Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2977 OF 2017

M/s.Sweeptech .. Petitioner
Vs.
Assistant Provident Fund Commissioner .. Respondent

Mr.A.P. Wachasunder, for the Petitioner.
Mr.Suresh Kumar, for Respondent.

CORAM : M.S.KARNIK, J.

DATE : 08th APRIL, 2019

P.C. :

. Rule. Rule is made returnable forthwith and heard finally by consent of the parties. Mr.Suresh Kumar waives service of rule on behalf of the respondent.

2. In this Petition filed under Article 226 of the Constitution of India, the petitioner assails the order dated 19/12/2016 passed by the Employees Provident Fund Appellate Tribunal. Before the Tribunal, the petitioner challenged the

order dated 17/07/2014 passed by the Assistant PF Commissioner Penal Damages RO Mumbai I. The petitioner is a covered establishment under the provisions of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (for short 'Act'). For the purpose of levying damages under the provisions of the Act, summons dated 06/06/2014 was issued to the petitioner for giving them a reasonable opportunity of representing their case. The petitioner is aggrieved by that part of the order dated 17/07/2014 whereby the authority concerned has directed the petitioner to remit the amount of Rs.8,79,986/- being damages payable under various heads of accounts as per section 14B of the Act.

3. It is the contention of the learned Counsel for the petitioner that pursuant to the summons received, they had appeared before the authority on 26/06/2014 for inquiry in connection with imposing the penal damages. By a detailed reply dated 17/07/2014 at page 41, the petitioner pointed out the difficulty they faced for not remitting the contribution in

time which was not willful. A specific reference can be had to paragraphs 2 & 4 which read thus :

> “2. In this connection, the establishment humbly states that, the establishment aggressively pursuing and waging a bitter struggle to stay in the market which is under tremendous pressure to survive in the economic recession faced wider ramifications in economic scenario. You are well aware sir that, the global recession unfolded quickly and drastically which refused to dilute even as on date. The establishment humbly submits that, arising due to the circumstances, the establishments which were getting serviced by us has started the monthly charges belatedly resulting in delay in disbursing the salary and wages further belated remittances of monthly provident fund contributions.
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> 4. The establishment humbly appeals that, when the industry was flourishing the establishment seldom belatedly remitted the monthly provident fund contributions. Only when the recession started quickly affecting the finances of the establishment it was forced to disburse the salary and allowances belatedly hence the belated remittances of monthly provident fund contributions. The statement supplied by the PF Department also reveals that, the establishment remitted the monthly provident fund contributions not with big margin but has remitted even in piece meal there by demonstrated that it was either willful or to earn profits by remitting belatedly the monthly provident fund contributions. In the circumstances the establishment humbly requests that no penalty be imposed but if any loss has occurred to the Organization. The Hon'ble High Court of Kerala in the case of Enakulum District Co-operative Bank Ltd., vs. RPFC [2000 (86) FLR 984 :2009 (97) FJR 19 (Ker)] has held that, the defaulter under section 14-B, is therefore, liable to pay damages which represent the loss, but not anything more, as such recovery would amount to penalty and that is not permitted under the section.”

I find from the order passed by the Assistant Provident Fund Commissioner Penal Damages RO Mumbai I that explanation given by the petitioner is not considered by the Authority before imposing damages u/s 14B of the Act.

4. Though the Tribunal in the Appeal has rejected the version of the petitioner for late payment for want of evidence, I am of the opinion that the Assistant Provident Fund Commissioner ought to have considered the explanation in the reply dated 17/07/2014 in the first instance and arrived at his independent finding on the basis of the explanation offered by the petitioner. There is some explanation found in reply dated 17/07/2014. In this view of the matter, the impugned order deserves to be quashed and set aside. Hence, the following order.

O R D E R

(i) The impugned orders are quashed and set aside.

(ii) Matter is remitted back to the Assistant Provident Fund

Commissioner Penal Damages RO Mumbai I to consider the matter only to the extent of imposing damages under section 14B of the Act after considering the explanation given by the petitioner in the reply dated 17/07/2014 which is at page 41 of the paper-book.

(iii) The impugned order passed by the Assistant Provident Fund Commissioner Penal Damages RO Mumbai I dated 17/07/2014 is set aside to the limited extent of passing a fresh order in respect of imposition of damages under section 14B of the Act.

(iv) The Authority to pass a fresh order after giving an opportunity of hearing to the petitioner.

(v) The petitioner undertakes to appear before the Authority on 29/04/2019 at 11.00 a.m..

5. Rule is partly made absolute in the above terms with

no order as to costs.

(M.S.KARNIK, J.)