

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 3RD DAY OF FEBRUARY 2015/14TH MAGHA, 1936`

WP(C).No. 24879 of 2014 (H)

PETITIONER(S):

**CAMERIN DRUGS & PHARMACEUTICALS LIMITED,
REGD. OFFICE, P.O. VARAM, KANNUR, KANNUR-670 597,
REPRESENTED BY ITS WHOLETIME DIRECTOR.**

**BY ADVS.SRI.E.K.MADHAVAN,
SMT.P.VIJAYAMMA,
SRI.V.KRISHNA MENON,
SMT.UMA GOPINATH,
SRI.PRINSUN PHILIP,
SMT.J.SURYA,
SMT.DEVI.C.HARIDAS,
SRI.DINESH THANKAPPAN.**

RESPONDENT(S):

- 1. THE EMPLOYEES PROVIDENT FUND APPELLATE TRIBUNAL,
SCOPE MINAR, CORE-II, 4TH FLOOR,
LAKSHMI NAGAR, NEW DELHI-110 092.**
- 2. THE ASST. PROVIDENT FUND COMMISSIONER,
EMPLOYEES PROVIDENT FUND ORGANISATION,
SUB REGIONAL OFFICE, V.K. COMPLEX, FORT ROAD,
P.B. NO.117, KANNUR, STATE OF KERALA, PIN-670 001.**

BY ADV. DR.ABRAHAM P.MEACHINKARA, SC.

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 03-02-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

- P1: COPY OF THE AUDIT REPORT AND PROFIT AND LOSS ACCOUNT OF THE COMPANY FOR THE FINANCIAL YEAR ENDING 31.03.2012.
- P2: COPY OF THE AUDIT REPORT AND PROFIT AND LOSS ACCOUNT OF THE COMPANY FOR THE FINANCIAL YEAR 2012-13.
- P3: COPY OF THE ORDER NO.KR/KNR/11435/ENF.1(5)/DAMAGES/2011/419 DATED 00.05.2013.
- P4: COPY OF THE ORDER UNDER SECTION 7Q.
- P5: COPY OF THE APPEAL (LESS ANNEXURES) OF THE PETITIONER BEFORE THE FIRST RESPONDENT.
- P6: COPY OF THE ORDER OF THE FIRST RESPONDENT DATED 18.06.2014.

RESPONDENT'S EXHIBITS:-

NIL.

//TRUE COPY//

P.A TO JUDGE

rs.

K. VINOD CHANDRAN, J.
=====

W.P.(C) No.24879 of 2014 - H
=====

Dated this the 3rd day of February, 2015

J U D G M E N T

The petitioner is aggrieved with the order imposing damages under Section 14B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (for brevity, 'the EPF & MP Act'). Admittedly, default was committed and as of now, the contributions as also 7Q interest have been paid. Even with respect to Section 14B damages of the EPF & MP Act, on the basis of an interim order in appeal an amount of Rs,1,00,000/- is said to have been paid to the Organisation.

2. The petitioner's contention is that, both the authorities went on the premise that, financial difficulties is not a mitigating circumstance in considering imposition of damages under Section 14B of the EPF & MP Act. The petitioner relies on a judgment of this Court in **Regional**

Provident Fund Commissioner v. Harrison's Malayalam Ltd. In **[2013 (3) KLT 790]**. The learned Counsel for the respondent however relies on a judgment of this Court in W.P.(C) No. 29645 of 2014 dated 11.11.2014. The learned Standing Counsel would also contend that, despite a plea raised of financial difficulties, nothing was produced to substantiate such contentions.

3. It is to be noticed that in W.P.(C) No.29645 of 2014, the assessee had not filed an appeal and had approached this Court under Article 226 of the Constitution of India. This Court refused to grant permission to file a delayed appeal beyond the period of limitation prescribed under the statute. However, this Court directed the authority to consider the mitigating circumstances again. Even then, no documents were produced to prove the financial stringency. It was in such circumstances, this Court found that, there was absolutely no material available to find financial crisis and refused to exercise the discretionary remedy in a matter in which, remedy of

statutory appeal was not availed of within time.

4. The facts in the present case are clearly distinguishable. A Division Bench of this Court in **Harrisons Malayalam Ltd.** (supra) has found that, in imposition under 14B damages of the EPF & MP Act, financial difficulties would be a mitigating circumstance and it was also held that the officer exercising power under Section 14B of the EPF & MP Act has a discretion to waive or reduce penalty; since rates are clearly determined under a sliding table as provided in para 32A of the EPF Scheme.

5. In such circumstance, it is only proper that, the original authority consider the issue in the light of the judgment of this Court in **Harrisons Malayalam Ltd.** (supra). Exts.P3 and P6 are set aside only for re-consideration. It is made clear that, this Court has not looked into the levy of damages as such and that would have to be considered by the original authority itself. The petitioner shall appear before the original authority on 12.02.2015 and shall also produce the documents within a

week from that date. The original authority, on production of such documents, shall give a date of hearing within one month thereafter and shall also afford an opportunity for personal hearing. The matter shall be disposed of within a period of three months from the date of hearing.

The writ petition is disposed of.

Sd/-
K. VINOD CHANDRAN,
JUDGE

SB