

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 12TH DAY OF MARCH 2015/21ST PHALGUNA, 1936

W.P.(C).No.20948 of 2011 (P)

PETITIONER(S):-

M/S. KARAPARA ESTATE,
REPRESENTED BY ITS MANAGER P.L.KRISHNAIAH CHETTY,
PADAGIRI, NELLIAMPATHY, PALAKKAD DISTRICT.

BY ADVS.SRI.G.P.SHINOD
SRI.RAM MOHAN.G.

RESPONDENT(S):-

ASSISTANT PROVIDENT FUND COMMISSIONER,
EMPLOYEES PROVIDENT FUND ORGANISATION,
SUB REGIONAL OFFICE, BHAVISHYANIDHI BHAVAN,
P.B.NO.1806, ERANHIPALAM P.O., KOZHIKODE-673 006,
KERALA STATE.

BY STANDING COUNSEL SRI.THOMAS MATHEW NELLIMOOTTIL.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
12-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

APPENDIX

PETITIONER'S EXHIBITS:-

- EXT.P1 TRUE COPY OF THE NOTICE NO.KR/KK/497/ENF.II(2)-DAM/2005
DATED 08.12.2005 ISSUED BY THE RESPONDENT.
- EXT.P2 TRUE COPY OF THE ORDER NO.KR/KK/497/DAM.CELL/II(2)/2005
DATED 16.01.2006 PASSED UNDER SECTION 14-B OF THE ACT.
- EXT.P3 TRUE COPY OF THE APPEAL MEMORANDUM IN ATANO.146(7)/2006
SUBMITTED BY THE PETITIONER BEFORE THE EMPLOYEES
PROVIDENT FUND APPELLATE TRIBUNAL, NEW DELHI.
- EXT.P4 TRUE COPY OF THE COUNTER AFFIDAVIT IN ATANO.146(7)/2006
SUBMITTED BY THE RESPONDENT BEFORE THE EMPLOYEES
PROVIDENT FUND APPELLATE TRIBUNAL, NEW DELHI.
- EXT.P5 TRUE COPY OF THE ORDER NO.KR/KK/497/ENF/DAM.CELL/II(2)/2005
DATED 13.02.2006.
- EXT.P6 TRUE COPY OF THE ORDER DATED 28.04.2011 OF
THE EMPLOYEES PROVIDENT FUND APPELLATE TRIBUNAL,
NEW DELHI IN ATANO.146(7)/2006.

RESPONDENT'S EXHIBITS:-

- EXT.R1(a) TRUE COPY OF THE LETTER DATED 23.01.2006 INTIMATING
THE PETITIONER ABOUT THE WITHDRAWAL OF THE
14B ORDER DATED 16.1.06.
- EXT.R1(b) TRUE COPY OF THE NOTE SHEET PAGE NO.18 AND 19 SIGNED
BY the PARTNER MR.MOHAMMED.
- EXT.R1(c) TRUE COPY OF THE ORDER DATED 13.02.2006
UNDER SECTION 14B AND 7Q.
- EXT.R1(d) TRUE COPY OF THE ACKNOWLEDGEMENT DATED 21.2.06.

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[true copy]

K. Vinod Chandran, J.

W.P(C) No.20948 of 2011-P

Dated this the 12th day of March, 2015

JUDGMENT

The petitioner is aggrieved with the proceedings initiated under Section 14B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 [for brevity "EPF Act"]. The same was the subject matter of an appeal also, in ATA 146(7)/06, which was rejected as per Exhibit P6. The facts in the case reveal that it is not a mere case of an order which was appealed against, being rejected. Hence, the proceedings assume significance.

2. Exhibit P1 is the notice issued for assessment of damages under Section 14 B for the period between 04/2001 to 03/2004. Exhibit P1 indicated the hearing date as 09.01.2006. An endorsement made on Exhibit P1 also indicates that the matter was adjourned to 18.01.2006. The said fact is admitted by the Organization, as would be noticed hereafter. However, an order was passed under Section 14B as indicated at Exhibit P2 on 16.01.2006, i.e., prior to the hearing date. ATA 146(7)/06 was filed against the said order.

3. Before the Appellate Tribunal, the respondent filed a counter affidavit, in which it was stated that, noticing that the order was passed prior to the hearing date, the same was withdrawn and the representative of the establishment was given a hearing on 18.01.2006. An order is said to have been passed, based on the said hearing, on 13.02.2006, which is produced at Exhibit P5 herein and challenged in the writ petition. Obviously the Tribunal did not consider Exhibit P5, since there was no challenge against that order before the Tribunal in the appeal. The Tribunal considered the issue of the jurisdiction under Section 14B and confirmed the order of the original authority, holding that financial stringency could not be a mitigating factor.

4. Before this Court, the respondent-Organisation has filed a detailed counter affidavit, wherein certain documents are also produced. Exhibit R1(a) dated 23.01.2006 indicates that the order passed on 16.01.2006 was withdrawn. The proceedings of the original authority is produced at Exhibit R1(b), wherein, on 18.01.2006 the following endorsement has been made:

“Mr.Mohammed, Partner appeared. Informed that the delay was not intentional. It is only due to financial constraints and ∴ requested for waiver of damages”.

It is based on the said hearing, the respondent-Organization contends that a fresh order was passed on 13.02.2006. The learned Standing Counsel appearing for the respondent-Organisation would refute the contention of the petitioner that the same was not received on the basis of Exhibit R1(d) acknowledgement.

5. Essentially what is to be noticed is that on 18.01.2006 when the matter was taken up for hearing, there was already an order passed. However, the proceedings at Exhibit R1(b) does not indicate that the assessee was informed of the said order. It was only subsequently on 23.01.2006 that the earlier order dated 16.01.2006 was recalled. Hence, there could have been no effective hearing on 18.01.2006. It is also evident from the orders dated 16.01.2006 and 13.02.2006 that they are almost identical in nature. Further, the issue with respect to whether the financial stringency is a reason for mitigation of Section 14B damages has been decided by a Division Bench of this Court in the decision reported in ***Regional Provident Fund Officer v. Harisons Malayalam Ltd.*** [2013 (3) KLT 790]. It was held that the financial difficulties ought to be considered while imposing damages and also found that the officer imposing damages has the discretion to either waive or

reduce the damages as prescribed under the scheme.

In the result, the writ petition is allowed. Exhibits P2 and P6 orders are set aside. The petitioner shall appear before the respondent on or before 31st of March, 2015 and the respondent shall grant the petitioner a month's time from that date to file objections and produce materials to substantiate its contentions. An opportunity for personal hearing shall also be afforded to the petitioner and decision taken within three months from the date of such hearing. Parties are left to suffer their respective costs.

Sd/-
K. Vinod Chandran,
Judge

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