BEFORE THE MADURAI BENGH OF MADRAS HIGH COURT

Orders reserved on 08.08.2022	Orders pronounced on 24.08.2022

CORAM

THE HONOURABLE MR. JUSTICE G.CHANDRASEKHARAN

W.P(MD)No.10374 of 2012
and
M.P(MD)Nos.1 of 2012 & 1 of 2013

Assistant Provident Fund Commissioner,
Employees Provident Fund Organization,
Sub-Regional Office,
NGO 'B' Colony,
Tirunelveli – 627 007. ... Petitioner

Vs

1.The Employees' Provident Funds Appellate Tribunal,
New Delhi.

2.The South India Mines and Minerals Industries Limited,
No.315, Narayana Nagar,
Sankarnagar P.O,
Thalaiyuthu R.S.,
Tirunelveli – 627 357
Represented by its Executive Director. ... Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records of the impugned order passed by the first respondent, dated 14.06.2011 in ATA.No.362 (13) 2009 and quash the same and direct the second respondent to pay the sum of Rs.6,16,708/- as per the order No.TN/TNY/846/14B/100121/CD1/2009, dated 09.04.2009.

For Petitioner : Mr.K.Murali Sankar

For R – 2 : Mr.Aravind Subramanian

ORDER

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned order passed by the first respondent, dated 14.06.2011 in ATA.No.362 (13) 2009 and direct the second respondent to pay the sum of Rs.6,16,708/- as per the order No.TN/TNY/846/14B/100121/CD1/2009, dated 09.04.2009.

2. Learned counsel appearing for the petitioner submitted that the second respondent is an establishment covered under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as 'the Act, 1952'). It had failed to remit within the time limit (i) Provident Fund contribution in Account No.1 (ii) Family pension Fund / Pension Fund contribution in Account No. 10 (iii) Administrative charges in Account No.2 (iv) Employees deposit linked Insurance contribution and administrative charges thereon in Account Nos.21 and 22 for the period from July 1991 to September 1991, March 2003 to June 2003 and September 2003 to November 2004. Damages was levied under Section 14B of the Act, 1952, by an order dated 13.09.2006 bearing

No.TN/TNY/846/14B/1036/PDC(1)/2006, amounting to Rs. 6,16,708/- and the interest payable under Section 7Q was also quantified by an order No.TN/TNY/846/7Q/1036/PDC(1)/2006, dated 13.09.2006. These orders were challenged before this Court in W.P(MD)Nos.8903 and 8904 of 2006. This Court, by an order dated 18.12.2008, set aside the orders and remitted the matters for fresh disposal and further directed that the petitioner shall afford sufficient opportunity to the second respondent and pass a detailed speaking order. The said exercise shall be completed by the petitioner within a period of three months. However, the second respondent has not co-operated for the enquiry and therefore, the matter was decided ex-parte to comply with the direction of the High Court to dispose of the case within a period of three months. The second respondent preferred an appeal in ATA.No.362(13)2002 before the first respondent. The Appellate Authority remanded the matter to the authority to assess the liability at the rate of 37% per annum inclusive of interest. This remand order is under challenge.

3. Learned counsel appearing for the petitioner further submitted that the Central PF Commissioner's circular is dated 29.05.1990, whereas the amendment in G.S.R.No.521, dated 16.08.1991 notifying the revised rates of damages came into effect

from 01.09.1991. The said notification is subsequent to the circular cited above and therefore, it has no effect and has become defunct. The direction to calculate damages at the rate of 37% per annum inclusive of interest is against the provisions of Section 14B read with para 32A of the Employees' Provident Funds Scheme, 1952. The new rates of damages vide notification in G.S.R.689(E), dated 26.09.2008 came into effect from 28.09.2008 only and it will not apply to the period for which damages levied vide impugned order, dated 09.04.2009. Therefore, this Writ Petition is filed.

4. Per contra, learned counsel appearing for the second respondent submitted that orders in W.P(MD)Nos.8903 and 8904 of 2006 was passed on 18.12.2008, when the amendment to the Provident Fund Act was in force. The amendment came into effect from 28.09.2008 and as per this amendment, the rate of damages was reduced from 37% to 25%. This Court directed to enforce this amendment. However, the petitioner assessed the damages at the old rates, which is not permissible. The petitioner had not taken into consideration the loss suffered by the second respondent during the years under the assessment. The petitioner paid 25% for damages and also the entire interest. This Writ Petition has no merits and the same is liable to be dismissed.

5. In support of his submissions, learned counsel appearing for the second respondent relied on the Judgment of the Division Bench of this Court in ***W.A.No.1560 of 2016, dated 13.11.2017 [Assistant Provident Fund Commissioner, Employees PF Organization Vs. Renaissance RTW Asia (P) Limited and others]*** for the the proposition that only the revised guidelines have to be followed for the past period also and the relevant portion of the Judgment reads as follows:-

> *"11. A Division Bench of the Bombay High Court in the case of Union of India and Others Vs. Super Processors reported in (1993) II LLJ 203 (Bombay), has held as follows:-*
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> > *"When an occasion arises for the Regional Provident Fund Commissioner to exercise his discretion after October 1982, he will have to exercise the discretion in accordance with the guidelines which are in force at that time. It may be that the default had taken place prior to October 1982. At the time when the damages are determined, if the revised guidelines are in force, then those guidelines must be applied. Such an occasion may arise either because a case is*

pending or it may arise if the matter is remanded to the officer for fresh determination."

12. For non-payment of the provident fund contribution for the period from 2006 to 2008, an amount of penalty has been imposed by way of damages. The observations made by the Bombay High Court in the decision reported in (1993) II LLJ 203 (Bombay) in the case of Union of India and Others Vs. Super Processor (cited supra) are squarely applicable to the facts of the present case. In view of the said decision of the Bombay High Court, it is necessary that revised guidelines have to be followed for the past period also."

6. Considered the rival submissions and perused the records.

7. As stated already, the second respondent filed Writ Petitions in W.P(MD)Nos.8903 and 8904 of 2006 challenging the levy of damages and interest by the proceedings of the petitioner in order

No.TN/TNY/846/7Q/1306/PDC(1)/2006, dated 13.09.2006 and order No.TN/TNY/846/14B/1036/PDC(1)/2006, dated 13.09.2006 respectively. When the matter was heard on 18.12.2008, it was argued on behalf of the petitioner therein that the calculation of quantum of damages and the interest had not been made in accordance with the Circular issued by the Central Board of Trustees. Learned counsel appearing for the respondents therein/petitioner herein, submitted that Circular, dated 29.05.1990 has not been followed and the Act itself has been amended with effect from 26.09.2008. Recording this submission, this Court remitted the matter back to the first respondent therein for fresh disposal strictly on merits and in accordance with law. Thereafter, the order, dated 09.04.2009 was passed by the petitioner. Through this order, the second respondent was directed to pay a sum of Rs. 6,16,708/-, which was the same amount in the earlier order.

8. In Appeal in ATA.No.362(13)/2009, the Appellate Authority found that the circular of the department provides different rate of damages for different period of default and no interest can be levied when damage was levied at the rate of 37% as laid down in the case of **M/s.System and Stumping** reported in ***2008 LLR at***

page 485 and ordered to remand the matter to the authority to assess the liability at the rate of 37% per annum inclusive of interest. This order was passed on 14.06.2011. By then, there was an amendment in para 32A of the Employees' Provident Funds Scheme, 1952. As per this amendment, the Central Provident Fund Commissioner or Provident Fund Officer, who has been authorized by the Central Government may require from the employer by way of penalty, damages at the rate given in the table below:-

T A B L E

Sl.No. (1)	Period of default (2)	Rate of damages (percentage of arrears per annum) (3)
(a)	Less than 2 months	Five
(b)	Two months and above but less than four months	Ten
(c)	Four months and above but less than six months	Fifteen
(d)	Six months and above	Twenty Five

It is seen from this table, for a default period in excess of six months, the rate of damages is 25% of arrears per annum.

9. Though the period of default ranges from 1991 and then, to 2003 and 2004, as per the Judgment referred above in ***W.A.No. 1560 of 2016, dated 13.11.2017 [Assistant Provident Fund Commissioner, Employees PF Organization Vs. Renaissance RTW Asia (P) Limited and others]***, only the revised guidelines have to be followed for the past period also.

10. Therefore, this Court finds that there is no illegality in the order passed by the Appellate Authority in remanding the matter to the petitioner for fresh consideration to assess the liability at the rate of 37% per annum inclusive of interest. However, this Court further directs that the amendment in para 32A of the Employees' Provident Funds Scheme, 1952 with regard to the rate of damages, as stated above, has to be kept in mind while assessing the damages by the authority.

11. In the result,

"(i) This Court finds that there is no illegality in the order passed by the Appellate Authority in remanding the matter to the petitioner for fresh consideration to assess the liability at the rate of 37% per annum inclusive of interest. However, this Court further directs that the amendment in para 32A of the Employees' Provident Funds Scheme, 1952 with regard to the rate of damages, as stated above, has to be kept in mind while assessing the damages by the authority.

(ii) With the above observation and direction, this Writ Petition is disposed of.

There shall be no order as to costs. Consequently connected Miscellaneous Petitions are closed.

24.08.2022

Internet :Yes
Index :Yes / No
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Note:-

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

The Employees' Provident Funds Appellate Tribunal,
New Delhi.

G.CHANDRASEKHARAN, J.

ps

Order made in
W.P(MD)No.10374 of 2012

24.08.2022