

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN**

**WEDNESDAY, THE 21ST DAY OF JANUARY 2015/1ST MAGHA, 1936**

**WP(C).No. 2178 of 2015 (V)**  
-----

**PETITIONER(S):**  
-----

**M/S.BHARATH EMPLOYMENT,  
MASS TOWER, CHIRAYINKEEZHU ROAD, ATTINGAL,  
THIRUVANANTHAPURAM-695 101, KERALA STATE,  
REPRESENTED BY PEETHAMBARAN, MANAGING PARTNER.**

**BY ADV. SMT.A.K.PREETHA.**

**RESPONDENT(S):**  
-----

- 1. EMPLOYEES' PROVIDENT FUND APPELLATE TRIBUNAL,  
SCOPE MINAR, 4TH FLOOR, CORE-2,  
LAXMI NAGAR, NEW DELHI-110 092.**
- 2. ASST. PROVIDENT FUND COMMISSIONER,  
EMPLOYEES' PROVIDENT FUND ORGANIZATION,  
REGIONAL OFFICE, BHAVISHYANIDHI BHAVAN,  
PATTOM, THIRUVANANTHAPURAM-695 004.**
- 3. EMPLOYEES' PROVIDENT FUND ORGANIZATION,  
REGIONAL OFFICE, BHAVISHYANIDHI BHAVAN,  
PATTOM, THIRUVANANTHAPURAM-695 004,  
REPRESENTED BY ITS REGIONAL  
PROVIDENT FUND COMMISSIONER.**

**BY ADV. SMT.T.N.GIRIJA, SC.**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION  
ON 21-01-2015, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:**

**rs.**

**WP(C).No. 2178 of 2015 (V)**

**APPENDIX**

**PETITIONER'S EXHIBITS:-**

- EXT.P1.        TRUE COPY OF THE ORDER DATED 21/08/2014 ISSUED BY  
                  THE 2ND RESPONDENT U/S.14B OF THE ACT.**
- EXT.P1A.      TRUE COPY OF THE ORDER DATED 21/08/2014 ISSUED BY  
                  THE 2ND RESPONDENT U/S. 7Q OF THE ACT.**
- EXT.P2.        TRUE COPY OF THE APPEAL FILED BY THE PETITIONER  
                  BEFORE THE 1ST RESPONDENT.**

**RESPONDENT'S EXHIBITS:-**

**NIL.**

**//TRUE COPY//**

**P.A TO JUDGE**

**rs.**

**K.VINOD CHANDRAN, J**

-----  
**W.P.(C) No.2178 of 2015**  
-----

Dated this the 21<sup>st</sup> day of January, 2015

**JUDGMENT**

The petitioner challenges the recovery proceeded against Ext.P1 and P1(a) orders passed under Section 14B and Section 7Q of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (EPF and MP Act). The petitioner admittedly has filed an appeal as indicated in Ext.P2, challenging both the orders under Section 14B and Section 7Q. The petitioner contends that since there is no Presiding Officer in the Appellate Tribunal, the petitioner may be granted sufficient time to move the appeal, with the interim application, before recovery is effected.

2. The learned counsel appearing for the respondent organisation would however contend that the writ petition itself is filed on a mere apprehension, since no recovery steps have been initiated as of now. It is also submitted that

the order at Ext.P1 would clearly indicate that the petitioner admitted the delay and hence the authority has imposed damages under Section 14B for reason of there being no provision for waiving of damages/ interest.

3. The said understanding of the Officer who has passed Ext.P1 is not correct since this Court has in **RPF v. Harisons Malayalam** [2013(3)KLT 790] specifically found that financial stringency would be an aspect which has to be considered when imposing Section 14B damages. The petitioner specifically pleads in the appeal that the delay was occasioned due to the financial stringency of the establishment. In such circumstances, necessarily the appeal would have to be considered with respect to Section 14B damages. However, from Section 7Q interest, no appeal would lie as has been held by the Hon'ble Supreme Court in **M/s. Arcot Textile Mills Ltd. v. Regional Provident Fund Commissioner and others** [AIR 2014 295].

5. In such circumstances, if the petitioner pays 7Q interest under Ext.P1(a) within a period of six weeks from

today, the recovery steps with respect to Ext.P1 shall be kept in abeyance. If the conditions are not complied with, the respondent organisation can move for recovery of Exts.P1 and P1(a). On compliance of the condition, further recovery will depend upon the disposal of the interim application or the appeal by the Appellate Authority whichever is earlier.

The writ petition is disposed of.

Sd/-  
**K.VINOD CHANDRAN, J**  
**JUDGE**

//true copy// P.A. To Judge

smv