

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

EPF Appeal No.- 17/2017

Present – P.K. Srivastava

H.J.S. (Retd.)

**Progressive Education,
Through its Proprietor Col. Anil Kak (Retd.),
S/o Late Col. Brijendranath Kak,
R/o 64/67, Dhar Kothi,
Indore (M.P.)**

Appellant

Vs.

**Assistant Provident Fund Commissioner,
O/o the Employees' Provident Fund Organisation,
Pradhikaran Bhawan,
7, Race Course Road,
Indore (M.P.)- 452003**

Respondent

Shri Kapil Duggal : Learned Counsel for Appellant.

Shri Harshit Patel : Learned Counsel for Respondent.

JUDGMENT

(Passed on this 6th day of February, 2026)

The present Appeal is directed against the order dated 04.02.2009, passed by Respondent Authority under section **14-B** of the **Employees Provident Fund & Miscellaneous Provisions Act, 1952** (in short the 'Act'), by which the Respondent Authority has held that the Appellant Establishment liable to pay damages with respect to late deposit of PF dues of its excluded employees also for the period from 04/2006, 05/2006, 10/2006 to 12/2006 and has assessed the amount at Rs. 34,385/-.

The facts connected in brief are mainly that the Appellant Establishment is covered under the Act and has been allotted the P.F. Code in which it is required to deposit dues of its employees who were covered under the Scheme. He made deposit of PF amount with respect

to its excluded employees also under a mistaken belief that this amount was also to be deposited with the Organization. The Respondent Authority took advantage of this mistake and issued a notice under section 14-B of the Act to show cause why not a penalty/penal damages be recovered for late deposit of PF dues of excluded employees of the Appellant Establishment as well. The Appellant Establishment appeared before them and took a plea that the excluded employees were not covered under the Scheme. Hence, they were not obliged under law to deposit their PF dues also and hence no damages can be levied for any such delayed deposit. The Respondent Authority rejected their this case holding that the Act and Scheme do not make any difference in this respect in the case of excluded and non-excluded employees and assessed the amount by the impugned order.

Grounds of Appeal, taken in the memo of Appeal are mainly that, the impugned order is incorrect in law and fact, findings recorded are against law, the Respondent Authority has committed error in law in recording finding that the penal damages under section 14-B of the Act may be recovered in the case of late deposit of PF dues of excluded employees also.

In its counter to the Appeal, the Respondent Authority has taken a case that the Act is a beneficial legislation, hence interpretation, which favors the beneficiaries, will be accepted in case any provision which is capable of two interpretations, also that the Act and Scheme do not make any difference between employees hence, there is no error of law or fact in the findings and assessment.

I have heard argument of Learned Counsel for Appellant Establishment Mr. Kapil Duggal and Mr. Harshit Patel for Respondent Authority. Both the sides have filed a written submission. Also, I have gone through the written submission and record as well.

On perusal of record in the light of rival arguments following points comes out for determination:

“Whether the finding of the Respondent Authority that the Appellant Establishment is liable to pay damages with respect to late deposit of PF dues of its excluded employees also and assessment has been recorded correctly in law and fact?”

Learned Counsel for Appellant Establishment has referred to section 2-(c) of the Act as well para 26, 26-A and 30 of the Scheme and

has submitted that section 2-(c) defines 'Contributions' payable with respect to a member under the Scheme or Contribution payable in respect of an employee to whom the Scheme applies. He further submits that section 2-F of the Scheme defines 'Excluded Employees'. According to this paragraph an excluded employee is one who was earlier member of the fund but withdrew the full amount or one who pays at the time he is otherwise to entitle member of the fund, exceeds Rs. 50,000/- per month. He further referred to para 26 of the Scheme and submits that an excluded employee is not entitled and required to be a member of the Scheme. He also refers to para 29 and 30 of the Scheme and submits that this also applies on the member of the Scheme, the excluded employee is not entitled and not required to be a member of the Scheme. Hence, the finding of the Respondent Authority that the Establishment is also liable to pay damages for late deposit of PF amount of its excluded employees also is incorrect in law. Section 2-C of the Act & section 2-F as well Para 26, 26-A, 29 & 30 of the Scheme are being reproduced as under:-

"2(c) "contribution" means—

a contribution payable in respect of a member under a Scheme or the contribution payable in respect of an employee to whom the Insurance Scheme applies.

(f) "excluded employee" means—

(i) an employee who, having been a member of the Fund, withdrew the full amount of his accumulations in the Fund under clause (a) or (c) of sub-paragraph (1) of paragraph 69;

(ii) an employee whose pay at the time he is otherwise entitled to become a member of the Fund, exceeds fifteen thousand rupees per month

Para 26 "Classes of employees entitled and required to join the fund"

(1) (a) Every employee employed in or in connection with the work of a factory or other establishment to which this scheme applies, other than an excluded employee, shall be entitled and required to become a member of the Fund from the day this paragraph comes into force in such factory or other establishment.

(b) Every employee employed in or in connection with the work of a factory or other establishment to which this Scheme applies, other than an excluded employee, shall also be entitled and required to become a member of the fund from the day this paragraph comes into force in such factory or other establishment if on the date of such coming into force, such employee is a subscriber to a provident fund maintained in respect of the factory or other establishment or in respect of any other factory or establishment (to which the Act applies) under the same employer:

Provided that where the Scheme applies to a factory or other establishment on the expiry or cancellation of an order of exemption under section 17 of the Act, every

employee who but for the exemption would have become and continued as a member of the Fund, shall become a member of the Fund forthwith.

(2) After this paragraph comes into force in a factory or other establishment, every employee employed in or in connection with the work or that factory or establishment, other than an excluded employee, who has not become a member already shall also be entitled and required to become a member of the Fund from the date of joining the factory or establishment.

(3) An excluded employee employed in or in connection with the work of a factory or other establishment, to which this Scheme applies shall, on ceasing to be such an employee, be entitled and required to become a member of the Fund from the date he ceased to be such employee.

(4) On re-election of an employee or a class of employees exempted under paragraph 27 or paragraph 27-A to join the Fund or on the expiry or cancellation of an order under that paragraph, every employee shall forthwith become a member thereof.

(5) Every employee who is a member of a private provident fund maintained in respect of an exempted factory or other establishment and who but for exemption would have become and continued as a member of the fund shall, on joining a factory or other establishment to which this Scheme applies, become a member of the fund forthwith.

(6) Notwithstanding anything contained in this paragraph an officer not below the rank of an Assistant Provident Fund Commissioner may, on the joint request in writing, of any employee of a factory or other establishment to which this Scheme applies and his employer, enroll such employee as a member or allow him to contribute more than rupees fifteen thousand rupees of his pay per month if he is already a member of the Fund and thereupon such employee shall be entitled to the benefits and shall be subject to the conditions of the Fund, provided that the employer gives an undertaking in writing that he shall pay the administrative charges payable and shall comply with all statutory provisions in respect of such employee.

26A "Retention of membership"

(1) A member of the Fund shall continue to be member until he withdraws under paragraph 69 the amount standing to his credit in the Fund or is covered by a notification of exemption under section 17 of the Act or an order of exemption under paragraph 27 or paragraph 27A.

(2) Every member employed as an employee other than an excluded employee, in a factory or other establishment to which this Scheme applies, shall contribute to the Fund, and the contribution shall be payable to the Fund in respect of him by the employer. Such contribution shall be in accordance with the rate specified in paragraph 29:

Provided that subject to the provisions contained in sub-paragraph (6) of paragraph 26 and in paragraph 27, or sub-paragraph (1) of paragraph 27- A, where the monthly pay of such a member exceeds fifteen thousand rupees the contribution payable by him, and in respect of him by the employer, shall be limited to the amounts payable on a monthly pay of fifteen thousand rupees including dearness allowance, retaining allowance if any and cash value of food concession

29 "Contributions"

(1) The contributions payable by the employer under the Scheme shall be at the rate of ten per cent] of the basic wages, dearness allowance including the cash value of any food concession and retaining allowance if any payable to each employee to whom the Scheme applies:

Provided that the above rate of contribution shall be twelve per cent in respect of any establishment or class of establishments which the Central Government may specify in the Official Gazette from time to time under the first proviso to sub-section (1) of section 6 of the Act.

(2) The contribution payable by the employee under the Scheme, shall be equal to the contribution payable by the employer in respect of such employee:

Provided that in respect of any employee to whom the Scheme applies, the contribution payable by him may, if he so desires, be an amount exceeding ten per cent or twelve per cent, as the case may be, of his basic wages, dearness allowance and retaining allowance if any subject to the condition that the employer shall not be under an obligation to pay any contribution over and above his contribution payable under the Act;

(3) The contributions shall be calculated on the basis of basic wages, dearness allowance including the cash value of any food concession and retaining allowance if any actually drawn during the whole month whether paid on daily, weekly, fortnightly or monthly basis.

(4) Each contribution shall be calculated to the nearest rupee, 50 paise or more to be counted as the next higher rupee and fraction of a rupee less than 50 paise to be ignored.

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 together with an equal amount of contribution in this Scheme referred to as the employer's 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."

Learned Counsel for Respondent Authority has referred to para 32-A of the Scheme and submits that this para empowers the organization to impose damages in case of default of deposit of contribution and it does not make any difference with respect to excluded and recovered employees these provident fund are deposited with the organization.

“32A Recovery of damages for default in payment of any contribution

(1) Where an 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 (5) of section 17 of the Act or in the payment of any charges payable under any other provisions of the Act or 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 below: —

TABLE

S.No. (1)	Period of default (2)	Rates of Damages (percentage of arrears per annum) (3)
(a)	Less than two 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 rupee, 50 paise or more to be counted as the nearest higher rupee and fraction of a rupee less than 50 paise to be ignored.”

Para 27 of the Scheme is being reproduced as follows:-

27 “Exemption of an employee”

(1) A Commissioner may by order and subject to such conditions as may be specified in the order exempt from the operation of all or any of the provisions of this Scheme an employee to whom the Scheme applies on receipt of application in Form I from such an employee:

Provided that such an employee is entitled to benefits in the nature of Provident Fund, gratuity or old age pension according to the rules of the factory or other establishment and such benefits separately or jointly are on the whole not less favourable than the benefits provided under the Act and the Scheme.

(2) Where an employee is exempted as aforesaid, the employer shall in respect of such employee maintain such account, submit such returns, provide such facilities for inspection, pay such inspection charges and invest provident fund collections in such manner as the Central Government may direct.

Provided that the above mentioned returns shall be submitted by the employer in electronic format also, in such form and manner, as may be specified by the Commissioner.

(3) An employee exempted under sub-paragraph (1) may by an application to the Commissioner make a declaration that he shall become a member of the Fund.

(4) No employee shall be granted exemption or permitted to apply out of exemption more than once on each account.”

As the Act and Scheme show, there is no difference with respect to exempted and non-exempted employees in the Act and Scheme. Hence,

the finding of Respondent Authority and assessment cannot be faulted in law and fact. They are affirmed accordingly.

No other point was pressed.

In the light of above discussion and findings, the appeal is held sans merit.

ORDER

Appeal dismissed.

No order as to cost.

Date:- 06/02/2026

**P.K. SRIVASTAVA
(PRESIDING OFFICER)**

Judgment Signed, dated and pronounced.

Date:- 06/02/2026

**P.K. SRIVASTAVA
(PRESIDING OFFICER)**

