IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.02.2020

CORAM :

The Hon'ble Mr.A.P.SAHI, THE CHIEF JUSTICE

AND

The Hon'ble Mr.JUSTICE SUBRAMONIUM PRASAD

W.A.No.101 of 2020
and C.M.P.No.1406 of 2020

M/s.PGC Textile Corporation (P) Ltd.,
(Formerly M/s.Prem Durai Exports
(P) Ltd.,) No.5, Prem Gardens,
Rajaji Salai, P.N.Road, Tiruppur-641 602. .. Appellant

-vs-

1.The Regional Provident Fund Commissioner,
Office of the Regional Provident-Fund
Commissioner, Bhavishya Nidhi Bhawan,
Dr.Balasundaram Road, Coimbatore 641 018.

2.The Presiding Officer,
Employees Provident Fund Appellate
Tribunal, Scope Minar Core-II,
4th Floor, Lakshmi Nagar,
New Delhi 110 092. .. Respondents

Appeal filed under Clause 15 of the Letters Patent against the order dated 18.10.2019 passed in W.P.No.6643 of 2014 on the file of this Court.

Prayer in W.P.No.6643 of 2014:
Writ Petition filed under Article 226 of the Constitution of India Praying for issuance of a Writ of Ceritorari to call for the records of the first respondent in ATA.NO.987(13)2012 and quash the order dated 14.06.2013.

For Appellant : Mr.S.Gunalan

For Respondents : Ms.R.Meenakshi for R-1

JUDGMENT

(Delivered by Subramonium Prasad, J.)

Challenging the order dated 14.06.2013 of the Provident Fund Appellate Tribunal, New Delhi, exempting the appellant herein from paying damages under Section 14-B of the Employees Provident Fund and Miscellaneous Provisions Act, 1952, the respondent / Regional Provident Fund Commissioner, filed W.P.No.6643 of 2014. The learned Single Judge by the impugned judgment has erroneously come to a conclusion that the authority had reduced the damages from 17% to 5%, which is contrary to the record. The Tribunal had actually exempted the appellant herein from payment of any damages under Section 14-B of the said Act.

2.The contention of the respondent / Regional Provident Fund Commissioner before the learned Single Judge was that when the Statute itself provides for payment of damages under Section 14-B, the Tribunal, which is a creature under the Statute, could not have, without any valid reason, reduced the quantum of damages, which are payable under the Statute. The learned Single Judge accepted the argument of the respondent / Commissioner and set aside the order passed by the Tribunal. Challenging the said order, the appellant employer has approached by filing this instant writ appeal.

3.Section 14-B of the Act provides for power to recover damages, which reads as under:-

> “14B. Power to recover damages - Where an employer makes default in the payment of any contribution to the Fund the Pension Fund or the Insurance Fund or in the transfer of accumulations required to be transferred by him under sub-section 2 of section 15 or subsection 5 of section 17 or in the payment of any charges payable under any other provision of this Act or of any Scheme or Insurance Scheme or under any of the conditions specified under section 17, the Central Provident Fund Commissioner or such other officer as may be authorised by the Central Government, by notification in the Official Gazette, in this behalf may recover from the employer by way of penalty such damages, not exceeding the amount of arrears, as may be specified in the Scheme.
>
> Provided that before levying and recovering such damages, the employer shall be given a reasonable opportunity of being heard.
>
> Provided further that the Central Board may reduce or waive the damages levied under this section in relation to an establishment which is a sick industrial

company and in respect of which a scheme for rehabilitation has been sanctioned by the Board for Industrial and Financial Reconstruction established under section 4 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986), subject to such terms and conditions as may be specified in the Scheme."

The second proviso to Section 14-B clearly stipulates that the Central Board may reduce or waive the damages levied under Section 14-B of the establishment, which is a sick industrial company and in respect of which a scheme for rehabilitation has been sanctioned by the Board of Industrial and Financial Reconstruction (BIFR). The learned Single Judge in paragraph 12 of the impugned judgment has specifically recorded that no document had been produced by the appellant herein to show that they were declared as a sick company under the BIFR.

4.A perusal of the order of the Tribunal also shows that the Tribunal also has not recorded any finding to the effect that the appellant company had been declared as a sick company under the BIFR entitling them waiver of damages under Section 14-B of the Act.

5.In view of the above, we find that the order of the learned Single Judge does not require any interference. The Writ Appeal is, accordingly, dismissed. No costs. Consequently, C.M.P.No.1406 of 2020 is also dismissed.

The learned Single Judge had directed the appellant to pay the damages within a period of 12 weeks from the date of receipt of a copy of the judgment in three equal instalments, the first instalment was to be paid on 01.11.2019. The time granted by the learned Single Judge shall run from today, the first instalment be paid by the first of May, 2020.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

sra

To

1.The Regional Provident Fund Commissioner,
Office of the Regional Provident-Fund
Commissioner, Bhavishya Nidhi Bhawan,
Dr.Balasundaram Road, Coimbatore 641 018.

2.The Presiding Officer,
Employees Provident Fund Appellate Tribunal, Scope Minar Core-II,
4th Floor, Lakshmi Nagar,
New Delhi 110 092.

+1cc to Mr.S.Gunalan , Advocate SR.No. 11556
+1cc to Mrs.R.Meenakshi , Advocate SR.No. 11721

A.SK(04/03/2020)