THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

W.P.Nos.27462, 28030, 27961, 27967 and 28033 of 2005 and 464 of 2006

ORDER:

1) Seeking issuance of writ of certiorari and for quashing of the common order dated 13.09.2005 passed by the E.P.F. Appellate Tribunal rep. by its Presiding Officer, New Delhi in A.T.Nos. 782 (1), 783 (1), 784 (1), 785 (1), 786(1) and 787(1) of 2005, the above writ petitions came to be filed by the Food Corporation of India, Tadepalligudem.

2) The facts in brief are as under:

The employer ie. M/s. Food Corporation of India is an establishment to which the provisions of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (for short "the Act") would apply, failed to remit the provident fund contributions in time for the period from October, 1994 to September, 1998. The Regional Provident Fund Commissioner issued notices for payment of outstanding dues under 14 (b) and 7 (2) of the Act. Since the said amount was not paid within the time stipulated, a recovery certificates under 8-B of the Act were issued. In order to recover the dues, the E.P.F. organisation initiated the proceedings by issuing demand notices dated 12.10.2004. The District Manager, F.C.I. was asked to remit the dues vide letter dated 24.11.2004 and by way of remainder dated 02.02.2005. The petitioner approached the 1st respondent challenging the demand notice and recovery action. The said matter was remanded vide letter dated 15.04.2005 for fresh adjudication under Section 14-B of the Act, fixing a date for personal hearing. It was urged that F.C.I. (employer) has no direct control over the Labour Contract Society engaged by it for the purpose of carrying out loading and unloading purpose and as such they are not liable to pay any amount. After considering the same, the Regional Provident Fund Commissioner, vide its order dated 26.07.2005 levied damages on delayed remittances made by the employer. Challenging the same, appeals came to be filed before the 1st respondent. Vide common order dated 13.09.2005, the 1st respondent rejected the same confirming the findings of the 2nd respondent. Aggrieved by the same, the present writ petitions came to be filed.

3) Learned counsel for the petitioner mainly submits that the work of handling and transporting was given on contract basis to various contractors, on tender basis from time to time. The contractors used to engage their own labourers for carrying out the said work. However, from December, 1997 the Corporation abolished the system of contract system and introduced the system of direct payment. It is said that the labourers went on strike demanding minimum wage guaranteed D.P.S. and refused to claim wages. Though the D.P.S. was introduced in the month of December, 1997, the same was settled in January, 1999 after deducting the P.F. and other deductions. In view of the above, it is urged that the respondents are not entitled for any relief. It is further submitted that there is abnormal delay in initiating the

proceedings. According to him, though the labourers left the service in the year 1997, the issue for payment of damages came to be initiated in the year 2005 and in the absence of any record at this length of time, the question of payment of penalty would not arise.

4) Relying upon Section 7-A and 14-B of the Act, it is urged that in the absence of any employer and employee relationship with the labourers, payment of compensation by the petitioner would not arise. The same is opposed by the learned counsel for the respondents contending that under Section 6 of the Act, the employer, who has engaged the Contractor, is liable to pay the damages. He further submits that since the record discloses payment of money by the petitioner, after the strike period, they cannot now turn back and say that there are no records and that there is no relationship of employee and employer between the Corporation and labourers. It is further urged that in case of any default, the authority has every right to recover the damages.

5) In reply, the learned counsel for the petitioner would submit that grave prejudice would be caused to the petitioner since the applications came to be made with abnormal delay. In support of the same, he relies upon the judgment of the Apex Court in 2001 (4) SCC 449.

6) In order to establish as to whether the petitioner-Corporation is liable to remit the provident fund contributions, it

would be useful to extract Section 6 of the Act, which reads as under:

> "6. Contributions and matters which may be provided for in Schemes.—
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> The contribution which shall be paid by the employer to the Fund shall be [ten per cent] of the basic wages, [dearness allowance and retaining allowance (if any)] for the time being payable to each of the employees [(whether employed by him directly or by or through a contractor)], and the employees' contribution shall be equal to the contribution payable by the employer in respect of him and may, [if any employee so desires, be an amount exceeding [ten per cent.] of his basic wages, dearness allowance and retaining allowance (if any), subject to the condition that the employer shall not be under an obligation to pay any contribution over and above his contribution payable under this section]:
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> [Provided that in its application to any establishment or class of establishments which the Central Government, after making such inquiry as it deems fit, may, by notification in the Official Gazette specify, this section shall be subject to the modification that for the words ["ten per cent."], at both the places where they occur, the words ["twelve per cent."] shall be substituted:]
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> Provided further that where the amount of any contribution payable under this Act involves a fraction of a rupee, the Scheme may provide for the rounding off of such fraction to the nearest rupee, half of a rupee or quarter of a rupee.
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> Explanation 1.—For the purposes of this [section], dearness allowance shall be deemed to include also

> the cash value of any food concession allowed to the employee.
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> [Explanation 2.—For the purposes of this [section], "retaining allowance" means an allowance payable for the time being to an employee of any factory or other establishment during any period in which the establishment is not working, for retaining his services.]

7) A reading of Section 6 of the Act would show that the principal employer is responsible for payment of contribution whether they were employed directly or through the contractor. Therefore, the employer-petitioner cannot escape from its liability in payment of Provident Fund contributions. It is also to be noted that P.F. code number was allotted to the principal employer but not to the Labour Contractor societies.

8) Coming to the payment of damages and interest under Section 14-B and 7-Q of the Act, it is urged that due to strike there was a delay in disbursing the salaries and as such the payment of damages with interest is sought to be waived, though primarily contending that they are not entitled to pay any damages. After perusing the record it was found that though the employer was aware about the total salaries to be paid to the labourers/employees, failed to calculate the provident fund contributions and other administrative charges. Instead of paying the amounts to the department before the due date, the employer delayed the remittances and credited the interest to the employees account on progressive balance from the date of due,

though the amounts were received belatedly. Such a procedure is not contemplated under the Act. Infact, the Apex Court in *Hindustan Times v. Union of India*[1] held that an establishment cannot escape from the consequences on the ground of strike or lockout, as pleaded in this case.

9) Coming to the plea of delay in filing the application on the ground that no records were available with them, it is to be noticed though the contract system was abolished in the year 1997, payments came to be made basing on the record even in the month of February, 1999. The proceedings were initiated by way of notice in the year 2003, when there was a strike. Therefore, the theory of non-availability of the record, because of which they could not remit the amount in time, cannot be accepted, moreso, when the said amount was remitted by the employer as determined by R.P.F.C.

10) At the end, the learned counsel for the petitioner pleads for reduction of damages to be paid by the employer. It is to be noted that since the quantum awarded was based on the rates fixed as observed by the appellate authority, I see no reason to reduce the damages.

11) Having regard to the above, the plea taken by the petitioner that there was a delay of 7 years in initiating the action cannot be accepted. Since both the forums have held against the petitioner; as the dispute is only with regard to payment of

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[1] AIR 1998 SC 488

damages on delayed remittances, and as the orders came to be passed on factual aspects basing on the record placed before the authorities, this Court finds no ground to interfere with the same.

12) Accordingly, all the writ petitions dismissed. There shall be no order as to costs.

13) Miscellaneous petitions, pending if any, shall stand closed in the light of this final order.

JUSTICE C.PRAVEEN KUMAR

17.04.2017
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