

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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**CWP-2231-2012 (O&M)
Date of decision: 17.05.2016**

The Nakodar Cooperative Sugar Mills Limited

....Petitioner

Versus

The Employee's Provident Fund Appellate Tribunal 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. Rahul Sharma-I, Advocate for the petitioner.

Mr. Rajesh Hooda, Advocate for respondent No.2.

P.B. Bajanthri, J. (Oral)

In the instant writ petition, the petitioner has questioned the order dated 30.12.2008 and 17.08.2011, vide Annexures P4 and P6. The respondent-PF department made assessment and demanded for payment of PF, interest and damages on the petitioner.

Aggrieved by the same, preferred an appeal before the Appellate Tribunal, New Delhi. On 17.08.2011, petitioner's appeal was rejected in ATA No. 120(II)/2009. Hence, this petition.

Petitioners engaged 3 trainees Assistant Engineer in the

petitioners' Sugar Mill for a period of 3 years by paying them consolidated stipend of Rs.1800/Rs.2000 per month in the First, Second and Third year respectively. The petitioners' Sugar Mill is of the view that trainee appointees are not required to contribute provident fund. In this regard, petitioner suffered an order in the year 2007. Thereafter, the PF department assessed the PF amount and demanded the same. Respondent-Department is stated to have demanded PF, interest and damages. Insofar as damages under Section 14B of the Provident Fund Act, 1952 is concerned, it is questioned that the EPF Department kept quiet from 1990 to 2004. Therefore, there is a delay on the part of the respondent-EPF Department. Hence the petitioners are not liable for payment of damages under Section 14-B of the Act.

Learned counsel for the petitioner submitted that under similar situation Supreme Court as well as Kerala High Court has held that damages can be reduced if there is a delay on the part of EPF department in issuance of payment assessment of provident fund dues etc. On the other hand, learned counsel for the EPF-department submitted that the decision cited by learned counsel for the petitioner is distinguishable with reference to the facts of the case. In the present case, there is a default on the part of petitioner from 1990 to 2008. Whereas, in the cited decision facts of the case is that though the Education Institution were contributing PF through University therefore, there is no default on the Education Institution wherein the Supreme Court interfered and reduced the damages. Thus, the petitioner has not made out a case so as to reduce the damages imposed

under Section 14-B of the Provident Fund Act.

In the case of **Hindustan Times Ltd. Versus Union of India and others** (1998)2 Supreme Court cases 242 paragraph 29 reads as follows:-

“29. The authority under [Section 14-B](#) has to apply his mind to the facts of the case and the reply to the show cause notice and pass a reasoned order after following principles of natural justice and giving a reasonable opportunity of being heard; the Regional Provident Fund Commissioner usually takes into consideration the number of defaults, the period of delay, the frequency of default and the amounts involved; default on the part of the employer based on pleas of power cut, financial problems relating to other indebtedness or the delay in realisations of amounts paid by the cheques or drafts, cannot be justifiable grounds for the employer to escape liability; there is no period of limitation prescribed by the legislature for initiating action for recovery of damages under [Section 14-B](#). The fact that proceedings are initiated or demand for damages is made after several years cannot by itself be a ground for drawing an inference of waiver or that the employer was lulled into a belief that no proceedings under [section 14B](#) would be taken; mere delay in initiating action

under section 14B cannot amount to prejudice inasmuch as the delay on the part of the department, would have only allowed the employer to use the monies for his own purposes or for his business especially when there is no additional provision for charging interest. However, the employer can claim prejudice if there is proof that between the period of default and the date of initiation of action under Section 14-B, he had changed his position to his detriment to such an extent that if the recovery is made after a large number of years, the prejudice to him is of an "irretrievable" nature: he might also claim prejudice upon proof of loss of all the relevant records and/or non-availability of the personnel who were, several years back in charge of these payments and provided he further establishes that there is no other way he can reconstruct the record or produce evidence; or there are other similar grounds which could lead to "irretrievable" prejudice; further, in such cases of "irretrievable" prejudice, the defaulter must take the necessary pleas in defence in the reply to the show cause notice and must satisfy the concerned authority with acceptable material; if those pleas are rejected, he cannot raise them in the High Court unless there is a clear pleading in the writ petition to that effect."

Recently, this court has considered decision of the above decision wherein it is held that irrespective of delay in assessing and demanding Provident Fund Contribution. Interest and damages is to be paid. Therefore, the petitioner has not made out a case so as to interfere with levying damages on the petitioner by the EPF-Department under Section 14-B of E.P.F. Act, 1956.

Petition stands dismissed.

17.05.2016

pooja saini

**(P.B. BAJANTHRI)
JUDGE**