IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition No.18350 of 2011
Date of decision: 15.12.2015

Employees Provident Fund Organization

... Petitioner

Versus

M/s Telephone Cables Limited and another

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Sanjay Tangri, Advocate,
for the petitioner.

Mr.A.K.Chandok, Advocate,
for respondent No.1 in CWP No.18350 of 2011.

Mr.D.P.Sharma, Advocate,
for respondent No.1 in CWP No.9002 of 2012.

Mr.Nandan Jindal, Advocate,
for respondent No.1 in CWP No.434 of 2012.

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

RAJIV NARAIN RAINA, J. (Oral)

CM No.12261 of 2015

CM is allowed as prayed for and the Central Board of Trustees is added as petitioner No.2 to maintain the petition. Amended memo of parties is taken on record.

CWP No.18350 of 2011

2. This order will dispose of the following four writ petitions as common questions of law and fact are involved in all the four petitions : -

1. CWP No.18350 of 2011
   Employees Provident Fund Organization v.
   M/s Telephone Cables Limited and another.

2. CWP No.434 of 2012
   Employees Provident Fund Organization v.
   M/s M/s Indian Sucrose Limited and another.

3. CWP No.9002 of 2012
   Employees Provident Fund Organization v.
   M/s Sodhi Erectors and another.

4. CWP No.434 of 2012
   Employees Provident Fund Organization v.
   M/s Punjab Health Systems Corporation and another.

3. Heard Mr.Tangri for the petitioner organization and the respective counsel for the respondents in the four cases. The challenge in this petition is to the orders passed by the Presiding Officer, Employees' Provident Fund Appellate Tribunal, New Delhi exercising jurisdiction over the subject matter. The Employees' Provident Fund Organization has filed these petitions under Article 226 read with Article 227 of the Constitution of India for setting aside the orders passed by the Appellate Authority under Section 14-B of the Employees' Provident Fund & Miscellaneous Provisions Act, 1952 on the respondent establishments where penalties were imposed by the assessing authority and in appeal, liabilities have been reduced either to 22% or 17% and in one case up to 75%.

4. It is the case of organization that the penalties under Section 14-B of the Act can be imposed only in accordance with para. 32-A of the 1952 Scheme framed under the Act read with the provisions of Employees' Pension Scheme, 1995.

5. On the other hand, learned counsel for the establishments who are respondents in these four cases submit that the liability has been

assessed by the department on the higher rates without considering various factors which are required to be considered before imposing penalty which is penal in nature. It is the case of the establishments that even if there was element of *mens rea* the period of default is too brief in all the cases and thus the Appellate Authority is justified in reducing the vigour of penalty and in one of the cases [CWP No.9002 of 2012] the liability has been fixed even for the pre-discovery period which is against all canons of justice inasmuch as no liability can be fastened before the Act becomes applicable unless the pre-discovery period is supported by concrete evidence of default by the establishment in not surrendering itself to the organization for the administration of the schemes under the Act. These are the issues raised by the respondents which deserve attention and were required to be addressed by the appellate authority that has passed an extremely casual and cryptic and non-speaking order wherein the grounds of appeal have not been dealt with fairly by assigning cogent reasons to support the conclusions. Besides, the appellate authority has relied on the decision of the Madras High Court in **Shanti Garments** v. **Regional PF Commissioner;** 2003 (1) Current Law Reporter 228 which has not been approved by this Court in the case **The Regional Provident Fund Commissioner** v. **M/s Shivon International and another;** CWP No.22297 of 2012 decided on 30.7.2015 which ruling have been relied upon in all the cases by the appellate authority except in CWP No.9002 of 2012 which is part of the bunch of cases under consideration. Since no cogent and valid reasons have been assigned for deciding the appeals, it is not possible to judicially review the order and as a result, this Court has to set aside the orders in appeal and remit the cases to the appellate authority for fresh consideration in accordance with law. In the remand proceedings, the appellate authority would hear the petitioners on their grounds and deal with each one of them by recording reasons in writing.

6. The petitions are partly allowed. The impugned orders in all the four cases are set aside.

7. In the meantime, the petitioners would not take any coercive steps against the respondents or make any financial demands on them till such time as fresh orders are not passed in the appeals.

8. It is expected that the appellate authority would endeavour to decide the appeals as soon as practicably possible.

9. Parties to appear in their respective cases on 14.1.2016 before the Appellate Authority.

(RAJIV NARAIN RAINA)
JUDGE

December 15, 2015
Paritosh Kumar