

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

MONDAY, THE 2ND DAY OF FEBRUARY 2015/13TH MAGHA, 1936

WP(C).No. 8950 of 2010 (P)

PETITIONER:

**KERALA GARMENTS LIMITED,
THILLERI ROAD, KANNUR-I, REPRESENTED BY
ITS AUTHORISED SIGNATORY, GENERAL MANAGER-IN- CHARGE,
MR.ARUL SELVAN.**

**BY ADVS.SRI.E.K.NANDAKUMAR
SRI.A.K.JAYASANKAR NAMBIAR
SRI.K.JOHN MATHAI
SRI.P.BENNY THOMAS
SRI.P.GOPINATH
SRI.V.J.ANAND**

RESPONDENTS:

- 1. EMPLOYEES PROVIDENT FUND APPELLATE
TRIBUNAL, SCOPE MINAR, CORE II,
4TH FLOOR, LAXMI NAGAR DISTRICT CENTRE, LAXMI NAGAR
NEW DELHI-110 092.**
- 2. THE ASST. PROVIDENT FUND COMMISSIONER,
EMPLOYEES PROVIDENT FUND ORGANIZATION,
SUB REGIONAL OFFICE, P.B.NO.117, KANNUR-670 001.**

R2 BY ADV. SRI.THOMAS MATHEW NELLIMOOTTIL,SC, P.F.

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 02-02-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

WP(C).No. 8950 of 2010 (P)

APPENDIX

PETITIONER'S EXHIBITS

- EXHIBIT P1 - COPY OF THE ORDER DATED 01.09.2003 PASSED BY THE 2ND RESPONDENT UNDER SECTION 14 B OF THE ACT.**
- EXHIBIT P2 - COPY OF THE APPEAL PETITION (WITHOUT ITS ANNEXURES) DATED 10.10.2003 FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.**
- EXHIBIT P3 - COPY OF THE ORDER OF THE TRIBUNAL DATED 29.01.2010 IN ATA NO. 733 (7)/2008 PASSED BY THE FIRST RESPONDENT.**
- EXHIBIT P4 - COPY OF THE ORDER OF THE GOVERNMENT DATED 3.6.2003.**
- EXHIBIT P5 - COPY OF THE INTERIM ORDER IN WP(C) NO. 7813/2008 DATED 7.3.2008.**

RESPONDENTS' EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

DST

K.VINOD CHANDRAN, J

W.P.(C).No. 8950 of 2010

Dated 2nd February, 2015

JUDGMENT

The petitioner is a Company which has been closed down for admitted default in arrears of contribution under the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (EPF & MP Act). The petitioner was levied with damages under Section 14B as per Ext.P1 order. The petitioner had taken up the matter in appeal which was disposed of by Ext.P3. The petitioner was also granted an interim order of stay of recovery on condition of the petitioner paying 25% of the amount demanded in five instalments as directed by this Court. The learned counsel for the petitioner submits that the said amount has been paid as directed by this Court.

2. The only ground raised for absolving the petitioner from the liability under Section

14B is the financial difficulty for payment of the contribution under the Act in time. In fact, before the Original Authority itself, such a claim was made as is evidenced from Ext.P1. However, the Original Authority chose to reject the same on the ground that the financial difficulties of the Firm cannot be taken into consideration for levy of damages.

3. A Division Bench of this Court in Regional Provident Fund Commissioner v. Harrisons Malayalam Ltd. (2013 (3) KLT 790) held that, the financial difficulty is a compelling circumstance which has to be taken into account by the authorities under the EPF & MP Act, when considering the levy of damages under Section 14B. In the present case, admittedly the petitioner's establishment has been closed down. Financial difficulty was an issue urged at the first instance itself before the Original Authority.

4. Going by the Division Bench judgment, this Court would have ordinarily remanded the matter for fresh consideration. However, in the context of the petitioner having paid 25% of the amount demanded and also in the context of the submission that the petitioner's establishment is closed down, this Court is of the opinion that damages can be limited to 25% under Section 14B. The impugned orders are modified to that extent.

The writ petition would stand disposed of. It is made clear that, if 25% of the amounts are paid, as per the interim order, there would be no further recovery proceeded against the petitioner. Parties are left to suffer their respective costs.

Sd/-

K.VINOD CHANDRAN
Judge

Mrcs

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