IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 6421 OF 2016
(Central Board of Trustees & anr..vs.. Singh & Sons)

Office Notes, Office Memoramda of Coram, appearances, Court's orders of directions and Registrar’s Orders. *Court's or Judge's orders.*

Shri R.S. Sundaram with Smt. U.R. Tanna, Advocate for petitioner.

CORAM: RAVINDRA V. GHUGE, J.
DATE: 4th JANUARY, 2020.

1. The petitioner APF Commissioner, Nagpur is aggrieved by the order dated 12.2.2014 passed by the E.P.F. Appellate Tribunal, New Delhi, vide which, Appeal u/s ATA No.712(9)/2011, filed by the respondent industry, has been allowed, on the ground that the competent authority has not properly heard the respondent while levying damages under section 14(B) of the E.P.F. & M.P. Act, 1952.

2. Despite service of notice for final disposal, issued on 27.10.2016 and made returnable on 12.1.2017, the respondent industry has chosen not to cause an appearance in this matter. In this backdrop, I have considered the submissions of the learned Advocate for the petitioners.

3. Having considered the record available and the impugned order, I find that the issue before the E.P.F. Appellate Tribunal was as to whether the competent authority i.e. A.P.F.C., Nagpur was justified in imposing damages under section 14(B). The grievance of the petitioner is that the

Appellate Tribunal has relied upon the judgment of the Hon'ble Apex Court in the case of ***ESIC vs. HMT Ltd & anr, 2008(3)SCC 35*** and by relying on regulation 31/C of the ESIC (General) Regulations, 1950 framed under the ESI Act, 1948, it has concluded that there is no finding given by the APFC that the respondent industry has deliberately delayed the payment of EPF contribution and there was no *mens rea* on the part of the respondent.

4. I find that the first proviso to section 14(B) under the EPF Act, is identical to the first proviso under section 85(B)(1) of the ESIC Act, 1948. As such, the issue to be considered is as to whether the APFC had given a reasonable opportunity of hearing to the respondent employer before passing the order for recovering damages under section 14(B).

5. It is apparent from the order dated 16.8.2011 delivered by the APFC which was a subject matter of challenge in the appeal before the EPF Tribunal that the employer was issued with a show cause notice as to why damages should not be imposed as provided under section 14(B). The dates of hearing were posted on 25.10.2010, 26.11.2010, 4.2.2011, 25.2.2011, 25.3.2011, 15.4.2011, 6.5.2011, 27.5.2011, 17.6.2011 and 8.7.2011. On 22.7.2011, the representative of the establishment submitted a statement showing monthwise wages paid to the employees and the dates of depositing all the PF contributions. Despite sufficient opportunities granted by the APFC to the employer, the employer has failed to cite any reason which would satisfy either the APFC or the EPF Appellate Tribunal, to pass an order of reducing the

damages or not imposing damages under the first proviso to section 14(B).

6. Considering the above, I find that the EPF Appellate Tribunal has failed to notice that the employer was given an opportunity over a period of almost 9 months and despite the various dates of hearing, no explanation was put forth.

7. In view of the above, this petition is allowed. The impugned order dated 12.2.2014, passed by the EPF Appellate Tribunal, is quashed and set aside.

(Ravindra V. Ghuge, J.)

Belkhede RS