IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Letters Patent Appeal No.466 of 2016 (O&M)
Date of Decision: April 04, 2016

Regional Provident Fund Commissioner

.....Appellant

versus

M/s Essen Deinki and another

.....Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT.
HON'BLE MR.JUSTICE P.B.BAJANTHRI.

Present: Mr.Rajesh Hooda, Advocate, for the appellant.

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

Surya Kant, J. (Oral)

This letters patent appeal is directed against the order dated 17.09.2015 whereby the learned Single Judge has declined to interfere with the order dated 26.04.2011 passed by the Employees Provident Fund Appellate Tribunal vide which the Tribunal has remanded the matter back to the EPF Authority to assess the liability of the respondent @17% (inclusive of interest).

[2] The learned Single Judge, after referring to the case law exhaustively including the views taken by different High Courts, has held that since the Tribunal has done substantial justice while remanding the proceedings, he would not invoke the discretionary writ jurisdiction to tinker with such discretion. The learned Single Judge has further observed that in a case where the delay in deposit of EPF was caused

without any motive and for convincing reasons, the object of the EPF Authority would be to levy interest and costs which should be compensatory in nature and not as a measure of penalty. There is a pointed reference made to Para 32-B of the EPF Scheme, 1952 whereunder the Authority is empowered to reduce or waive the damages levied under Section 14-B of the Act.

[3] Though the period of delay caused by the respondent-establishment in deposit of payments has not been brought on record, the guidelines for levying interest or damages in the event of such delay are specified in sub-para (2) of Para-32-A of the EPF Scheme, which reads as follows:-

> "…..Para 32-A of the EPF Scheme formulated under the 1952 Act which is the guiding factor for the recovery of damages reads as follows:-
>
> > "…..32-A. Recovery of damages for default in payment of any contribution:-
> >
> > (1) Where an employer makes default in the payment of any contribution to the fund, or in the transfer of accumulations required to be transferred by him under sub-section (2) of section 15 or sub-section (5) of section 17 of the Act or in the payment of any charges payable under any other provisions of the Act or Scheme or under any of the conditions specified under Section 17 of the Act, the Central Provident Fund Commissioner or such officer as may be authorized by the Central Government by notification in the Official Gazette, in this behalf, may recover

from the employer by way of penalty, damages at the rates given below:-

Period of default	Rate of damages (% of arrears per annum)
(i) Less than two months	17
(ii) Two months and above but less than four months	22
(iii) Four months and above but less than six months	27
(iv) Six months and above	37

(2) The damages shall be calculated to the nearest rupee, 50 paise or more to be counted as the nearest higher rupee and fraction of a rupee less than 50 paise to be ignored.....”

[4] It has come on record that the respondent-establishment deposited the due amount alongwith interest. The only issue required to be determined by the EPF Authority was liability of the establishment to pay damages. It is in this backdrop that the Tribunal, following the principle that in the event of simple default the quantum of damages should be compensatory rather than penal in nature, remanded the case to the EPF Authority with a direction to assess the damages @ 17% inclusive of interest which is suggestive of the fact that the delay caused by the respondent-establishment falls at Sr.(i) of para-32-A(1) of the Scheme.

[5] The appellant may be legally right to contend that even in a case where the respondent-establishment due to financial constrain was unable to discharge the statutory liability, cannot be exempted from payment of damages or

penalty etc., but the quantum of such damages has to be assessed keeping in view the facts and circumstances of each case coupled with the total period of delay. Further, the learned Single Judge has granted discretion to the EPF Authority that it can thrash out against the levy of 17% interest while deciding the remand proceedings. Hence, no case to interfere with the order under appeal is made out.

[5] Dismissed.

[6] The question of law raised by the appellant is kept open.

[SURYA KANT]
JUDGE

April 04, 2016
mohinder

[P.B.BAJANTHRI]
JUDGE

CM No.1016-LPA of 2016 in
LPA No.466 of 2016

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Regional Provident Fund Commissioner

M/s

M/s Essen Deinki and another

Present : Mr.Rajesh Hooda, Advocate,
for the applicant-appellant.

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For the reasons mentioned in the application, the same is allowed subject to all just exceptions and 101 days' delay in filing the appeal is condoned.

CM stands disposed of.

(SURYA KANT)
JUDGE

April 04, 2016
mohinder

(P.B.BAJANTHRI)
JUDGE