215

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-17448-2011 (O/M)
Date of decision : 12.09.2023

Employees Provident Fund Organization and another ...... Petitioners

Versus

Employees Provident Fund Appellate Tribunal and another ...... Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Sanjay Tangri, Advocate
for the petitioner.

Mr. Anil Rathee, Advocate
for respondent No. 2.

HARSH BUNGER, J.

1. Petitioners have filed the instant writ petition under Articles 226/227 of the Constitution of India seeking quashing of the impugned order dated 04.07.2011 (Annexure P-1), passed by the Employees Provident Fund Appellate Tribunal, New Delhi (respondent No. 1 herein).

2. Briefly, the petitioners claim that respondent No. 2 (Bharat Sanchar Nigam Limited) is having a number of employees and is thus covered under the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as '1952 Act') with Code No. PN/21310 and is required to pay provident fund contribution, pension fund contribution, administrative

charges and deposit linked insurance fund contribution. It is the pleaded case of the petitioners that respondent No 2 herein failed to pay the aforesaid contributions/administrative charges, accordingly, notice was issued to it (BSNL) to show cause as to why the damages as envisaged under Section 14-B of the Act be not recovered.

3. After affording an opportunity of hearing to respondent No. 2 herein, the Assistant Provident Fund Commissioner, vide its order dated 18.02.2008 (Annexure P-2), passed the following order :-

> *" As the above said arrear dues are for the past period of 4/2002 to 6/2004 that are liable as per the provisions of the penal damages provided u/s 14-B viz-a-viz penal interest provided under Section 7-Q of the Employees Provident Fund and Miscellaneous Provisions Act, 1952.*
>
> *Considering the submissions of the establishment and facts presented before me during the hearing before going to examine this case we should go through Section 14-B where it is mentioned that damages is enforceable where an employer makes any default in the payment of the contribution in the fund. In present case establishment makes default in payment of arrear dues which were suppose to be deposited during the period of 4/2002 to 6/2004.*
>
> *I have also examined the provisions of reducing or waiver of the penal damages which are as under :-*
>
> *provided further that the Central Board may reduce or waive the damages levied under this*

section in relation to an establishment which is a sick industrial Company or 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 Provision Act 1985 (1 of 1986), subject to such terms and conditions as may be specified in the scheme.

On perusal of the above it is clear that the present case thus does not fall under the said conditions as the Trust is paying the interest since the date of contribution payable. So the establishment cannot be escaped from its liability.

I have examined this case on the basis of available records I could not find that accepting the detail of dues deposited, establishment has not submitted any month wise detail of dues on the amount more than statutory limit in spite of giving eight (8) opportunities. I deputed Enforcement Officer Sh. S.S. Bhalla but in spite of visit of Sh. S.S. Bhalla, the establishment not submitted details of arrears paid to the members. Now I have no option but to impose the penalty on pro-rata basis for the whole dues month.

In view of the above, I R.K. PAL, Assistant Provident Fund Commissioner, E.P.F.O., Regional Office, Punjab & U.T. Chandigarh in exercise of powers conferred upon me under Section 14-B of the Act read with para 32-A of the EPF Scheme, 1952, 5 of the EPS, 1995 and 8-A of the EDLI Scheme, 1976 after applying my mind hereby levy the following damages on the delayed *payment for the period 06/2004 to 05/05.*

HEAD	*AMOUNT*
A/C No. I	*647797/-*
A/C No. II	*19355/-*
A/C NO. X	*344488/-*
A/C NO. XXI	*8805/-*
A/C NO. XXII	*167/-*
TOTAL	*1020613/-*

In addition to the above levied damages, interest as required under Section 7-Q of the Act is also hereby communicated for the period 6/2004 to 5/05.

HEAD	*AMOUNT*
A/C No. I	*231969/-*
A/C No. II	*6938/-*
A/C NO. X	*123359/-*
A/C NO. XXI	*3158/-*
A/C NO. XXII	*60/-*
TOTAL	*365484/-*

I further order that the amount as levied above be deposited within 15 days of the issue of this order. If the establishment fail to deposit the above levied amount it shall further attract simple interest at the @ 12% per annum till it is deposited by the establishment.

This is without prejudice to the other actions initiated under Section 8-B and 8-G and under Section 14, 14-A of the EPF and MP Act, 1952. "

4. Being dis-satisfied, respondent No. 2 herein (BSNL) filed an appeal against the aforesaid order, which came to be decided, vide impugned order dated 04.07.2011 (Annexure P-1) and the matter was remanded to the Authority below with the following directions :-

> *" Hence, ordered the matter is remanded to authority to assess at the rate of 17% per annum inclusive all interest. The appellant is directed to appear within 1 month of this order before the authority failing which the matter be disposed off as per law, copy of the order be sent to the parties and record be consigned to record room."*

5. The aforesaid order dated 04.07.2011 (Annexure P-1) has been impugned in this writ petition.

6. Learned counsel for the petitioners, at the outset, submits that the only grievance in this matter is regarding direction issued by the Appellate Authority while remanding the case back to the Authority below, whereby a direction has been issued to assess at the rate of 17% per annum inclusive of all interest. Learned counsel for the petitioners submits that once the Appellate Authority had considered the matter and decided to remand the case then no direction could have been issued to the Authority below to decide the matter in a particular manner, which in the instant case is to assess at the rate of 17% per annum inclusive of all interest.

7. On the other hand, learned counsel for respondent No. 2 is unable to counter the aforesaid submissions made by learned counsel for the petitioners and rather, contends that once the matter has been remanded, the matter shall be decided in accordance with law.

8. I have heard learned counsel for the respective parties and have also perused the paper book.

9. Upon considering the submissions of the counsels for the respective parties, I am of the considered view that once the Appellate

Authority had decided to remand the matter to the Authority below for determination then no direction could have been issued to decide in a particular manner, which in the instant case is to assess at the rate of 17% per annum inclusive of all interest.

10. In view of the above, while upholding the remand order passed by the Appellate Authority, the direction issued by the Appellate Authority to the Authority below to assess at the rate of 17% per annum inclusive of all interest is hereby quashed. It shall be open to the concerned Authority to decide the matter afresh in accordance with law after affording due opportunity of hearing to parties concerned. The parties are directed to appear before the concerned Authority on 19.10.2023.

11. The instant writ petition is disposed of in the aforestated terms.

12. All pending application(s), if any, shall stand closed.

(HARSH BUNGER)
JUDGE

12.09.2023
sjks

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No