

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

MONDAY, THE 5TH DAY OF JANUARY 2015/15TH POUSHA, 1936

WP(C).No. 29929 of 2010 (M)

PETITIONER :

**M/S.QUILON DISTRICT MOTOR TRANSPORT
WORKERS CO-OP. SOCIETY LTD.NO. Q 420, KOLLAM,
REPRESENTED BY ITS SECRETARY R.RAJASEKHARAN PILLAI,
S/O.RAMACHANDRAN PILLAI, AGED 45 YEARS, CHANDRA BHAVAN,
KOTTACKAKOM, PERINAD (PO),KOLLAM.**

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

RESPONDENT :

**ASSISTANT PROVIDENT FUND COMMISSIONER,
E.P.F.O., BHAVISHYANIDHI BHAVAN, PATTOM,
THIRUVANANTHAPURAM - 4.**

**BY SRI.N.N.SUGUNAPALAN,SENIOR ADVOCATE
SMT.T.N.GIRIJA, SC,EPF ORGANISATION
SRI.PIRAPPANCODE V.S.SUDHIR,SC,EPF ORGN**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 05-01-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

sts

WP(C).NO.29929/2010

APPENDIX

PETITIONER'S EXHIBITS:

- P1 COPY OF THE ORDER NO.KR/4301/RO/TVM/PD/B/NS/03 DATED 10/04/2003
PASSED BY THE RESPONDENT.
- P2 COPY OF THE ORDER DATED 13/7/2010 OF THE EMPLOYEES PROVIDENT
FUND APPELLATE TRIBUNAL NEW DELHI IN ATA NO.760(7)/2004.

RESPONDENT'S EXHIBITS: NIL

/TRUE COPY/

P.A.TO.JUDGE

sts

K. VINOD CHANDRAN, J.

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W.P.(C) No.29929 of 2010 - M

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Dated this the 5th day of January 2015

J U D G M E N T

The petitioner in the above writ petition, is a Co-operative Society, who is said to have been defunct for a certain period. The petitioner challenges the penalty imposed, under Section 14B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (for brevity, 'EPF & MP Act') for the period from 06/98 to 02/99. The original authority imposed the same by Ext.P1, which was challenged in appeal and confirmed by Ext.P2.

2. The short contention raised by the petitioner is that, the original authority as also the Tribunal had gone wrong in finding that financial stringency is not a mitigating factor in considering the damages to be levied under Section 14B of the EPF & MP Act. That is not a sustainable reason especially in view of the Division Bench decision of this Court reported in **Regional Provident Fund**

Commissioner v. Harrisons Malayalam Ltd. [2013(3) KLT 790].

3. A reading of the original order as also the appellate order would indicate that both the authorities have gone on the premise that, financial difficulties cannot be a valid ground to condone the default and absolve the employer from damages under Section 14B of the EPF & MP Act. The issue has been squarely considered and answered in the aforecited decision. The amendment to the Act; specifically to Section 14B of the EPF & MP Act and the introduction of Section 7Q has been taken note of by the Division Bench, which amendment was brought in by Act 33 of 1998; long prior to the period, which is the subject matter of the above writ petition.

4. In such circumstance, Exts.P1 and P2 would stand set aside. The original authority being the Assistant Provident Commissioner, Trivandrum, shall issue notice to the petitioner and decide the issue afresh in accordance with law and in accordance with the dictum laid down in the

aforesaid judgment; within a period of three months. The petitioner shall appear before the Assistant Provident Fund Commissioner on 22.01.2015, in which event, no fresh notice need be issued and the respondent authority shall also permit the petitioner to produce sufficient evidence; as laid down in the aforesaid decision.

The writ petition would stand allowed.

Sd/-
K. VINOD CHANDRAN,
JUDGE

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// true copy //

P.A To Judge.