* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: April 28, 2017

\+ **W.P.(C) 3321/2001**

REGIONAL PROVIDENT FUND COMMISSIONER
..... Petitioner
Through: Ms. Reema Khorana, Advocate

versus

E.P.F. APPELLATE TRIBUNAL & ANR. .....Respondents
Through: Nemo

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
% **(ORAL)**

1. Petitioner's order of 12th July, 2000 under Section 14-B of *The Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the EPF Act)* levying damages for belated remittances of provident fund and other contributions by second respondent herein, during the period from September, 1990 upto November, 1999 stands modified by the *Employees Provident Fund Appellate Tribunal (hereinafter referred to as 'the Tribunal')* vide order of 4th January, 2001, which is impugned by this petition.

2. Petitioner vide order of 12th July, 2000 imposed damages of ₹3,96,842/- (Rupees Three Lac Ninety Six Thousand Eight Hundred and Forty Two) on account of default in depositing provident fund, etc., by second respondent and the said order stands modified by impugned order

to the effect that flat rate of 22% per annum be imposed on account of default, where the period of delay is more than two months and where it is more, the rate of damages be imposed as per paragraph No.32–A of *The Employees' Provident Funds Scheme, 1952* as amended from 1st September, 1991.

3. At the outset, learned counsel for petitioner informs that the scheme has been subsequently amended in the year 2008 whereby the rate of damages has been varied, but the applicable rates in the instant case would be as amended from 1st September, 1991 as the period of delay is from September, 1990 upto November, 1999. Learned counsel for petitioner assails impugned order on the ground that there is no discretion with the Tribunal to vary the rate of damages to be levied and the Tribunal has erred in reducing the rate of damages on respondent's plea of financial difficulty. Reliance is placed upon a decision of High Court of Bombay in *Vegetables Vitamins Food Co. Ltd. V. Regional PF Commissioner, Maharashtra, Goa,* 1995 (1) LLJ 1145 to submit that the rate of damages as provided in paragraph No. 32–A of *The Employees' Provident Funds Scheme, 1952,* as applicable, prevails and the determination under Section 14–B of the EPF Act is to be computed strictly in terms of paragraph No. 32-A of the aforesaid Scheme. Reliance is also placed by petitioner's counsel upon Supreme Court's decision in *Hindustan Times Ltd. V. Union of India and Others,* (1998) 2 SCC 242 to submit that financial difficulty cannot be a ground to vary the rate of damages on delayed payments and so, impugned order deserves to be set aside.

4. As per order of 12th May, 2016, the respondents have been served, but none has appeared on their behalf on the last few dates of hearing. Even today, none appears on behalf of respondents. In such a situation, there is no option left except to hear this petition with the assistance of learned counsel for petitioner.

5. Upon hearing and on perusal of impugned order and petitioner's order of 12th July, 2000 and after going through the decisions cited, I find that financial stringency cannot be a ground to vary the rate of damages as provided in *The Employees' Provident Funds Scheme, 1952*. The Tribunal has erred in modifying petitioner's order of 12th July, 2000 to direct the reassessment at flat rate of 22% *per annum* where the default is of more than two months.

6. In view of the aforesaid, impugned order is modified and petitioner's order of 12th July, 2000 is restored with the rider that impugned order shall operate for the period from September, 1990 to 31st August, 1991.

7. With aforesaid directions, this petition is disposed of.

(SUNIL GAUR)
JUDGE

APRIL 28, 2017
j