IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

MONDAY, THE 12TH DAY OF JANUARY 2015/22ND POUSHA, 1936

WP(C).NO. 34892 OF 2014 (J)

PETITIONER(S):

THE DIRECTOR,
M/S CSI MISSION HOSPITAL,
KODACAL P.O., TIRUR
MALAPPURAM.

BY SRI. P.RAMAKRISHNAN

RESPONDENT(S):

THE ASSISTANT PROVIDENT FUND COMMISSIONER
EMPLOYEES PROVIDENT FUND ORGANIZATION
SUB REGIONAL OFFICE, ERANHIPALAM, KOZHIKODE-673006.

R1 BY SRI.THOMAS MATHEW NELLIMOOTTIL,S.C.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 12-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

NS

WP(C).NO. 34892 OF 2014 (J)

APPENDIX

PETITIONER(S)' EXHIBITS :

EXHIBIT-P1: COPY OF NOTICE DATED 7/5/2014 ISSUED BY THE RESPONDENT.

EXHIBIT-P2: COPY OF REPLY DATED 20/5/2014 SUBMITTED BY THE PETITIONER BEFORE THE RESPONDENT.

EXHIBIT-P3: COPY OF ORDER DATED 24/7/2014 ISSUED BY THE 1ST RESPONDENT.

EXHIBIT-P4: COPY OF ORDER DATED 24/7/2014 ISSUED BY THE RESPONDENT.

RESPONDENT(S)' EXHIBITS : NIL

/ TRUE COPY /

NS P.A. TO JUDGE

K. VINOD CHANDRAN, J.
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W.P.(C) No.34892 of 2014 - J
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Dated this the 12th day of January, 2015

J U D G M E N T

The petitioner is aggrieved with Ext.P1 order, of damages are levied under Section 14B and interest under Section 7Q of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (for brevity, 'EPF & MP Act'). Admittedly, Ext.P1 with respect to the levy of damages under Section 14B is appealable. As for the interest under Section7Q, no appeal is maintainable as held by the Hon'ble Supreme Court in **M/s. Arcot Textile Mills Ltd.** v. **Regional Provident Fund Commissioner and others [AIR 2014 295]**. Admittedly, the petitioner did not file an appeal even against Section 14B and the petitioner has approached this Court under Article 226 of the Constitution of India when a demand was raised as per Exts.P3 and P4.

2. With respect to the statutes wherein,

specifically a period of appeal is provided and the appellate authority has also been conferred with a power to condone the delay; again within a specific period, this Court has time and again held that there can be no further extension of time under Article 226 (**Panopharam** v. **Union of India [2010(3) KLT149]** and **Assistant Commissioner of Central Excise v. Krishna Poduval [2005 (4) KLT 947]).**

3. The learned Counsel for the petitioner however, would submit that despite the non-appearance of the petitioner at the time when the matter was reserved for orders, the petitioner had in fact on the issuance of the notice filed an objection, which is seen at Ext.P2. Despite the objection, the authority has not considered the specific grounds raised, is the contention. Definitely if any sustainable points are raised that has to be considered by the authority despite non-appearance of the assessee on the date of hearing. Ext.P2 raises two objections with respect to the appeal; against imposition of Section 14B damages.

4. The non-availability of documents to substantiate the contributions having been made in time, due to long passage of time, is the first contention. The petitioner definitely would have to substantiate that no delay was occasioned in the contributions and the long pendency of the matter alone cannot absolve the petitioner from such liability. If the petitioner has absolutely no documents to substantiate the payments made in time, then definitely there would be no purpose served in remanding the matter for further consideration.

5. The learned Counsel appearing for the respondent organisation would also place before me a decision of this Court **Regional Provident Fund Commissioner** v. **M/s. K.T. Rolling Mills Pvt. Ltd. [CDJ 1994 SC 241]**, which has categorically found that there would be no question of delay when default in contributions are made and damages are levied under Section 14B.

6. The second ground raised by the petitioner is with respect to the closing down of the hospital for 5-6

months. Even with respect to that, there are no documents produced to substantiate the ground. In any event, that is a claim which could have raised in appeal. In such circumstance, this Court does find any sustainable reason to interfere under Article 226.

7. However, considering the impecunious circumstances pleaded by the petitioner, if the petitioner remits the interest under Section 7Q in two instalments, on or before 12.02.2015 and 12.03.3015, then the petitioner shall be allowed a further period of six months to remit the Section 14B damages demanded at Ext.P3, which instalment shall commence on 12.04.2015 and continued on the 12th of each succeeding month. The recovery proceedings shall be kept in abeyance on condition that the petitioner does not commit two consecutive defaults.

The writ petition would stand disposed of.

Sd/-
K. VINOD CHANDRAN,
JUDGE

SB // true copy //

P.A to Judge.