

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 21.01.2020
CORAM
THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU
W.P.No.26412 of 2015
and
MP No.2 of 2015

The Central Board of Trustees,
EPF Organisation,
Rep. by the Regional Provident Fund Commissioner,
Employees' Provident Fund Organisation,
Sub-Regional Office, Muggapair,
Chennai 600 037.

...Petitioner

Vs.

1.The Presiding Officer,
Employees' Provident Fund Appellate Tribunal,
Scope Minar, Core-II, 4th Floor,
Laxmi Nagar District Centre,
Laxmi Nagar, New Delhi 110 092.

2.M/s.Dignity Innovations,
G-15, I Main Road,
Ambattur Estate,
Chennai 600 032.

...Respondents

Prayer:Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of certiorari to call for the records relating to the proceedings of the first respondent in in Ref. No.459(13) 2014 dated 09.10.2014 and quash the order passed therein.

For Petitioner : Mr.J.Sathya Narayana Prasad
For Respondent : R1-Tribunal
Mr.V.S.Paulraj for R2

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O R D E R

This writ petition is filed challenging the order of Employees Provident Fund Appellate Tribunal, New Delhi dated 09.10.2014, wherein and whereby, the Tribunal restricted the damages under Section 14B of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 at 5% p.a. as compensation

instead of the quantum arrived by the Original Authority as 5% p.a. to 25% p.a.

2. Heard the learned counsel for the petitioner and the learned counsel appearing for the contesting second respondent.

3. It is seen that the second respondent covered under the Employees' Provident Fund and Miscellaneous Provisions Act, 1952, had suffered an order dated 01.05.2014 issued by the Regional Provident Fund Commissioner, Ambattur Region, Chennai, levying damages under Section 14B of the said Act for the period 03/2008 to 03/2013. The said Authority levied the damages at 5% p.a. for delay less than 60 days, 10% p.a. for delay ranging from 2 to 4 days, 15% p.a. for delay ranging from 4 to 6 months and 25% p.a. for more than 6 months. Challenging the said order, the second respondent herein preferred an appeal before the first respondent Appellate Tribunal, which in turn, passed the impugned order thereby restricting the damages at 5%p.a. as compensation.

4. Learned counsel for the petitioner contended that since there was delay in payment of the contribution, the original Authority has levied the damages, which ought not to have been interfered with by the Appellate Tribunal.

5. On the other hand, the learned counsel for the second respondent contended that the original Authority, while imposing the penalty, has not stated or observed regarding the mandatory requirement of showing and establishing mensrea on the part of the second respondent in not paying the contribution in time. In other words, the learned counsel contended that in the absence of any finding rendered by the original authority with regard to mens rea on the part of the second respondent, the levy of damages under Section 14B cannot be sustained. Therefore, he contended that the order passed by the Provident Fund Appellate Tribunal need not be interfered with.

6. Perusal of the order passed by the original Authority levying damages under Section 14B would clearly show that there is no finding whatsoever with regard to mens rea on the part of the second respondent in making the delayed payment. It is settled proposition of law that mere delay in making the payment itself is not sufficient to attract the levy of damages under Section 14B of the said Act, unless mens rea is also found to have been existing with the employer in not paying the contribution in time. Therefore, the Appellate Tribunal pointed out the fact that the Authorities are not bound to act mechanically applying the uppermost limit of the Table and that

due consideration is required to be done to the situation which led to default in remittance of dues by the employer and the reasons for such delay. In fact, the said order passed by the Tribunal has not been questioned by the second respondent and on the other hand, they have accepted the said order. Under such circumstances, I do not find any reason to interfere with such order of the Tribunal, in view of the fact that the original Authority has not given any finding on mens rea on the part of the second respondent in making the delayed payment of contribution. Thus, the writ petition fails and the same is dismissed. No costs. The connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

vri

To

1.The Presiding Officer,
Employees' Provident Fund Appellate Tribunal,
Scope Minar, Core-II, 4th Floor,
Laxmi Nagar District Centre,
Laxmi Nagar, New Delhi 110 092.

2.The Regional Provident Fund Commissioner,
Employees' Provident Fund Organisation,
The Central Board of Trustees,
EPF Organisation,
Sub-Regional Office, Muggapair,
Chennai 600 037.

+1cc to Mr.J.Sathya Narayana Prasad, Advocate sr.4408
+2cc to Mr.V.S.P.Paulraj, Advocate sr.4047

W.P.No.26412 of 2015

nr 10/02/2020

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