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Daily List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WA No.84/2024

Date of order: 02.12.2025

Regional Provident Fund Commissioner II, Office of the Employees Provident Fund Organization, N.E.R., Barik, near BSNL Office, Shillong-793001. Appellant

Vs.

St. John's School Whitehall Shillong represented by Shri Robert Z Street Employer St. John's School Whitehall, Shillong. Respondent

Coram:

Hon'ble Mr. Justice Soumen Sen, Chief Justice
Hon'ble Mr. Justice H.S. Thangkhiew, Judge

Appearance:

For the Appellant : Ms. P. Bhattacharjee, Adv

For the Respondent : Mr. S. Dey, Adv with
Mr. S. Deb, Adv

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| i) | Whether approved for reporting in Law journals etc.: | Yes/No |
| ii) | Whether approved for publication in press: | Yes/No |

JUDGMENT: (per the Hon'ble, the Chief Justice) (Oral)

The limited issue on which this appeal is being heard is whether for the period of default, the writ petitioner/respondent would be required to pay damages for default in payment of any contribution at the rate of 25% or 37% as the period of default in the instant case has been found to be from March, 2000.



2. The learned single judge notwithstanding objections being raised with regard to the maintainability of the writ petition on the basis of the decisions of the Hon'ble Supreme Court in *PHR Invent Educational Society v. UCO Bank & ors*¹ paragraph 30 and *Commissioner of Income Tax & ors v. Chhabil Dass Agarwal*² paragraph 19, decided to hear the writ petition on merits and applied the ratio in *Regional Provident Fund Commissioner v. S.D. College, Hoshiarpur & ors*³ and *Halwasia Vidya Vihar (Sr.Sec.School) Haryana v. Regional Provident Fund Commissioner*⁴, reduced or waived the damages levied to 25% instead of 37%.

3. For proper understanding of the percentage of damages to be calculated for the period of default, it is necessary to refer to the unamended Section 32A as it stood prior to 26.09.2008, which is set out below:

“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

¹ (2024) 6 SCC 579

² (2014) 1 SCC 603

³ (1997) 1 SCC 241

⁴ (2006) 4 SCC 46



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:-

<i>Period of Default</i>	<i>Rate of damages</i> (% of arrears per annum)
(a) Less than two months	17
(b) Two months and above but less than four months	22
(c) Four months and above but less than six months	27
(d) Six months and above	37

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”.

1. Ins. By G.S.R. 521, dated 16th August, 1991 (w.e.f. 1-9-1991)”

4. By reason of the amendment of Section 32A on 26.09.2008, the rate of damages (percentage of arrears per annum) was amended, and for the period of default being six months and above, the applicable rate of damages would be 25% instead of 37%. However, for the period prior to 26.09.2008, damages for default have to be calculated at 37% in terms of Section 32A. We have not come across any provision in the Act which either permits the appellate authority or the High Court in deciding an application of this nature to reduce the rates of damages



from what has been fixed under the statute. The court cannot rewrite the statute.

5. Initially, the respondent attempted to argue that the proceeding for recovery of damages was taken at a belated stage in February, 2023 for the period 02/1992 to 04/2008 and the claim was barred by limitation. This issue is no more res integra in view of the judgment of the Hon'ble Supreme Court in *Hindustan Times Ltd. v. Union of India & ors*⁵ in which it has been clearly stated that the Act does not contain any provision prescribing a period of limitation for assessment or recovery of damages. Although various amendments had taken place in the Act, the legislature did not think fit to make any provision prescribing a period of limitation, the reason being that as the amounts are due to the trust fund and the recovery is not by suit, the provisions of the Indian Limitation Act, 1963 are not attracted. [See at SCC p.251 paras 19 and 20].

6. However, there can be no dispute in law that when a power is conferred by statute without mentioning the period within which it could be invoked, the same has to be done within a reasonable period,

⁵ (1998) 2 SCC 242



as all powers must be exercised reasonably, and exercise of the same within a reasonable period would be facet of reasonableness.

7. In *Halwasia Vidya Vihar (Sr.Sec.School) Haryana* (supra), the Hon'ble Supreme Court considering special features of the case including the fact that there was no allegation that there was any delay in making the deposit with the government, restricted the levy of damages to 25% instead of 100%.

8. In *S.D. College, Hoshiarpur* (supra), on fact, it was found that the respondent-educational institution was depositing the amounts of provident fund with the University under a scheme framed by the University and the college was not found to have wilfully withheld payment of the provident fund dues. In fact, the college was depositing the amount with the University without realising that it had to be deposited with the RPF Commissioner and it was only after two and a half years the college withdrew the said amount with the permission of the University and redepositing the same with the RFF Commissioner. It was in such circumstances that the levy of damages was held to be proper, however, discretion was applied in such facts to reduce the damages to 25% taking into consideration the aforesaid facts.



9. It is true that the period for which the damages were levied was reduced to 25% instead of 37%, however, it should depend upon the facts and circumstances of the case. Unlike the decisions cited for reduction of the percentage of damages, in the instant case, it appears that the respondent was a defaulter for a long period and it was not a single instance of default or that the deposit was not made on a bona fide mistake. On such consideration, we are of the view that having regard to the object of the said statute and that the respondent has failed to make out any case for reduction of the percentage of damage from 25% to 37%, the respondent is liable to pay damages at 37%. Moreover, the school is not coming within the exception under Section 14B for which claim for waiver or reduction of the damages could be considered.

10. Under such circumstances, we accept the submission on behalf of the authorities concerned and modify the said order to the extent that the damages to be paid shall be calculated at the rate of 37%. During the pendency of the appeal, in compliance with the impugned order, the respondent had deposited 25% by cheque bearing number 985501 on 07.11.2024. The balance 12% shall be deposited within eight weeks



from the date of communication of the amount payable in terms of this modified order for the period from March, 2000 till April, 2008.

11. Accordingly, the writ appeal is disposed of to the extent indicated above.

(H.S. Thangkhiew)
Judge

(Soumen Sen)
Chief Justice

