

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 19TH DAY OF MARCH 2015/28TH PHALGUNA, 1936

WP(C).No. 26545 of 2010 (P)

PETITIONER(S):

**M/S.HARRISONS MALAYALAM LIMITED,
BRISTOW ROAD, WILLINGDON ISLAND, KOCHI-3
OWNING KUMBAZHA ESTATE, REPRESENTED BY ITS
MANAGER-LEGAL MR.M.V.H.MENON.**

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

RESPONDENT(S):

- 1. EMPLOYEES PROVIDENT FUND APPELLATE
TRIBUNAL, SCOPE MINAR, CORE II
4TH FLOOR, LAXMI NAGAR DISTRICT CENTRE, LAXMI NAGAR
NEW DELHI-110 092.**
- 2. THE REGIONAL PROVIDENT FUND COMMISSIONER
EMPLOYEES PROVIDENT FUND ORGANIZATION
REGIONAL OFFICE, THIRUVANANTHAPURAM-695 004.**

**R, BY ADV. SRI.N.N.SUGUNAPALAN (SR.)
R,R-2 BY ADV. SRI.N.N. SUGUNAPALAN, SC, P.F.
R,R-2 BY ADV. SMT.T.N.GIRIJA, SC,EPF ORGANISATION**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 19-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

APPENDIX

PETITIONERS EXHIBITS:

- EXT.P1** **COPY OF THE CIRCULAR DATED 29.06.07 CONTAINING THE SALIENT FEATURES OF THE SCHEME OF REHABILITATION ISSUE BY THE GOVERNMENT.**
- EXT.P2** **COPY OF THE NOTICE DATED 22.8.03 ISSUED BY THE 2ND RESPONDENT.**
- EXT.P3** **COPY OF THE ORDER DATED 13.10/03 PASSED BY THE 2ND RESPONDENT.**
- EXT.P4** **COPY OF THE APPEAL A.T.A NO.851 (7)/2003, DATED 3.12.03 (WITHOUT ITS ANNEXURES).**
- EXT.P5** **COPY OF THE ORDER DATED 15.7.08 IN W.P.(C) NO.21195/08.**
- EXT.P6** **COPY OF THE ORDER DATED 27.1.10 IN ATA NO.851(7)/2003 PASSED BY THE 1ST RESPONDENT.**

RESPONDENTS EXHIBITS: **NIL**

// TRUE COPY //

PA to Judge

SB

K. VINOD CHANDRAN, J.
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W.P.(C) No.26545 of 2010 - P
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Dated this the 19th day of March, 2015

J U D G M E N T

The petitioner challenges Ext.P3 order passed under Section 14B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (for brevity, 'EPF & MP Act'), relating to the period May 2000 to February 2001. The appeal filed was dismissed by Ext.P6. The petitioners claim was that, the petitioner was suffering from financial difficulties and there was a scheme by which the Government had proposed rehabilitation of the plantation, which was the real cause of the delay and that the same had not fructified. The petitioner claims mitigation in imposition of damages, which was rejected on the ground that financial difficulties would not stand in the way of imposition of

damages.

2. 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. Ext.P3 and P6 orders are set aside. The petitioner shall appear before the 2nd respondent on or before 16.04.2015 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

SB

// true copy //

P.A to Judge