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W.A.No.2750 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED:16.02.2023**

CORAM:

**THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN**  
**AND**  
**THE HONOURABLE MRS.JUSTICE R.KALAIMATHI**

**W.A.No.2750 of 2022 and**  
**C.M.P.No.22340 of 2022**

Tamil Nadu Khadi and Village Industries Board,  
Rep. by its Chief Executive Officer,  
Kuralagam,  
Chennai 600 108.

.. Appellant

-VS-

The Assistant Provident Fund Commissioner,  
Employees' Provident Fund Organisation,  
Rajaji Salai,  
Tambaram,  
Chennai-600045.

.. Respondent

Writ Appeal filed under Clause 15 of Letters Patent Act, to set aside the order  
dated 06.11.2019 passed by this Court in W.P.No.3301/2015.

|                |                                                                                              |
|----------------|----------------------------------------------------------------------------------------------|
| For Appellant  | : Mr.R.Neelakandan<br>Additional Advocate General<br>Assisted by<br>Mr.S.Saravana Kumar Bose |
| For Respondent | : Mr.K.Ramu<br>Standing Counsel                                                              |
|                | ***                                                                                          |



W.A.No.2133 of 2015

## **J U D G M E N T**

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This Writ Appeal has been preferred by the Appellant challenging the order of the learned Single Judge in W.P.No.3301 of 2015 dated 06.11.2019, in dismissing the Writ Petition.

2. According to the Appellant/Writ Petitioner, the Employer's contribution has already been paid by the Board in respect of 68 workers who are concerned in the Writ Appeal. The Appellant-Board has given permanent status to the aforesaid 68 workers, who all are working in the Soap Units under the time scale of pay as per the orders of the High Court in W.A.Nos.662 to 664 of 2001 dated 23.11.2009. It is further stated that the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 applies to all permanent employees of Soap Units. The Respondent issued an order on 30.08.2013, directing the Appellant Board to pay a sum of Rs.18,30,968/- for the period from April 1983 to March 2010 and the said order was complied with. Thereafter, the Respondent quantified the interest as well as the damages to be paid and accordingly directed the Appellant to pay a sum of Rs.37,30,960/- as per Sections 14-B and 7-Q of the Act, for the belated payment of EPF amount vide order dated 19.12.2014. Challenging the said order, the Appellant filed a Writ Petition in W.P.No.3301 of 2015.



W.A.No.21 of 2019

3. The learned Single Judge, vide order dated 06.11.2019, dismissed the Writ

Petition in W.P.No.3301 of 2015, by holding as under:

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*"5. That apart, the order passed under Sections 14-B and 7-Q of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 is an appealable order and an appeal is provided under Section 7-I of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. Thus, the writ petitioner-Board ought to have preferred an appeal before the Appellate Tribunal constituted under Section 7-I of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.*

*6. Admittedly, no such appeal has been filed by the writ petitioner-Board. Those disputed facts and issues raised with reference to the calculation or otherwise, cannot be adjudicated in a writ proceeding. All such disputed facts are to be adjudicated with reference to the original documents as well as the evidences available and such an exercise cannot be done by the High Court under Article 226 of the Constitution of India.*

*7. As far as the appeal is concerned, the writ petitioner-Board had not filed any appeal within time limit prescribed under the Employees' Provident Funds and Miscellaneous Act, 1952 and therefore, they themselves have chosen not to prefer any appeal and as such a right cannot be now restored by the High Court in view of the elaborate judgment delivered by this Court in W.P.No.28363 of 2013 dated 06.11.2019, wherein this Court has held that the uncondonable delay cannot be condoned by the High Court, enabling the aggrieved person to prefer an appeal under Section 7-I of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and under these circumstances, this Court cannot give any liberty for the purpose of filing an appeal under Section 7-I of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. Accordingly, the writ petitioner-Board is bound to pay the amounts as calculated by the respondent-organisation in the impugned proceedings and accordingly, settle the said amount as expeditiously as possible."*



W.A.No.2/2022 of 2022

4. The Employees Provident Fund authorities have quantified the amount of contribution and after having paid the amount, there has been determination with regard to payment of interest under Section 7-Q of the Act. Though amount has been paid within the time frame, damages have been levied under Section 14 -B of the Act. For the sake of convenience, Sections 7-A, 7-Q and 14-B of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 are extracted hereunder:

**"7A. Determination of moneys due from employers.—2[(1)**  
*The Central Provident Fund Commissioner, any Additional Central Provident Fund Commissioner, any Deputy Provident Fund Commissioner, any Regional Provident Fund Commissioner, or any Assistant Provident Fund Commissioner may, by order,—*

*(a) in a case where a dispute arises regarding the applicability of this Act to an establishment, decide such dispute; and*

*(b) determine the amount due from any employer under any provision of this Act, the Scheme or the 3[Pension] Scheme or the Insurance Scheme, as the case may be,*

*and for any of the aforesaid purposes may conduct such inquiry as he may deem necessary];*

*(2) The officer conducting the inquiry under sub-section (1) shall, for the purposes of such inquiry, have the same powers as are vested in a court under the Code of Civil Procedure, 1908 (5 of 1908), for trying a suit in respect of the following matters, namely:*

*(a) enforcing the attendance of any person or examining him on*



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oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavit;

(d) issuing commissions for the examination of witnesses;

and any such inquiry shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196, of the Indian Penal Code (45 of 1860).

(3) No order 4\*\*\* shall be made under sub-section (1), unless [the employer concerned] is given a reasonable opportunity of representing his case.

(3A) Where the employer, employee or any other person required to attend the inquiry under sub-section (1) fails to attend such inquiry without assigning any valid reason or fails to produce any document or to file any report or return when called upon to do so, the officer conducting the inquiry may decide the applicability of the Act or determine the amount due from any employer, as the case may be, on the basis of the evidence adduced during such inquiry and other documents available on record.]

(4) Where an order under sub-section (1) is passed against an employer ex parte, he may, within three months from the date of communication of such order, apply to the officer for setting aside such order and if he satisfies the officer that the show cause notice was not duly served or that he was prevented by any sufficient cause from appearing when the inquiry was held, the officer shall make an order setting aside his earlier order and shall appoint a date for proceeding with the inquiry:

Provided that no such order shall be set aside merely on the ground that there has been an irregularity in the service of the show cause notice if the officer is satisfied that the employer had notice of the date of hearing and had sufficient time to appear before the officer.

*Explanation.*—Where an appeal has been preferred under this Act



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against an order passed *ex parte* and such appeal has been disposed of otherwise than on the ground that the appellant has withdrawn the appeal, no application shall lie under this sub-section for setting aside the *ex parte* order.

(5) No order passed under this section shall be set aside on any application under sub-section (4) unless notice thereof has been served on the opposite party.]"

**7Q. Interest payable by the employer.**—The employer shall be liable to pay simple interest at the rate of twelve per cent. per annum or at such higher rate as may be specified in the Scheme on any amount due from him under this Act from the date on which the amount has become so due till the date of its actual payment: Provided that higher rate of interest specified in the Scheme shall not exceed the lending rate of interest charged by any scheduled bank.]

**14B. Power to recover damages.**—Where an employer makes default in the payment of any contribution to the Fund 3[, the 2[Pension] Fund or the Insurance Fund] or in the transfer of accumulations required to be transferred by him under sub-section (2) of section 15 [or sub-section (5) of section 17] or in the payment of any charges payable under any other provision of this Act or of [any Scheme or Insurance Scheme] or under any of the conditions specified under section 17, [the Central Provident Fund Commissioner or such other officer as may be authorised by the Central Government, by notification in the Official Gazette, in this behalf] may recover [from the employer by way of penalty such damages, not exceeding the amount of arrears, as may be specified in the Scheme:]

[Provided that before levying and recovering such damages, the employer shall be given a reasonable opportunity of being heard]:  
[Provided further that the Central Board may reduce or waive the



W.A.No.21 of 2015

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*damages levied under this section in relation to an establishment which is a sick industrial company and in respect of which a scheme for rehabilitation has been sanctioned by the Board for Industrial and Financial Reconstruction established under section 4 of the Sick Industrial Companies (Special Provisions) Act, 1985, subject to such terms and conditions as may be specified in the Scheme.]"*

5. Though time for preferring an Appeal before the Appellate Tribunal appears to have expired, the order passed by the authority is dated 19.12.2014 and the Board has preferred the Writ Petition in January 2015 i.e. within a period of 30 days from the date of passing of the order and therefore, the employer has got time to prefer an Appeal before the Tribunal under Section 7-I of the Act i.e. within a period of 60 days from the date of receipt of a copy of the order dated 19.12.2014 and there is another 60 days time for the Tribunal to condone the delay in filing the Appeal filed before it.

6. In the light of the Judgment of the Apex Court in the case of ***P.Sarathy Vs. State Bank Of India*** reported in ***2000 (5) SCC 355*** and as per The Limitation Act, 1963, when the matter is pending before this Court, that period has got to be excluded for the purpose of computing limitation period and as on date, interest amount having already been paid, which has been admitted by Mr.Ramu, learned Standing Counsel for Employees Provident Fund Organisation, we permit the Board to prefer an Appeal



W.A.No.2130 of 2022

before the Tribunal within a period of 120 (60+60) days, excluding the period during which the proceedings were pending before this Court in Writ Petition and Writ Appeal.

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7. With the above directions, while setting aside the order dated 06.11.2019 passed in the Writ Petition in W.P.No.3301 of 2015, this Writ Appeal stands disposed of in the above terms. No costs. Consequently, connected Miscellaneous Petition is closed.

[S.V.N., J.] [R.K.M., J]  
16.02.2023

Index: Yes / No  
Internet: Yes / No  
arr



W.A.No.2100 of 2011

To  
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1. The Chairman,  
Pondichery Housing Board,  
Anna Salai, Nellithope,  
Pondichery-5.
2. Executive Engineer,  
Pondicherry Housing Board,  
Anna Salai, Nellithope,  
Pondichery-5.
3. The Presiding Officer,  
Labour Court,  
Pondicherry.



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W.A.No.2750 of 2022

**S. VAIDYANATHAN,J.,  
and  
R.KALAIMATHI.,J**

arr

**W.A.No.2750 of 2022**

**16.02.2023**