



W.P.No.9153 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on 23.07.2024

Order delivered on 10.09.2024

CORAM

THE HONOURABLE Mrs. JUSTICE J.NISHA BANU

and

THE HONOURABLE Mr.JUSTICE.P.DHANABAL

W.P.No.9153 of 2016

and

W.M.P.No.8154 of 2016

The Central Board of Trustees,
EPF Organisation, Represented by
The Regional Provident Fund Commissioner,
Employees Provident Fund Organisation,
Regional Office, No:37 Royapettah High Road,
Chennai – 600 014.

....Petitioner

Vs

1. The Presiding Officer,
Employees Provident Fund Appellate Tribunal
Scope Minar core-II,
4th Floor, Lakshmi Nagar,
New Delhi - 110 092

2. M/s. Hot Chips Restaurants (P) Ltd.,
No.103, Avvai Shanmugam Salai,
Royapettah,
Chennai – 600 014.

...Respondents



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Prayer: Writ Petition filed under Article 226 of Constitution of India praying to issue a Writ of Certiorari to call for the records relating to the proceedings of the 1st respondent in Ref.No.ATA.No.892(13)2014 dated 03.11.2014 and quash the same.

For Petitioner : Mr.T.R.Sundaram

For Respondents : R1-Tribunal
Mr.V.S.Paulraj
For R.2

J U D G M E N T

(The judgment of this Court was delivered by J.Nisha Banu,J.)

The writ petition has been filed challenging the proceedings of the first respondent dated 03.11.2014, restricting the damages of 10% of the impugned amount as compensation.

2. The 2nd respondent, "M/s. Hot Chips Restaurant (P) Ltd.", is an establishment covered under the Employees Provident Funds & Miscellaneous Provisions Act, 1952. The employer of the establishment has failed to remit the contribution and administrative charges payable under Sections 6, 6(A) (2a) and 6C(2)/6C(4a) of the said Act. Therefore, the Assistant Provident Fund Commissioner, vide proceedings dated 19.08.2014, levied a sum of Rs.1,75,759/- as damages on belated remittance for the



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period September, 2008 to November, 2013, and a sum of Rs.85,426/- was ordered to be paid as interest under Section 7Q of the said Act. Challenging the said proceedings dated 19.08.2014 passed by the Assistant Provident Fund Commissioner under Sections 14B of the said Act, levying damages and interest on account of delayed remittance of PF dues, the 2nd respondent/Establishment filed an appeal before the 1st respondent/ Appellate Tribunal. The 1st respondent vide order dated 03.11.2014, observing that the penal provision in the damages has to be ignored and only the compensatory clause has to be invoked, had restricted the damages of 10% of the impugned amount as compensation. Hence, the present writ petition has been filed by the EPF Organisation, challenging the order passed by the EPF Appellate Tribunal.

3. It is pertinent to point out that in similar circumstances, this Court, by order dated 18.06.2024, made in W.A.No.2855 of 2023, citing the judgment of the Hon'ble Supreme Court reported in **(2002) 4 SCC 516 (Horticulture Experiment Station Gonikoppal, Coorg vs. Regional Provident Fund Organization)** has held that any default or delay in payment of EPF contribution by the employer under the Act is a *sine qua non* for imposition of levy of damages under Section 14-B of the said Act and *mens*



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rea or *actus reus* is not an essential element for imposing penalty/damages for breach of civil obligations/liabilities.

4. Therefore, we are of the view that the aforesaid judgment reported in ***(2002) 4 SCC 516 (Horticulture Experiment Station Gonikoppal, Coorg vs. Regional Provident Fund Organization)***, will squarely apply to the facts of the present case. Accordingly, the order passed by the 1st respondent Tribunal dated 03.11.2014 is set aside and the Writ Petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

(J.N.B.,J.) (P.D.B.,J.)
10.09.2024

vsi

Index : Yes / No

Internet : Yes / No

To

The Presiding Officer,
Employees Provident Fund Appellate Tribunal
Scope Minar core-II,
4th Floor, Lakshmi Nagar,
New Delhi - 110 092



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J. NISHA BANU, J.
and
P.DHANABAL, J.

vsi

Pre-delivery order in
W.P.No.9153 of 2016

10.09. 2024