

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.17790 of 2020 (O&M)

Date of Decision: 16.03.2021

Central Board of Trustee

.....Petitioner

Versus

**The Central Government Industrial Tribunal-cum-Labour Court-II and
another**

..... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Rajiv Sharma, Advocate
for the petitioner.

LISA GILL, J(Oral).

This writ petition has been filed by the Central Board of Trustee, through Assistant Provident Fund Commissioner, Regional Office, seeking quashing of order dated 22.10.2019, Annexure P-4, passed by the Central Government Industrial Tribunal-cum-Labour Court-II, Delhi in appeal No. 41)2(16) 2016.

Brief facts necessary for adjudication of this matter are that respondent no.2, a private limited company was engaged in the business of providing finance for two wheelers, personal loan and consumer durable products. Being a multinational company many of its employees working in India were of foreign origin and international workers in terms of the definition of EPF and MP Act 1952 (for short 'Act.'). The company was depositing the PF dues of these international workers in respect of their basic wages. Appellant company had a scheme for payment of special allowance over and above the basic wages, which applied to all the employees of the company including the international workers. Company was making regular

contribution towards wages as defined under the Act.

Pursuant to amendment in the EPF Scheme, an agreement on Social Security was signed between the Republic of India and Czech Republic on 09.06.2010. Subsequently, on internal evaluation, the appellant company formed a policy to benefit its international workers by extending the benefit of EPF to the special allowance paid to them. In February 2015, the establishment while acting upon the said policy paid additional contributions to the provident fund in respect of the special allowance paid to the international workers in addition to the regular provident fund contribution on the wage. Remittance in this respect was made for the period between October 2011 to January 2015.

Notice was thereafter served upon the respondent company in February 2015 to show cause as to why damage should not be levied for the delayed remittance of dues.

Respondent company took a stand that department vide its circular dated 25.05.2012 had clarified that in respect of international workers, the component of salary to be included for the purpose of contribution shall remain the same as in the case of Indian domestic employees and that remittance having been made in respect of special allowance on its own, no damage should be imposed. The company also pleaded that delayed remittance was not intentional nor with any intention of wrongful gain on the part of the employer. Furthermore, it was pleaded that special allowance had not formed part of the wages for the purpose of PF contribution and there was no clarity in this respect. Moreover, the Company, it was stated had never defaulted in deposit of the statutory due *qua* the wages, thus no interest or damages should be levied. Regional Provident Fund Commissioner (for short 'RPFC') vide order dated

18.02.2016, however, observed that there was delay in the remittance of amount, therefore, damages to the tune of Rs.1,02,67,646/- along with interest of Rs.50,43,972/- was levied.

Respondent company filed an appeal against the said order, which was allowed by Central Government Industrial Tribunal-cum-Labour Court-II, Delhi, vide impugned order dated 22.10.2019, Annexure P-4, while specifically observing that there was admittedly no clarity in the orders issued by the PF Organization in respect to applicability of the provisions of the PF Act to the international workers. Therefore, there being no mensrea or actusreus on the part of the company for delayed remittance, it was held that the respondent company was not liable for payment of damage as assessed by APFC.

Aggrieved therefrom, this writ petition has been filed.

Learned counsel for the petitioner has vehemently argued that mensrea or actusreus is irrelevant in the given facts and circumstances of the case. Once there is delay in remittance of the amount, the company in question automatically becomes liable to pay the damages. It is thus prayed that this writ petition be allowed.

Having heard learned counsel for the petitioner at length and going through the file, I am unable to agree with the contentions raised by him.

It is a matter of record and as has been observed by the learned Industrial Tribunal-cum-Labour Court-II, that document placed on record thereof reveal that the establishment before the receipt of notice under Section 14-B of the Act had voluntarily deposited the PF dues of expat employees and admittedly there was no clarity in the orders issued by the PF Organization in respect to applicability of the provisions of the PF Act in

such situations.

At this stage, it is relevant to note that the Hon'ble Supreme Court in **ESI Corporation Vs. HMT Limited report in (2008) 3 SCC 35** has held that the statute does not mandate that in every case a penalty has to be levied and it is left to the authority to decide whether penalty is to be levied and if so what should be the quantum of the penalty.

The Hon'ble Supreme Court in **APFC Vs. Management of RSL Textile India Private Limited, 2017, LLR 337**, has held that before imposing damage on the establishment the adjudicating authority should necessarily looked into the mensrea or actusreus of the establishment for the delayed deposit. Therefore, to say that the RPFC, has no discretion in regard to imposition of damage and quantum thereof or to say that the minute there is a delay in the deposit, damages have necessarily to be imposed irrespective of mensrea or actusreus, is not correct. Judgement of the Hon'ble Supreme Court in **Organo Chemical Industries Vs. Union of India, AIR 1979 (SC) 1803**, relied upon by learned counsel for the petitioner, is not applicable to the facts and circumstances of the case as there is no dispute regarding power conferred upon the authority under Section 14-B of the Act to impose damages. In-fact, it has been specifically held in the said judgement that power under Section 14-B of the Act has to be exercised by the RPFC after taking into consideration various factors and the said power is not an unguided or uncontrolled discretion. Decision dated 03.11.2017 in **CWP No. 9048 of 2011, in Regional Provident Fund Commissioner vs. M/s Nijjar Agro Food Limited and another** and decision dated 09.05.2018, in **CWP No. 1497 of 2014, titled as Regional Provident Fund Commissioner Vs. The Employees Provident Fund Appellate Tribunal and another**, are not relevant in the given facts and

circumstances of the present case. Hon'ble Supreme Court in **Assistant Provident Fund Commissioner, EPFO and another Vs. The Management of RSL Textiles India Pvt. Ltd. Through its Director, 2017(3) SCC 110**, while referring to earlier decision in **McLeod Russel India Limited Vs. Regional Provident Fund Commissioner, Jalpaiguri and others, (2-14) 15 SCC 263** has held that presence or absence of mensrea/ actusreus would be a determinative factor in imposing damages under Section 14-B of the Act, as also quantum thereof.

No other argument has been raised.

Accordingly, I do not find any illegality, irregularity or perversity in the impugned order dated 22.10.2019, Annexure P-4, passed by the Central Government Industrial Tribunal-cum-Labour Court-II, Delhi. Respondent company has rightly been held not liable to pay the damages. Needless to say it is bound to deposit interest under Section 7 of the Employees Provident Funds and Miscellaneous Provisions Act, 1952.

No other arguments had been addressed.

Writ petition is accordingly dismissed with no order as to cost.

16.03.2021

s.khan

[LISA GILL]
Judge

Whether speaking/reasoned : Yes/No.
Whether reportable : Yes/No.