IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. CWP No.12542 of 2011 (O&M)

Hindu Girls College, Sonepat
... Petitioner

Versus

Regional Provident Fund Commissioner
and another ... Respondents

2. CWP No.13819 of 2011 (O&M)

Hindu College of Pharmacy Education,
Kath Mandi, Sonepat ... Petitioner

Versus

Regional Provident Fund Commissioner
and another ... Respondents

Date of Decision: 05.10.2015

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Ankit Goel, Advocate,
for the petitioner.

Mr. Sandeep Goyal, Advocate,
for respondent No.1.

Mr. Rajiv Sharma, Advocate,
for respondent No.2.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.

1. This order will dispose of CWP No.12542 of 2011 titled *Hindu Girls College, Sonepat vs. Regional Provident Fund Commissioner and another* & CWP No.13819 of 2011 titled *Hindu College of Pharmacy Education, Kath Mandi, Sonepat vs. Regional Provident Fund*

Commissioner and another. The facts are taken from CWP No.12542 of 2011.

2. The petitioner has approached this Court under Articles 226 & 227 of the Constitution of India aggrieved by orders passed by the Regional Provident Fund Commissioner, Karnal levying damages to the tune of 100% under section 14-B of the Employees' Provident Fund & Miscellaneous Provisions Act, 1952 ("1952 Act"). The petitioner is an educational institution and runs an aided college receiving 95% grant-in-aid known as Hindu Girls College, Sonepat from the Government of Haryana. The petitioner was earlier affiliated to the Kurukshetra University but jurisdictions have changed and it is presently affiliated to the Maharshi Dayanand University, Rohtak. When it was affiliated to the Kurukshetra University it maintained a Contributory Provident Fund, the control of which was vested in the Registrar of the University to run the CPF scheme in terms of its Calendar Vol. I Ordinance XVI, Chapter II, Rule 5. With transfer affiliation MDU runs the scheme. The CPF scheme is also prescribed in the Haryana Affiliated Colleges (Security of Service) Act, 1979 ("1979 Act").

3. The Central Government issued notification dated February 29, 1982 extending the 1952 Act to educational institutions. The notification was challenged before the Supreme Court which dismissed the petition on January 29, 1988. During the pendency of the litigation, applicability of the 1952 Act was exempted to educational institutions vide notification dated August 21, 1984 initially for three years and re-issued in 1987 and 1991, thus taking the exemption notification up to 1994. Also, the 1952 Act was

amended w.e.f. August 01, 1988 substituting section 16 (1) (b), providing for the Act to not apply to "any other establishment belonging to or under the control of the Central Government or a State Government and whose employees are entitled to the benefit of Contributory Provident Fund..." Section 16 of the 1952 Act reads as follows:-

> ***"16. Act not to apply to certain establishments -*** *(1) This Act shall not apply –*
>
> *(a) to any establishment registered under the Co-operative Societies Act, 1912 (2 of 1912), or under any other law for the time being in force in any State relating to co-operative societies, employing less than fifty persons and working without the aid of power; or*
>
> *[(b) to any other establishment belonging to or under the control of the Central Government or a State Government and whose employees are entitled to the benefit of contributory provident fund or old age pension in accordance with any scheme or rule framed by the Central Government or the State Government governing such benefits; or*
>
> *(c) to any other establishment set up under any Central, Provincial or State Act and whose employees are entitled to the benefits of contributory provident fund or old age pension in accordance with any scheme or rule framed under that Act governing such benefits;*
>
> *[(2) If the Central Government is of opinion that having regard to the financial position of any class of [establishments] or other circumstances of the case, it is necessary or expedient so to do, it may, by notification in the Official Gazette, and subject to such conditions, as may be specified in the notification, exempt [whether prospectively or retrospectively,] that class of [establishments] from the operation of this Act for such period as may be specified in the notification.]"*

4. The Assessing Authority initiated proceedings under section 7-

A of the 1952 Act to determine moneys due on August 21, 1996 for the period July 1985 to June 1994 and has assessed a sum of Rs.30,85,041/-. This was the exact amount deposited by the petitioner under the CPF scheme with the Registrar of University. The amount was transferred to the EPF Organization. Subsequently, a show cause notice was issued to the College contemplating combined proceedings under section 14-B for damages and for interest under section 7-Q on June 09, 2005 indicating raising demand of about Rs.43.69 lacs as damages and Rs.26,350 as interest. This demand was confirmed on November 09, 2005.

5. Aggrieved by the assessment, the petitioner filed an appeal under section 7-I of the 1952 Act before the Employees Provident Fund Appellate Tribunal, New Delhi. An appeal has been dismissed on March 25, 2011 against which the present petition has been filed.

6. Mr. Ankit Goel, learned counsel for the petitioner submits that the two page order is cryptic. It has ignored the specific and elaborate contentions of the petitioner duly supported by case-law. It was argued in appeal that the applicability of the 1952 Act was in dispute due to sections 16 (1) (b) and 16(2) notifications. There was no willful default warranting imposition of damages under section 14-B of the 1952 Act. There was inordinate delay on the part of the RPFC to commence proceedings for levy of damages. In any event, damages could not have been imposed at more than 25% of the assessed amount.

7. In his address to this Court assailing the order in appeal, Mr. Ankit Goel, learned counsel submits that the provisions of the 1952 Act are inapplicable due to section 16(1) (b) and notifications issued under section

16(2) of the 1952 Act; there is no *mens rea* justifying penalty by way of imposition of damages under section 14-B. The remaining arguments are as above. In fact, it would be best to quote the entire order passed by the appellate authority:-

> *"The appeal in this case is preferred against the order passed by the PF authority under Section 14B of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the Act').*
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> *2. The case of the appellant is that the appellant is an educational institution. The establishment was covered under the Act and it deposited the dues in the bank. The coverage of educational institutions was upheld by the Hon'ble Court in the year 1988 and after decision of the litigation the appellant deposited the amount. The EPF Authority initiated a proceeding under Section 14B of the Act and without considering the case of the appellant levied the damage and interest. The impugned order is illegal.*
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> *3. The case of the respondent is that as there was delay in depositing the EPF contribution the damage and interest is levied correctly.*
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> *4. It is contended that the delay is not an intentional one but due to the litigation in different courts.*
>
> *5. The learned advocate for respondent supported the impugned order.*
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> *6. It is not disputed that the validity of the notification was upheld by the Hon'ble Court. In the case of M/s DAV College Vs. RPFC reported in 1988 Vol. 2 LLJ page 218, the lordship held that, "whatever arrear they have to pay under the Act and the Scheme in respect to the period between 3/1982 to 2/1988 shall be paid by each of the petitioner within such time as may be granted by the Regional PF Commissioner." In the case in hand, the appellant has not deposited the money as per the direction. Moreover, the appellant cannot be permitted to take the benefit of litigation. In the case of M/s Gram Sewa Samti Vs. Regional PF Commissioner reported in 1997 Vol. II LLJ at*

> *page 1202 the Hon'ble High Court of Madhya Pradesh held that, "employer beneficially disputing the applicability of the Act is not absolved of his liability to pay the contribution and subsequently admitted for its default."*
>
> *7. Thus, in view of the discussion held above, no infirmity is noticed in the order of the Authority. Hence ordered, the appeal is dismissed. Copy of order be sent to the parties and the file be consigned to record room."*

8. A reading of the appellate order needs much to be desired and Mr. Goel rightly contends that it is laconic and does not deal with the contentions and, therefore, suffers from non-application of mind. It also renders the valuable appellate right of the petitioner under section 7-I of the Act, completely nugatory. Although it is a trite law that every Court or Tribunal is under a duty to give reasons for the summing up of findings on facts and law but the reminder is well to issue time and again to those bound by duty to decide rights and obligations of parties.

9. To reinforce his arguments, Mr. Goel cites two recent judgments as illustrations on the point. He refers to **Manohar vs. State of Maharashtra and another**, (2012) 13 SCC 14. He refers to paras.15 to 19 where the Court has re-emphasized that recording of reasons is one of the basic elements of the principles of natural justice. In **Anand Brothers Private Limited vs. Union of India and others**, 2014 (9) SCC 212 the Supreme Court observed in para.14 that duty to give reasons is the soul of every adjudicatory process which affects rights. This Court is more than specify that the impugned appellate order does not satisfy the tests of reason as can be easily noticed on reading the two pages of appellate work.

10. The first contention of Mr. Goel is that for the period when the

alleged "default" is said to have occurred attracting penalty under section 14-B, the 1952 Act was not applicable due to the operation of section 16 (1) (b), which came into effect from August 01, 1988 (after the Supreme Court judgment upholding the Act's applicability over "educational institutions"). Therefore, no penalty could be levied for the period July 1985 to July 1988. It is his contention that since the petitioner received 95% aid it is financially controlled and is subject to functional and administrative authority of the State Government due to the operation of the 1979 Act and the rules framed thereunder. He cites authority in **RPFC vs. Sanatan Dharam Girls Secondary School**, (2007) 1 SCC 268. The Supreme Court held that the exemption clause of section 16 (1) (b) of the 1952 Act is available to a privately owned institution "under the control of the State Government", such as an aided school. The Supreme Court on the said judgment distinguished its earlier decision in **M.P. Shikshak Congress vs. RPFC**, (1999) 1 SCC 396. The second contention is that section 14-B is a penal provision which is to be construed strictly only upon establishing willful default. Since the provision is penal in nature it inheres a quasi-criminal element and must be construed in that light. Therefore, existence of *mens rea* is not an out-of-place principle and is rather essential before imposing penalties under section 14-B of the Act. The petitioner had absolutely no intent to commit default, since it had been regularly depositing the PF contributions as per the University and State norms which was an equally beneficial to the employees. No proof could be better of this fact than in the determination under section 7-A, the amount determined was exactly the same as the amount that had been deposited under the control of the

Registrar of the University. Therefore, the question of wilful default does not arise.

11. To strengthen his contentions, Mr. Goel cites the authority in **Hindustan Steel vs. State of Orissa**, (1969) 2 SCC 627 where the Supreme Court while interpreting the penalty provision held that imposition of penalty is permissible not only upon defiance, but upon deliberate defiance of law or contumacious or dishonest conduct. He quotes the relevant extract and reads para.8 of the judgment:-

> *"**8.** Under the Act penalty may be imposed for failure to register as a dealer – Section 9(1) read with Section 25 (1) (a) of the Act. But the liability to pay penalty does not arise merely upon proof of default in registering as a dealer. An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute. Those in charge of the affairs of the Company in failing to register the Company as a dealer acted in the honest and genuine belief that the Company was not a dealer. Granting that they erred, no case for imposing penalty was made out."*

12. His third contention is that damages cannot exceed 25%. Attention of the Court was drawn to para.32-A of the EPF Scheme framed under the 1952 Act wherein is contained the table for rates of imposition of damages and envisaged the levy of a maximum of 25%. Moreover, it has been consistently held that imposition of damages must not ordinarily exceed 25%.

13. In support of his case that damages must ordinarily exceed 25% and to justify the levy, Mr. Goel cites: (i) **K. Streetlite Electric Corporation v. RPFC**, (2001) 4 SCC 449 and **Halwasia Vidya Vihar v. RPFC**, (2006) 3 SCC 239. In *K. Streetlite* case the Supreme Court applied the principle of overall consideration and moderated disproportionate levy of damages to shorter and longer periods imposed by the RPFC and that is how 25% damages were levied as the golden mean. In *Halwasia* case the Supreme Court held that reduction or waiver of damages can be done in circumstance indicated in section 14-B. The Supreme Court confined the levy from 100% by reducing it to 25% where there is no delay in making payments and the appellant was an educational institution. In the present case, it cannot be said that there was no delay in depositing money as per direction.

14. The accompanying case CWP No.13819 of 2011 has been filed by the petitioner against the determination of money under section 7-A by the RPFC effected on March 22, 1976 for the period September 1983 to August 1994 in respect of the teaching and non-teaching employees of the petitioner-College. The outstanding has been assessed at Rs.10,80,784/- which is exactly the same amount in the PF Funds maintained by the

Registrar of the University as stood deposited. The impugned order is identical to the one passed in the earlier petition and bears the same principle of recovery.

15. The mitigating circumstance pleaded before the APFC, Karnal for non-levy of damages pressed were that the revised notice was issued after seventeen years of the alleged default which is hit by an inordinate and unreasonable delay with no action taken by the department in the intervening years. The educational institutions were under litigation and the legal position took considerable time to settle up to the highest Court, however, the department never made any demand from the petitioner-College prior to the inspection conducted for the first time on August 10, 1996. At that time proceedings under section 7-A were in process and order was passed on September 02, 1996 while the entire amount in terms of the order was deposited on October 01, 1996. Therefore, the pre-discovery period prior to 1996 stands paid satisfactorily and, therefore, no damages ought to be imposed on the ground of delay and laches. These arguments were casually rejected by the APFC and that order has been upheld by the impugned order passed by the Appellate Tribunal which contains no reasons whatsoever indicating complete lack of application of mind. The order cannot be sustained.

16. The petitions are, therefore, allowed. The impugned orders are set aside. The APFC is directed to pass a fresh order in accordance with law after hearing the petitioners and keeping in view the legal position as above. The APFC will also temper its fresh decision keeping in mind the ultimate beneficiaries of the fund-the workers who have been on the rolls of the

petitioning-Colleges during the relevant period.

(RAJIV NARAIN RAINA)
JUDGE

05.10.2015
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