

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.28997 of 2017 (O&M)

Reserved on 15.01.2020

Date of Decision: 20.03.2020

Central Board of Trustees

... Petitioner

VS.

M/s Punj Security Services &
Housekeeping Services P.Ltd.

... Respondent

CORAM: HON'BLE MR.JUSTICE GIRISH AGNIHOTRI

Present: Mr. Rajesh Hooda, Advocate for the petitioner

Mr. Nitin Kaushal, Advocate for the respondent

GIRISH AGNIHOTRI, J. (Oral)

(1) This order shall dispose of CWP Nos.28997 & 28998 of 2017 as common issues are involved. For the purpose of order, CWP No.28997 of 2017 is being treated as the lead case.

(2) The petitioner-Central Board of Trustees has filed the present writ petition through Assistant Provident Fund Commissioner *inter alia*, with a prayer to quash the order dated 20.02.2017 (P4) passed by the Employees' Provident Fund Appellate Tribunal, New Delhi (in short, the Tribunal). Vide order dated 20.02.2017, the Tribunal had ordered that the interest of justice would be met by restricting the damages to the extent of 20% of the demanded amount of damages, along with the entire amount of interest assessed by the respondent under Section 7Q of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (in short, the Act). Accordingly, the Tribunal had allowed the appeal filed by M/s Punj Security Services & Housekeeping Services P. Ltd. – the respondent.

(3) For the reasons noticed hereunder, this Court does not find any merit in the submissions made by the petitioner and therefore the writ petition is dismissed.

(4) The facts which briefly need to be noticed are that in the order dated 25.04.2016 (P1), it has been *inter alia*, noticed by the Assistant Provident Fund Commissioner that since the respondent-establishment, allegedly, failed to pay the dues (details as under), in respect of certain category of employees, in time for the period April, 2012 to February, 2015 notice was issued dated 30.04.2014. The details of dues *inter alia*, allegedly are as under:-

- (i) Provident fund contribution under Section 6-A of the Act read with relevant paragraphs of the Employees Provident Fund Scheme, 1952.
 - (ii) Pension fund contribution under Section 6-A of the Act read with relevant paragraphs of the Employees Pension Scheme, 1995.
 - (iii) Administrative charges under relevant paragraph of the EPF Scheme, 1952.
 - (iv) The deposit Linked Insurance Fund Contribution and administrative charges under Section 6-C of the Act read with relevant paragraph of EDLI Scheme, 1976.
- (5) It is also noticed in the order that the establishment was also asked to show cause as to why damages as envisaged under Section 14-B and interest under Section 7-Q of the Act be not recovered from the respondent-establishment.

(6) On behalf of respondent-establishment, Sh. Om Sharma, appeared and submitted that he needed some more time to verify the record and also requested that the delay/reasons for late deposit of dues, if any, was on the part of the principal employer and therefore requested vide letter dated 28.09.2015 to summon the principal employer. The positive case of the respondent-establishment is that no delay is attributable to them because had the establishment received payments from the principal employer in time, they would have immediately deposited the same. Rather it is nobody's case that the respondent-establishment had actually received the amount and having received the amount from the principal employer they had been guilty of delay in deposit of the same with the authorities.

(7) A perusal of the order dated 25.04.2016 would further show that the sections 14-B of the Act and paragraph 32-A of the EPF Scheme have been reproduced. Thereafter, the competent authority has also made reference to the judgment of the Hon'ble Supreme Court in **Regional Provident Fund Commissioner vs. SD College, Hoshiarpur & Ors. 1997 SCC (L&S) 449** wherein, it has been observed that the employer is under a statutory obligation to deposit the amount to the credit of the fund every month. However, except the reference of the two provisions and the Hon'ble Apex Court judgment, there is no finding of fact or discussion as to how the establishment has been found to be guilty of damages to the extent of Rs.20,21,817/- under Section 14-B of the Act read with para 32-A of the EPF Scheme, 1952, para 5 of the EPS, 1995 and para 8A of the EDLI Scheme, 1976. It has further been stated in the order that in addition to the above levied damages, interest under Section 7-Q of the Act is also payable

and the same has been calculated as Rs.13,83,923/-. The total of the above amount comes to Rs.34,05,740/-.

(8) On 20.06.2016 (P2), the respondent-establishment is stated to have filed appeal before the Tribunal. In the grounds *inter alia* it had been primarily pleaded as under:-

“(G-1) It is to be considered as to whether the learned authority has appreciated the evidence produced on record by the appellant in the correct perspective. In the humble submission of the appellant the Ld. Authority has ignored the claim as put forth by the Appellant and passed the impugned order.

(G-2) It is to be considered as to whether the authority below has applied any rationale while imposing the penalty & interest for the alleged delayed period. The authority below, in a type cast & perfunctory manner imposed the penal damages u/s 14-B and interest u/s 7-Q of the Employees Provident Fund & Miscellaneous Provisions Act, 1952 on the appellant.”

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“(G-5) It will be pertinent to mention here that it was the specific case of the appellant before the authorities below that delay, if any, was solely attributable to the fact that there was delay in release of payments by the Principal Employer. This inturn, delayed the deposit of dues by the appellant. The appellant brought this fact to the notice of the authorities vide letter dated 23.07.2015 and appended the details of the same as well but the same were not even considered by the authorities. Copy of the letter dated 23.07.15 and its appendices are annexed as Annexure A3 (colly) for the kind perusal of this Hon’ble Tribunal. However the appellant has been regular in remitting the PF dues over the years. Copies of the challans showing remittances on behalf of the appellant are annexed as Annexure A-4 (colly). The appellant had also written to the Principal Employers regarding the delay in remittances of the

wage bills and the consequent ramifications the appellant had to face at the hands of the EPF authorities. Copies of the letters written to the Principal Employers are annexed as Annexure A-5 (colly). Once no fault can be attributed to the appellant the impugned order deserves to be set aside.

(G-6) It is to be considered as to whether the order passed by the Ld. Authority below is a cryptic one and no reasoning is given for arriving at the conclusion. There is no application of mind by the Ld. Authority below and merely a formal order imposing penalty and interest has been passed.”

(9) In September, 2016, the petitioner herein filed reply to the appeal and had justified its action. The Appellate Authority vide order dated 20.02.2017 has observed that the case of the respondent-establishment was that since the day of coverage of appellant-establishment, it has been complying with all the provisions of the Act sincerely. It was highlighted that the case of the respondent-establishment was that there was delay on the part of the principal employer for which even the salaries of the workers were delayed. It has also been noticed that the respondent-establishment had also taken a technical objection that even the show cause notice allegedly issued by the petitioner herein was belated and it had failed to follow its own departmental accounting guideline of chapter 5.1.2. It has been noticed further that the case of the respondent-establishment was that there was no intentional delay while remitting the statutory remittances but was circumstantial and was beyond the control of the appellant. It was the establishment's case that the competent authority passed the order dated 25.04.2016 in mechanical form without verifying the facts besides without application of mind. Para 4 of the order passed by the Appellate Authority is reproduced hereunder:-

*“Ld. Counsel for appellant further contended that there was no intentional delay while remitting statutory remittances but was circumstantial and was beyond the control of appellant. Respondent passed impugned order mechanically without verifying of facts besides application of mind. The submission made on behalf of appellant was not considered. Further all the circumstances duly reveals that appellant was having no mens rea to contravene the statutory provisions or had any intention to delay in the disposition of EPF dues. In support of his case, Ld. Counsel for appellant cited case laws titled as **Bhubneshwar City Distribution Division vs. UOI 1998 II LLJ 1044, Shanti Garments vs. Regional PF Commissioner 2003 I CLR 228, Assistant Provident Fund Commissioner Vs. Ashram Madhyamik 2007 LLR 1249, Regional Provident Fund Commissioner vs. Jamiyyatul Falah 2010 III LLJ 652, Employees State Insurance Corporation vs. HMT Ltd. 2008 I LLJ 814 and M/s Prestolite of India Ltd. vs. The Regional Director and other AIR 1994 Supreme Court 521.**”*

(10) The Appellate Authority has accepted the plea of the establishment *inter alia* observing that the penalty would not also be imposed merely because it is lawful to do so. Whether the penalty should be imposed for failure to perform the statutory obligation is a matter of discretion of the authority to be exercised judiciously and on consideration of all the relevant circumstances. In para 8 of the order, the Appellate Authority has further observed as under:-

“...All the supporting documents of the appellant establishment, duly reveals that appellant establishment was having actual financial crisis on account of not receiving wages on time during the period of assessment which restrained the appellant establishment to remit the statutory dues on time.”

(11) The respondent-establishment has filed written synopsis on 15.01.2020. The same is taken on record. The stand of the respondent-establishment in the written synopsis *inter alia* is to the effect that the delay, if any, was solely attributable to the fact that there was delay in the release of payments by the Principal Employer i.e. Government department. It was urged that the respondent has already made the required payments as per the Act of 1952 and already deposited the entire amount as assessed by the appellate authority. As per the provisions of the Act of 1952, the quantum of damages should be compensatory in nature. The appellate authority has rightly exercised its discretion in reducing the amount of damages keeping in view the reasons behind the delay as well as the timely payments earlier made by the respondent. The Hon'ble Madras High Court in the case of **Shanti Garments P.Ltd. vs. Regional Provident Fund Commissioner (2003) 1 Lab. LJ 467 (Mad)** has categorically held that when there is no willful violation, the quantum of damages should be compensatory in nature and not penal in nature. It is further submitted that the Hon'ble High Court of Kerala in the case of **Sreekamakshy Agency (P) Ltd. vs. Employees Provident Fund and Ors.** had reduced the assessed damages to 10% as it was observed that there was no willful default on the part of the petitioner.

(12) This Court therefore agrees with the reasoning given by the Appellate Authority.

(13) The present writ petition is devoid of any merit and is accordingly dismissed.

CM-17848-CWP-2019 IN CWP-28997-2017
CM-17858-CWP-2019 IN CWP-28998-2017

These applications have been filed by the respondent inter alia praying for interim directions to allow the respondent-establishment to operate its bank accounts

This Court on 05.12.2019 and 13.12.2019 had permitted the respondent-establishment to operate its accounts.

In view of the fact that the writ petitions have been dismissed, the interim directions allowing the respondent-establishment to operate its banks are made absolute.

CMs stand disposed of.

CM-17851-CWP-2019 IN CWP-28997-2017
CM-17859-CWP-2019 IN CWP-28998-2017

Short replies filed by the respondent in both the cases are taken on record.

Registry to tag the said documents at an appropriate place and paginate the paper books accordingly.

CM stands disposed of.

20.03.2020
Vvishal

(Girish Agnihotri)
Judge

1. Whether speaking/reasoned?
2. Whether reportable?

Yes
Yes