IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 14093 of 1995 (O&M)
Date of decision: 21.07.2016

Central Institute for Research on Buffaloes, Hissar

....Petitioner

Versus

The Regional Provident Fund Commissioner, Haryana and another

.... Respondents

CORAM: Hon'ble Mr. Justice P.B. Bajanthri

1. Whether Reporters of local papers may be allowed to see the judgment?
2. Whether to be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. N.K.Suneja, Advocate for the petitioner.

Mr. Tarun Singla, Advocate for
Mr. Ashok Aggarwal,Sr. Advocate for respondent No.1.

P.B. Bajanthri, J.(Oral)

In the instant writ petition, the petitioner has questioned the order dated 03.07.1995 passed by Ist respondent-Regional Provident Fund Commissioner, Haryana vide Annexure P-13.

2. The petitioner was required to comply the provident fund contributions, family pension contributions, insurance fund contributions and administrative charges of EPF Scheme etc. Even though, petitioner has remitted contribution/pay. However, there is a delay in remitting the above contributions. In this regard, show cause notice was issued to the petitioner by the office of Ist respondent on

23.05.1995. The same was replied by the petitioner on 01.07.1995. The petitioner was also given personal hearing which was fixed on 23.05.1995. It was adjourned on the administrative grounds on 19.06.1995 and 03.07.1995. One Shri R.S. Khatri, Assistant Finance and Accounts Officer, on behalf of the petitioner attended the hearing on the fixed date. He was heard in person and also written statement dated 01.07.1995 was taken note of. The main contention of the petitioner before Ist respondent is that EPF code was not given timely and the petitioner was waiting for the code. It was issued only in the year 1993. Thereafter, there is a delay of remitting contribution to the extent of 7 months which is not much delay so as to impose damages under Section 14-B of the EPF and Miscellaneous Provisions Act, 1952. Thus, Ist respondent passed order under Section 14-B of the Employees Provident Fund and Miscelleous Provisions Act, 1952 on 03.07.1995 while determining the damages as follows:-

> "The damages should be deposited in the different account nos. Mentioned below and receipt bank challans be submitted to this office.

Nature of damages	Amount	Account
P.F.Contributions	4,85,463.00	1
Administrative Charges	20,596.00	2
F.PF. Contributions	79,519.00	10
E.D.L.I. Contributions,	15,843.00	21
E.D.L.I. Admn. Charges	318.00	
Total	Rs.6,01,739.00"	

3. Aggrieved by the order dated 03.07.1995, the petitioner contended that in the show cause notice issued on 23.05.1995 as well as in the impugned order dated 03.07.1995 Ist respondent has not determined the damages how he arrived the figures mentioned in respect of PF contributions, Administrative charges, FPF contributions, EDLI contributions and EDLI Administrative charges totalling to Rs.6,01,739.00 In the absence of determination of damages for particular period respondent No.1 sought for depositing damages mentioned in the order dated 03.07.1995. Thus there is total non-application of mind while exercising power under Section 14-B of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 by respondent No.1. In support of the above contentions, learned counsel for the petitioner relied on decision of this court reported in ILLJ1994 1009 HC P&H ***Regional P.F. Commissioner and Taylor Instrument Co.(India) Ltd***. In view of the principle laid down in the above decision, impugned order dated 03.07.1995 is liable to be set aside.

4. Per contra, learned counsel for the respondent vehemently contended that the petitioner has been given necessary opportunity before respondent No.1 while passing the order dated 03.07.1995 which is evident that on 3 occasions the petitioner has been provided opportunity and so also after hearing the representative of the petitioner namely Sh. R.S.Khatri, Assistant Finance and Accounts Officer, order has been passed. Therefore, there is no infirmity in the order dated 03.07.1995. It was further submitted that the authority need not determine the details of damages levied in the order dated 03.07.1995. It is deemed that the order of damages levied from November, 1990 to April, 1994 and December, 1994 to February 1995. No

where in the pleadings disputed the amount of damages. Therefore, the petitioner has not made out a case so as to interfere with the order dated 03.07.1995.

5. Heard learned counsel for the parties.

6. Short question for consideration in this petition is whether the respondent for the purpose of invoking Section 14-B of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 levying damages on various contributions under the EPF Acts and Rules. There is requirement of details of damages (proposed damages) is to be furnished or not? Perusal of the show cause notice dated 23.05.1995, it is evident that there is no determination of damages. Therefore, the petitioner is not in a position to submit his reply effectively to the show cause notice. In the order dated 03.07.1995 respondent No.1 has arrived final figure of damages in respect of PF contributions, Administrative Charges, FPF contribution, EDLI Contributions, and EDLI administrative charges for the period from November, 1990 to April, 1994 and December, 1994 to February 1995 without proposed to levy damages of particular amount and period. Respondent No.1 at least could have given necessary materials to the petitioner before passing the order dated 03.07.1995 determining the proposal to impose damages under Section 14-B of the EPF Act. Respondent No. 1 is exercising quasi judicial function under the EPF Act. Therefore, it was bounden duty to give the calculation how he arrived the alleged damages levied which is mentioned in the order dated 03.07.1995 for the period from November, 1990 to April, 1994 and December, 1994 to February 1995. In the present petition, the petitioner has not disputed the determination of damages in the order dated 03.07.1995. Not even single

item in the impugned order is disputed by the petitioner that the amount determined in the order dated 03.07.1995 would be less than Rs.6,01,739.00. Therefore, there is a lapse on the part of the petitioner also in saying that the order is not speaking. Therefore, the order dated 03.07.1995 (Annexure P-13) is liable to be set aside. Respondent No. 1 is directed to give fresh show cause notice to the petitioner as to how the figures mentioned in the order that PF contribution, administrative charges, EPF contribution, EDLI contribution and EDLI administrative charges (damages) is to be determined for the period from November, 1990 to April, 1994 and December, 1994 to February 1995. Such a show cause notice shall be given within a period of one month from today. The petitioner is permitted to file his objections to such show cause notice within a period of one month after the receipt of the show cause notice. Then respondent No.1 is permitted to pass final order after considering reply to the show cause notice. He may also be given personal hearing before passing the order. The petitioner is liable to pay interest @ 9% per annum from 03.07.1995 on the levied damages with reference to the final order to be passed.

7. Order dated 03.07.1995 (Annexure P-13) is set aside.

8. In terms of the above order, Civil Writ Petition stands disposed of.

21.07.2016 **(P.B.BAJANTHRI)**

pooja saini **JUDGE**