IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.07.2023

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No. 20967 of 2014
and M.P.No.3 of 2014

Guru Nanak College,
(A unit of Guru Nanak Educational Society (Regd.)
Having its office at
Velachery Road,Velachery,
Chennai – 600 042.
Rep. by its General Secretary &
Correspondent Sardar Manjit Singh Nayar ... Petitioner

Vs

1. Employees Provident Fund Appellate Tribunal,
Appellate Tribunal,
Having its office at
4th Floor, Core 2, Scope Minar,
Laxmi Nagar, Delhi – 110 092.

2. The Assistant Provident Fund Commissioner,
Regional Provident Fund Office,
No.3, Rajaji Salai, Tambaram,
Chennai – 600 045.

3. The Provident Fund Commissioner,
Regional Provident Fund Office,
No.3, Rajaji Salai, Tambaram,
Chennai – 600 045. ... Respondents

Prayer:- Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records concerned with the impugned order dated 03.01.2014 in A.T.A.No.380 (13) of 2013 passed by the 1st respondent and the order dated 21.05.2013 in TB/RO/TAM/62438/Gr.54/PDC/2013 passed by the 2nd respondent and quash the same.

For Petitioner	:	Mr.H.Karthik Seshadri
For R1	:	No appearance
For R2 & R3	:	Mrs.Revathi Manivannan

ORDER

This Writ Petition has been filed challenging the order passed by the first respondent dated 03.01.2014, thereby dismissed the appeal as against the order passed under Section 14B of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (herein after called as "the Act").

2. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents 1 and 3 and perused the materials available on record.

3. The petitioner is an educational institution. It was started in the year 1980-1981. It is also collected donation from the general public and is functioning with the grants in aid from the Government. It was unaware of the fact that, it is covered under the Act. After 2010, the petitioner decided to provide savings benefit to its employees and it has applied voluntarily for the Provident Fund coverage under the Act. Thereafter, the second respondent by an order dated 04.01.2013, under Section 7A of the Act, held that the petitioner is covered by the provisions of the Act and it is liable to make payments under the Act of a sum of Rs.44,36,646/- for the period from 17.06.1985 to 31.03.2010. Thereafter, the petitioner remitted a sum of Rs.4,73,083/- and ordered to make payment to the tune of Rs.39,63,563/-. Aggrieved by the same, the petitioner also preferred review before the second respondent and the same was also dismissed by an order dated 06.03.2013. Against the order dated 06.03.2013, the petitioner preferred an appeal before the first respondent.

4. Pending appeal, the petitioner was issued with a show cause notice dated 06.05.2013 for assessment of interest and damages as

contemplated under Section 7Q and 14B of the Act, accordingly, a sum of Rs.22,42,691/- by way of interest and a sum of Rs.33,96,220 by way of damages for the period from period from March 2005 to March 2010, further, interest of Rs.11,86,722/- and damages of Rs.9,05,014 for the period from June 1985 to February 2005 was levied. On receipt of the same, the petitioner also appeared and submitted their explanation. By an order dated 21.05.2013, the second respondent assessed the damages to the tune of Rs.43,01,234. Aggrieved by the said order passed under Section 14B of the Act, the petitioner had preferred an appeal before the first respondent and the same was also dismissed by an order dated 03.01.2014. Aggrieved by the same, the present writ petition has been filed by the petitioner.

5. The learned counsel for the petitioner submitted that the petitioner was not given sufficient opportunity by the second respondent before passing the order under Section 14B of the Act. There was absolutely no wilful default on the part of the petitioner and the petitioner was not given an opportunity to prove that the contention of no wilful default for non-remitting the EPF amount. There was no *mens rea* on the

part of the petitioner to claim damages as contemplated under Section 14B of the Act and as such, the order impugned cannot be sustained.

6. However, the petitioner establishment was exempted under Section 16 of the Act. In fact, there was no notice by the authorities concerned for the period from 1985 to 2010 for non-payment of EPF. However, the petitioner itself approached the authorities concerned voluntarily in the year 2010. Therefore, the petitioner is not liable to pay any damages and levy of damages is arbitrary. While appeal, was very much pending as against the order of arrears of PF, the damages cannot be imposed. Further, as per Section 14B of the Act, the damages shall not exceed the amount of arrears as may be specified in the Scheme. The respondents levied damages at Rs. 43,01,234/-, whereas, the arrears of EPF levied itself was Rs.39,63,563/-. Therefore, it is clear that from the employer that by way of penalty/damages, such amount had exceeded the amount of arrears.

7. In support of his contention he relied upon the Judgment reported in ***(1979) 4 SCC 573*** in the case of ***Organo Chemical Industries & Anr Vs. Union of India & Ors,*** wherein the Hon'ble Supreme Court of India held that the power of the Regional Provident Fund Commissioner is a quasi-judicial function subject to observance of principles of natural justice and his order should be a speaking order. The powers must be exercised by the Commissioner after notice to the defaulter and after giving him a reasonable opportunity of being heard. He also relied upon the Judgment reported in ***1996 SCC Online Mad 569*** in the case of ***Adiya Agro Industries Private Limited & Another Vs.Regional Provident Fund Commissioner***, the Hon'ble Supreme Court of India held that it is true that the responsibility on employer is statutory but equally there is a duty cast upon the Regional Provident Fund Commissioner to act reasonably and promptly, when especially he is entrusted with the welfare of the employees. Demand for payment of penalties made after a lapse of more than 1 ½ decades from the first fault, cannot be sustained. Without actual determination or assessment of damages, no penalty can be levied.

8. A perusal of the counter filed by the second respondent reveals that as against the levy of arrears of contribution under the Act, the petitioner filed an appeal in ATA No.411 (13) of 2013 on the file of the first respondent, in which initially interim order of stay was granted. However, it was vacated on the application filed by the second respondent. Therefore, there is absolutely no impediment to impose penalty on the arrears of EPF. The provision of the Act enacted by the parliament in terms of 'Directive Principles of State Policy' as enshrined in the Constitution of India, is to extend the benefit of social society to the workmen. The petitioner is defaulter of monthly provident fund dues payable in terms of Section 6, 6A & 6C read with Para 38 of the Act for the period from 17.06.1985 to 31.03.2010. The non-payment of EPF fund is categorically admitted by the petitioner.

9. On the material produced by the petitioner, the second respondent assessed the arrears of EPF to the tune of Rs.44,36,646/-. Therefore, the petitioner is liable to pay damages and interest as contemplated under Section 14B and 7Q of the Act. Therefore, the second

respondent issued show cause notice to the petitioner demanding a sum of Rs.43,01,234/- as damages and a sum of Rs.34,29,413/- as interest. Therefore, the damages claimed by the second respondent is less than the arrears of EPF levied by the second respondent. The default of statutory dues would not form a mitigating circumstances for the petitioner especially when the legislature in its wisdom fixed a due date for repayment of monthly provident fund dues taking into account the entire gamut of hurdles of extending social security benefits to the workmen employed in the establishment like the petitioner herein and fixed the consequential additional liability of interest and damages as contemplated under Section 7Q and 14B of the Act with a view to safeguard the object of the enactment.

10. The levy of arrears of EPF and the damages were challenged in Appeals ATA No.380(13) of 2013 and ATA No.411(13) of 2013 challenging the order passed under Section 7A of the Act. In fact both the appeals were disposed of on the very same day i.e., 03.01.2014. Therefore, no appeal is pending. The petitioner was afforded an opportunity of hearing and even then, the petitioner had not raised any dispute over the data of

default made available to the petitioner. But the petitioner attempted to delay the levy seeking adjournments during the enquiry. Thereafter, the petitioner was given opportunity of hearing and as such, it is not a violation of principles of natural justice.

11. In fact, the interest of workmen, who are the beneficiaries under the Act, has to be protected and as such the second respondent fastened with the responsibility of prompt recovery of damages recoverable under Section 14B of the Act and unrealised amount of interest payable under Section 7Q of the Act. The petitioner was levied a sum of Rs.44,36,646/- for as arrears of EPF for the period from 17.06.1985 to 31.03.2010. On receipt of the order passed under Section 17A of the Act, the petitioner had remitted a sum of Rs.4,73,083/- on 22.11.2011. Thereafter, the balance amount of Rs.39,63,563/- was also remitted on 05.03.2013. Therefore, the entire amount had been deposited by the petitioner. As such, the respondents 2 and 3 have power to levy damages and interest as contemplated under Section 14B and 7Q of the Act. Therefore, the damages was levied on delay in remittance as per its

provisions of PF Rules. Hence, the order passed by the second respondent was rightly confirmed by the first respondent. Therefore, the Judgments cited by the learned counsel for the petitioner are not helpful to the case on hand, since the petitioner was afforded an opportunity of hearing.

12. In view of the above, this Court finds no infirmity or illegality in the impugned order dated 03.01.2014 in A.T.A.No.380 (13) of 2013 passed by the 1st respondent and the order dated 21.05.2013 in TB/RO/TAM/62438/Gr.54/PDC/2013 passed by the 2nd respondent and it is liable to be dismissed. Accordingly, this Writ Petition stands dismissed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

27.07.2023

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Index:Yes/No
Internet:Yes/No

To
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G.K.ILANTHIRAIYAN,J.

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