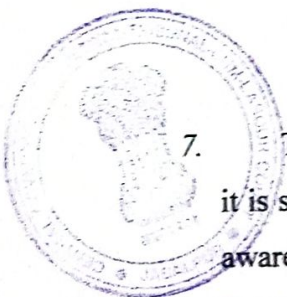


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Section 7B of the Act and the amount was re-fixed at Rs.1,52,080/- .According to the Respondent Authority it had acted in accordance with the powers vested on it in the Act and has passed the impugned order after application of judicial mind and after considering the facts and circumstances of the case in hand. There is no calculational mistake in assessment and the order is correct in law and fact.

4. I have heard arguments of Shri Manoj Chaturvedi, learned counsel for the Appellant Establishment and Shri J.K.Pillai, learned counsel for the respondent Authority. I have gone through the record.
5. At the very outset, it is made clear that since order Under Section 14B and 7Q of the Act is a Composite order which is under appeal, hence, this appeal is maintainable against order under Section 7Q also because of being a composite order. The learned Counsel for the Respondent has also fairly not disputed this point.
6. Now the following point remains to be decided in the present appeal:-

**“Whether the finding of the Respondent Authority, holding the Appellant Establishment liable to pay the damages and interest, as well as the assessment is correct in law and fact or not?”**



7. The main argument of learned counsel for the appellant is that, it is situated in a distant country side, hence not possible for it to be aware of each and every law on this point. Secondly the Appellant Establishment was held liable to pay the employees provident fund dues only vide the order under Section 7A passed by the Respondent Authority on 29-12-2000, hence its liability for interest and damages

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would arise only after the date of order under Section 7A of the Act. Accordingly, according to learned counsel for the Appellant the finding of Respondent Authority holding the Appellant Establishment liable to pay the damages and interest for the period in question which is before passing the order under Section 7A of the Act is against law and cannot be sustained.

8. Per Contra, learned counsel for the Respondent has submitted that it is wrong to say that the establishment is covered under the Act, only from the date of order Under Section 7A. Learned Counsel has referred to Section 1(3) of the Act which is being reproduced as follows:-

**1(3). Power to apply Act to an establishment which has a common provident fund with another establishment.-**

**Where immediately before this Act becomes applicable to an establishment there is in existence a provident fund which is common to the employees employed in that establishment, and employees in any other establishment, the Central Government may, by notification in the Official Gazette, direct that the provisions of this Act shall also apply to such other establishment.]**

9. Learned Counsel has further referred to para 30 of Employees Provident Fund Scheme 1952 which is being reproduced as follows:-

**30. Payment of contributions:**

(1) The employer shall, in the first instance, pay both the contribution payable by himself (in this Scheme referred to as the employer's contribution) and also, on behalf of the member employed by him directly or by or through a contractor, the contribution payable by such member (in this Scheme referred to as the member's contribution).

(2) In respect of employees employed by or through a contractor, the contractor shall recover the contribution payable by such employee (in this Scheme referred to as the member's contribution) and shall pay to the principal employer the amount of member's contribution so deducted



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together with an equal amount of contribution (in this Scheme referred to as the employer's www.epfindia.gov.in 43 contribution) and also administrative charges.

(3) It shall be the responsibility of the principal employer to pay both the contribution payable by himself in respect of the employees directly employed by him and also in respect of the employees employed by or through a contractor and also administrative charges. Explanation: For the purposes of this paragraph the expression "administrative charges" means 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 an excluded employee, and in respect of which Provident Fund Contribution are payable as the Central Government may, in consultation with the Central Board and having regard to the resources of the Fund for meeting its normal administrative expenses, fix.

10. Para 32A Employees Provident Fund Scheme 1952 is also being reproduced as follows:-

**32A. Recovery of damages for default in payment of any contribution.** - [(1) Where a employer makes default in the payment of any contribution to the Fund, or in the transfer of accumulations required to be transferred by him under sub-section (2) of section 15 or sub-section (15) of section 17 of the Act or in the payment of any charges payable under any other provisions of the Act or the Scheme or under any of the conditions specified under section 17 of the Act, the Central Provident Fund Commissioner or such 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, damages at the rates given in the table below:-

11. TABLE

SI. No.	Period of default	Rate of damages (percentage of arrears per annum)
(1)	(2)	(3)
(a)	Less than 2 months	Five
(b)	Two months and above but less than four months	Ten
(c)	Four months and above but less than six months	Fifteen
(d)	Six months and above	Twenty Five.]

[(2) The damages shall be calculated to the nearest rupees, 50 paise or more to be counted as the nearest higher rupee and fraction of a rupee less than 50 paise to be ignored.]

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12. Thus according to the learned Counsel for the Respondent Authority, the establishment is covered under the Act when it fulfills the conditions under Section 1(3) of the Act and not from the date when it is held covered under the Act. Learned counsel further submits that this provision if read with para 30 and 32(a) of Employees Provident Fund Scheme 1952 as referred to above, makes it clear that any default of deposit of employees provident fund dues, the employer will be liable to pay interest and damages also.

13. In the light of the above provisions, the contention of the Appellant Establishment that it is not under obligation to pay the damages and interest for the period in question has no leg to stand. Hence, the finding of the Respondent Authority, in this respect is held correct in fact and law and is affirmed accordingly.

14. Learned Counsel for the Appellant could not dispute the assessment on fact, hence holding the assessment also correct in law and fact, the impugned finding is affirmed.

15. No other ground has been pressed

16. Consequently the appeal fails.

**ORDER**

**Appeal stands dismissed.**

**No order as to costs.**



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**(P.K.SRIVASTAVA)**

**PRESIDING OFFICER**

**JUDGMENT SIGNED , DATED AND PRONOUNCED.**

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**(P.K.SRIVASTAVA)**

**PRESIDING OFFICER**

**Date:10-10-2022**