IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

TUESDAY, THE 15TH DAY OF SEPTEMBER 2015/24TH BHADRA, 1937

WP(C).No. 31264 of 2010 (G)
--

PETITIONER(S):

**EMPLOYEES PROVIDENT FUND ORGANISATION,
REPRESENTED BY ASSISTANT PROVIDENT FUND
COMMISSIONER, SUB-REGIONAL OFFICE,
BHAVISHYANIDHI BHAVAN, P.B.NO.1895, KALOOR
COCHIN-682 017.**

**BY ADVS.SRI.S.GOPAKUMARAN NAIR (SR.)
SRI.M.CHANDRABOSE**

RESPONDENT(S):

**DR.PADIAR MEMORIAL HOMOEOPATHIC
MEDICAL COLLEGE, CHOTTANIKKARA-682 312,
ERNAKULAM DISTRICT.**

BY ADV. SMT.R.RANJINI

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 15-09-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

PJ

WP(C).No. 31264 of 2010 (G)
--

APPENDIX

PETITIONER(S)' EXHIBITS

P1 : **COPY OF THE PROCEEDINGS DATED 23/9/04**

P2 : **COPY OF THE ALPPEAL NO.821(7)2004**

P3: **TRUE COPY OF THE EPF APPELLATE TRIBUNAL'S ORDER DATED 29/1/2010**

P4: **TRUE COPY OF THE NOTICE DATED 16/8/2004**

P5: **TRUE COPY OF THE REPLY STATEMENT DATED 1/9/2004**

P6: **TRUE COPY OF THE JUDGMENT IN WPC.36805/2004.**

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

ANU SIVARAMAN, J.

=====================

W.P. (C) No. 31264 of 2010

- -

Dated this the 15th day of September, 2015

J U D G M E N T

This writ petition is filed by the Employees' Provident Fund Organisation challenging Ext.P3 order of the Employees' Provident Fund Appellate Tribunal.

2. The case of the petitioner organisation is that the respondent is an establishment covered under the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (*hereinafter referred as 'the EPF Act').* It had been assessed to damages amounting to Rs.22,215/- under Section 14B of the Act for the period of delayed payment of contribution from 06/1999 to 12/1999. Against Ext.P1 order of the authority imposing damages, the respondent had approached the appellate tribunal filing Ext.P2 appeal. By Ext.P3, impugned order, the tribunal had held that the delay on the part of the respondent in making contributions appears to be negligible and the damages assessed were directed to be reduced to 5% of the contributions remaining unpaid. The matter was thus remanded to the PF authority with a direction to assess the damages at 5% along with interest as per

the schedule. The respondent, who is appellant before the tribunal was directed to appear before the PF authority within two months. This order is challenged by the Provident Fund Organisation on the ground that it is in excess of jurisdiction. It is submitted by the learned counsel appearing for both sides that pursuant to Ext.P6 judgment, an amount of Rs.5,000/- had been paid towards the amount demanded in Ext.P1 and no further demand has been raised by the petitioner.

3. Heard, Dr S. Gopakumaran Nair, learned senior counsel appearing for the petitioner and Sri. M. Ashok Kini, learned counsel appearing for the respondent.

4. It is submitted by the learned senior counsel appearing for the petitioner that contribution under the EPF Act becomes payable on the basic wages which are paid or payable under the definition of basic wages under Section 2B of the Act. Section 2(c) defines contribution as “contribution payable in respect of the member under the scheme”. It is also urged that under Section 7Q of the Act, statutory interest @ 12% per annum is leviable from the date on which any amount under the Act has become due till the date of its actual payment.

5. Section 14B of the EPF Act empowers the authority under the Act to recover, by way of penalty from the employer,

such damages not exceeding the amount of arrears as may be specified in the scheme, where an employer makes default in the payment of any contribution to the fund or to the pension fund. Learned counsel appearing for the petitioner had further submitted that the EPF authority has no power to reduce waive the amount of contribution or to reduce it under the Act and the scheme and therefore, the order of the tribunal to the extent it reduces the amount of penalty is unsustainable. No discretion is available with the authority to reduce the amount of penalty or interest and the orders passed by the tribunal are not justified.

6. Learned counsel appearing for the respondent would submit, relying on the decisions of this Court reported in ***Sivaramakrishna Iyer v. Regional P.F. Commr.***[1988(1) KLT 431] and that of a Division Bench of this Court in ***Regional Provident Fund Commissioner v. Harrisons Malayalam Ltd.*** [2013(3) KLT 790] as also the earlier decisions referred to in the judgment of the Division Bench, that penalty is leviable only in cases where the element of default or willful negligence is found on the part of the employee. Learned counsel would submit that during the period from June, 1999, the respondent was in active consultation with the Government regarding direct payment of salary to its employees by the Government and was under the

bona fide belief that the salary would be paid directly by the Government from June 1999 itself. It is stated that after prolonged negotiations, a decision was taken that amounts would be payable by direct payment of salary by the Government only with effect from 01.01.2000. Soon thereafter, the remittance to the EPF account was made by the respondent on 18.01.2000. It is submitted that it was only in these circumstances that the remittances due were not made in time and there is no culpable neglect on the part of the respondent and therefore, the imposition of penalty was not in order.

7. It is further contended in any view of the matter in view of the specific provisions contained in Section 7L of the EPF Act empowering the tribunal to pass orders confirming, annulling or varying any order of the authority appealed against there is no legal infirmity in Ext.P3 order of the tribunal and the same is liable to be upheld.

8. Having considered the contentions raised on both sides and having gone through the pleadings and the materials on record, I am of the opinion that the question whether the authority under the EPF Act has power to waive or reduce the amount of penalty payable under Section 14B of the EPF Act does not arise for consideration in this case. The authority under the

EPF Act had not passed orders waiving or reducing the amount of penalty. It was in an appeal by the respondent that the tribunal, exercising power under Section 7L of the Act, had issued orders directing of reduction of the penalty. Section 7L of the EPF Act reads as follows:

> *"**7L-.Orders of Tribunal.-** (1) A Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or annulling the order appealed against or may refer the case back to the authority which passed such order with such directions as the Tribunal may think fit, for a fresh adjudication or order, as the case may be, after taking additional evidence, if necessary."*

It is clear from the plain reading of the provision that the tribunal, on being satisfied that reasons are shown justifying the delay in making the payment in time, is empowered to pass orders modifying or annulling the order appealed against. Since there is a provision in paragraph 32 of the scheme for waiver in particular cases by the authority under the EPF Act, I am not persuaded to hold that the tribunal, in exercise of its powers under Section 7L is powerless, if it is satisfied there were reasons justifying the delay, to pass orders reducing the penalty ordered by the competent authority. In that view of the matter, I hold that

Ext.P3 does not suffer from any legal infirmity. The order is upheld. Writ petition fails and is accordingly dismissed. No costs.

Sd/-

ANU SIVARAMAN,

JUDGE

DST

//True copy//

P.A. To Judge