

Court No. - 17

Case :- WRIT - C No. - 1003223 of 2005

Petitioner :- State Of U.P. Thru Prin.Secy. Irrigation And Anr.

Respondent :- Employees Provident Fund Organization Thru A.P.F.C.
And Anr.

Counsel for Petitioner :- A.C.S.C.

Counsel for Respondent :- Akhilesh Pratap Singh, Sri Shailendra
Srivastava

Hon'ble Alok Mathur, J.

1. Heard Sri Rajeev Ratan Chaudhari, learned Standing counsel for the petitioners as well as Sri Akhilesh Pratap Singh for the respondents.

2. By means of the present writ petition the petitioner has challenged the order passed by Prescribed Authority under Section 14 (b) of Employees Provident Fund & Miscellaneous Provisions Act, 1952 (hereinafter referred to as the Act of 1952) thereby directing the petitioner to pay an amount of Rs.27,82,961/-. Out of the said amount all the EPF dues payable to the employees of Irrigation Department.

3. It has been submitted on behalf of the petitioner that the petitioner is a factory within the meaning of Factories Act and is engaged in manufacturing of Tube well spare parts and hardware for pump houses of the irrigation department. To carry out the said manufacturing activities the petitioner Establishment has 127 employees of which 118 employees are industrial employees covered under various provisions of Labour Laws which includes Machinists, Turner, Electricians, Helper etc. It is further submitted that the petitioner establishment has been regularly depositing their statutory dues under State Employees Insurance (ESI) and Employees Provident Fund (EPF). It is stated that from March, 1992 to February, 2001 they have not deposited the employer's contribution towards EPF as the same was not sanctioned by the State. Consequently proceedings under Section 14 B were initiated by the Prescribed Authority / Assistant Provident Fund Commissioner, Sub Regional Office, Labour Camp, Gorakhpur. As per the notice the petitioner stated that the delay was on account of the fact that the State had not sanctioned the said amount and, hence, the same could not be deposited.

4. After considering the submissions of the petitioner, the EPF Commissioner directed the petitioner to pay following amount:-

i. The Provident Fund Contribution	Rs.1609170=00
ii. The Administrative charges	Rs. 85302=00
iii. The Employees' Pension Contribution	Rs.1012909=00
iv. The Employees Deposit linked Insurance Contribution	Rs. 65968=00
v. The Adm. Charges on EDLI <u>contribution</u>	Rs. 9612=00
Total:	Rs.27,82,961=00

5. The aforesaid amount is the statutory amount due from the petitioner and there is no infirmity either in calculation or the fact that the petitioner was under statutory duty to deposit the said amount with EPF Commissioner. Though the said order 22.8.2003 is under challenge but it is noticed that the same are statutory dues payable to the employees and the petitioner, on the other hand, does not shirk of its liability to pay the said dues and consequently this Court does not find any valid reason to challenge the order dated 22.8.2003. Apart from the order dated 22.8.2003 passed under Section 14 B of the Act of 1952, the petitioner has also been directed to pay interest on the delayed payment as per Section 7 Q of the Act of 1952 interest has been sanctioned at the rate of 12 per cent which amounts to Rs.8,06,519/-.

6. Learned counsel for the petitioner has assailed the said order on the ground that there were valid reasons for not depositing the EPF contribution within the time specified as the said amount was not sanctioned by the State and consequently could not deposit with the EPF Commissioner within the stipulated time. He has submitted that as the reasons was bonafide and sufficient no interest on delayed payment could have been imposed by the respondents.

7. Sri Akhilesh Pratap Singh appearing for the respondents submits that once it is demonstrated that the employer has defaulted in making payments of EPF contribution then firstly suitable direction were issued under Section 14 B which has been issued by Assistant Commissioner on 22.8.2003 only constitute the proceedings under Section 7Q which is quoted below:-

"[7Q. Interest payable by the employer.—The employer shall be liable to pay simple interest at the rate of twelve per cent. per annum or at such higher rate as may be specified in the Scheme

on any amount due from him under this Act from the date on which the amount has become so due till the date of its actual payment: Provided that higher rate of interest specified in the Scheme shall not exceed the lending rate of interest charged by any scheduled bank.]"

8. According to the aforesaid provisions it is noticed that once there is delay in payment of EPF contributions then the employer is liable to pay amount of interest at the rate of 12 per cent per annum or at such higher rate as may be specified in the Scheme. In the present case only 12 per cent interest has been imposed upon the petitioner which is minimum interest payable on the delayed payment of EPF contribution. It is noticed that the reasons for the delay in the present case cannot be a valid ground for waiving the interest as provided under Section 7Q. If there is delay in payment of EPF contribution provision of Section 7 Q comes into operation and the employer is liable to pay interest at the rate which may be specified. In case, there are cogent reason for not depositing the employer's contribution within the prescribed time to the satisfaction of the Prescribed Authority, the amount of interest can vary but the minimum interest has to be levied under Section 7Q at the rate of 12 percent and accordingly the authority cannot impose interest less than 12 per cent as provided under Section 7 Q. This aspects of the matter has been considered by Supreme Court in the case of ***Horticulture Experiment Station Gonikoppal, Coorg Vs. The Regional Provident Fund Organization*** passed in Civil Appeal No.2136 of 2012 on 23.2.2022 where in para 17 it has been held as under:-

*"17. Taking note of three-Judge Bench judgment of this Court in **Union of India** and others v. Dharmendra Textile Processors and others (supra), which is indeed binding on us, we are of the considered view that any default or delay in the payment of EPF contribution by the employer under the Act is a since qua non for imposition of levy of damages under Section 14 B of the Act 1952 and mens rea or actus reus is not an essential element for imposing penalty/damages for breach of civil obligations/liabilities"*

9. Considering the case of the petitioner this Court does not find any cogent reason firstly not depositing dues while the petitioner who is an employer is mandated to deposit and there is no escape from the said liability. Even otherwise under Section 7 Q minimum valid interest on delayed payment has been imposed. Accordingly no case for interference of this Court under Article 226 of the Constitution is made out . The petition is accordingly **dismissed**.

10. Considering the fact that there is interim order in favour of the petitioner since 2005 due to that the said amount has not been deposited, the petitioner is directed to deposit the said amount under Section 14 B as well as 7Q of the Act of 1952, expeditiously say within a period of two months from today.

(Alok Mathur, J.)

Order Date :- 8.11.2023
RKM.