

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Writ Petition No.1928/2018

(M/s Om Polytechnic V Assistant Provident Fund Commissioner , Nagpur)

Writ Petition No.459/2018

(M/s Nav Disha Education Society V Assistant Provident Fund Commissioner , Nagpur)

Writ Petition No.311/2018

(M/s Om School of Excellence V Assistant Provident Fund Commissioner , Nagpur)

Writ Petition No.460/2018

(M/s Om Arunodaya Bahu-Uddeshiya Khadi Gramo Udhog Vikas Sanstha V Assistant
Provident Fund Commissioner , Nagpur)

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Mr. S.R. Bhongade, Adv for petitioner.

Mr. A.R. Prasade, Adv for respondent.

CORAM : AVINASH G GHAROTE, J.

DATE : 13-06-2023

All these petitions challenge the orders passed by the Assessing Authority under Section 14(B) of the Employees Provident Fund Act (pg 24) and also notice/order dated 02-02-2017 passed by the Assistant Provident Fund Commissioner (pg 27). Since all these petitions raise a common ground, the facts in WP 1928/18 only are referred to.

2. The facts leading to the present matters indicate that since the petitioner establishment had failed to pay in time the PF contribution for the period as enumerated in the order, a notice was issued to the petitioner asking him to show cause as to why the damages

as envisaged u/s 14 (B) of the EPF Act and interest u/s 7-Q of the said Act ought not be levied. As none appeared, the learned Assessing Authority by an order passed under Section 14(B) of the EPF Act has assessed the damages for the delay occasioned as indicated above and directed the petitioner to pay the same. The subsequent notice/order u/s 7-Q requires the interest to be paid upon the same. (pg 27)

3. Mr. Bhongade, learned Counsel for the petitioner submits that since the proceedings were *ex parte* a fresh notice ought to have been sent to the petitioner to afford an opportunity. It is further contended that there is no compliance of the provision of Para 32A of the EPF Scheme regarding the assessment of the damages and therefore the impugned orders, according to him, are liable to be quashed and set aside.

4. Mr. Prasad, learned Counsel for the respondent supports the impugned order.

5. Since it is not disputed that the notices as contemplated were duly served upon the petitioner establishment and upon failure to appear they had been set *ex parte*, in my considered opinion that there was no necessity for the Assessing Authority to issue a fresh notice to the petitioner on this count. That apart the orders

indicate that even after service of notice the matter was adjourned for several dates in spite of which none appeared on behalf of the petitioner. The plea in this regard is rejected.

6. Insofar as the plea that there is no assessment of the damages, in my considered opinion, the number of days of delay was spelt out in the notice to which was also annexed a statement of calculation, which position is not disputed. Insofar as the rate of damages are concerned, that is fixed as per para 32A of the EPF Scheme 1952 and therefore the amount payable on account of the delay was simply a matter of calculation which has accordingly been done. Mr. Bhongade, learned Counsel for the petitioner has not been able to point out any error in the calculations in arriving at the damages assessed.

7. I, therefore, do not see any reason to interfere in the impugned orders. Petitions are dismissed. No costs.

JUDGE