BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **20.08.2024**

CORAM:

THE HONOURABLE MR.JUSTICE **P.VELMURUGAN**
AND
THE HONOURABLE MR.JUSTICE **K.K.RAMAKRISHNAN**

W.A.(MD)No.1308 of 2013
and
M.P(MD)No.1 of 2013

D.D.556 Guziliamparai Primary
Agricultural Co-operative Society,
Rep. Through its Secretary,
Guzhilamparai Post,
Vedasandur Taluk,
Dindigul District – 624 703. : Appellant/Petitioner

Vs.

1.The Appellate Tribunal /
Presiding Officer,
Employees Provident Fund,
Appellate Tribunal,
Scope Minar, Corell 4th Floor,
District Centra, Laxmi Nagar,
New Delhi – 110 092.

2.The Assistant Provident Fund Commissioner,
Employees Provident Fund Organization,
Regional Office,
Madurai – 600 002. : Respondents/Respondents

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent to set aside the order dated 30.10.2013 passed in W.P.(MD) No.17717 of 2013.

For Appellant : Mr.V.O.S.Kalaiselvam
For Respondents : Mr.S.Anwar Sammem (for R2)
No appearance for R1

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JUDGMENT

(Judgment of the Court was delivered by **P.VELMURUGAN, J.**)

The appellant, as the writ petitioner, filed the writ petition before the Writ Court in W.P(MD)No.17717 of 2013 to issue a Writ of Certiorari, to call for the records on the file of the second respondent in No.TN/RO/MDU/24232/RO/Circle M15/PDC/LD/2012, dated 27.07.2012 and the order of the Appellate Tribunal passed in ATA No.752[13]/2012, dated 14.03.2013 and quash the same. The learned Single Judge, after hearing the writ petition, dismissed the same on 30.10.2013. Aggrieved over the same, the appellant/writ petitioner has filed the present writ appeal.

2. The case of the appellant is that the second respondent/Assistant Provident Fund Commissioner passed an order in No.TN/RO/MDU/24232/RO/Circle M15/PDC/LD/2012 dated 27.07.2012 under Section 14 B of the Employees's Provident Funds and Miscellaneous

Provisions Act, 1952 [herein after referred as Act] imposing damages determining 100% for the period between May 2003 and October 2008 for the reasons that the contributions were not remitted by the appellant within due date and the employer made default in payment of contributions. The second respondent has passed an order imposing the damages to the tune of Rs. 1,58,144/-. Challenging the same, the appellant filed the appeal before the first respondent. The first respondent has also without considering the relevant fact, simply dismissed the appeal filed by the appellant. Challenging the same, the appellant has filed the writ petition. The Writ Court has also dismissed the writ petition. Hence, the present writ appeal.

3. The learned counsel for the appellant would submit that the employees' contribution was not deducted during the relevant period by the second respondent and therefore, there was no question of remittance. He would further submit that there was no diversion of the fund for EPF contribution towards the business of the appellant. During the relevant period, the appellant was incurring continuous loss, and therefore, even the wages could not be paid to the employees. Therefore, the authorities ought to have considered the mitigating circumstances of the appellant. Therefore, the appellant filed the appeal before the first respondent and the first respondent

has also not considered the same and hence, they filed the writ petition. However, the learned Single Judge has also failed to consider the fact that there are no funds at all to remit the contribution and as and when the funds are available, the contributions has been remitted immediately even without payment of any wages to their employees, which proves the *bona fides* of the appellant. The benefits, which are meant for the employees, are not denied and the contributions are fully paid with interest for the belated payment. Therefore, the order of the authorities and the learned Single Judge are liable to be set aside. Since the society was on the verge of liquidation, a special loan was sanctioned for remittance of contribution and there is no wilful negligence and no deliberate intention in remitting the contribution belatedly. Therefore, no penal damages could be imposed. The first respondent as well as the learned Single Judge failed to consider the mitigating circumstances of the appellant and dismissed their claim. There is no wilful disobedience and due to unavoidable circumstances, they could not remit the contribution in time and hence, the appellant seeks to allow the appeal.

4. The learned counsel for the second respondent would submit that admittedly, the appellant did not remit the contribution and it is a statutory due and no deliberate intention or *mens rea* is required. Once it is proved that the

employees' contribution was not remitted within the statutory period, the authorities can invoke Section 14 B of the Act and they can impose damages and therefore, the contention of the appellant is not legally sustainable and the learned Single Judge has rightly considered the same and dismissed the writ petition. There is no merit in the writ appeal and hence, the same is liable to be dismissed.

5. Heard both sides and perused the materials available on record.

6. Admittedly, the appellant is the employer under the said Act. As the employer, they have to remit the employer's contribution to the employees under the above said Act. Admittedly, the appellant has not remitted the said amount. The order of the second respondent would show that between May 2003 and October 2008, the contributions were not remitted by the appellant within the stipulated time. Therefore, the appellant, as the employer, made default in payment of the contribution and therefore, the second respondent invoked Section 14 B of the above said Act and imposed damages to the tune of Rs.1,58,144/-.

7. The learned counsel for the appellant contended that due to the financial crunch and also loss, the Society was on the verge of liquidation.

Therefore, the nonpayment of the contribution within the stipulated time is neither wilful nor wanton and only due to the valid reason, they could not remit the contribution and also even a special loan was sanctioned for remittance of the contribution since the society was on the verge of liquidation. Therefore, under these circumstances, the contribution could not be remitted. For which, the learned counsel for the second respondent would contend that once the nonpayment of the contribution is proved, the authorities can invoke Section 14 B of the Act and no *mens rea* or wilful default is necessary to be established, for which, he placed reliance on the Judgment of the Hon'ble Supreme Court in the case of **Horticulture Experiment Station Gonikoppal Coorg vs. Regional Provident Fund Organization** reported in **(2022)4 SCC 516**. The relevant paragraphs are extracted hereunder:

> "4.Thereafter, the authorities issued a notice under Section 14B of the Act 1952 to charge damages for the delayed payment of provident fund amount which was levied for the period January 1978 to September, 1988 and called upon the appellant(s) to pay damages of Rs.85,548/-. The High Court under the impugned judgment held that once the default in payment of contribution is admitted, the damages as being envisaged under Section 14B of the Act 1952 are consequential and the employer is under an obligation to pay the damages for delay in payment of contribution of EPF under Section 14B of the Act 1952, which is the subject matter of challenge in the present appeals.

> 10.The question that emerges for our consideration in the instant appeals is that what will be the effect and implementation of Section 14B of the Act 1952 and as to whether the breach of civil obligations or liabilities committed by the employer is a sine qua non for imposition of penalty/damages or the element of mens rea or actus reus is one of the essential elements has a role to play and the authority is under an obligation to examine the justification, if any, being tendered while passing the order imposing damages under the provisions of the Act 1952.
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> 15. Taking note of the exposition of law on the subject, it is well- settled that mens rea or actus reus is not an essential element for imposing penalty or damages for breach of civil obligations and liabilities.
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> 19.Taking note of three-Judge Bench judgment of this Court in Union of India and Others v. Dharmendra Textile Processors and others (supra), which is indeed binding on us, we are of the considered view that any default or delay in the payment of EPF contribution by the employer under the Act is a sine qua non for imposition of levy of damages under Section 14B of the Act 1952 and mens rea or actus reus is not an essential element for imposing penalty/damages for breach of civil obligations/liabilities."

8. The learned Single Judge, after considering the submission of both the learned counsel, dismissed the appeal. Since the contribution is only a statutory due, the employer has to comply with the statutory provisions within the stipulated time and they cannot seek lame excuses for nonpayment, as held

by the Hon'ble Supreme Court and for remittance, there is no need to show *mens rea* for wilful disobedience or wilful default for non-remitting the contribution. Once it is proved that the employer did not remit the contribution, the authorities can pass an order of damages by invoking Section 14 B of the Act. Therefore, under these circumstances, this Court does not find any reason to interfere with the order of the learned Single Judge. Therefore, the writ appeal fails and the same is dismissed. However, the appellant is directed to remit the amount, if already not remitted, failing which, the respondents are directed to act in accordance with law to recover the damage imposed by the competent authority. No costs. Consequently, connected miscellaneous petition is closed.

[P.V.,J.] **[K.K.R.K.,J.]**

20.08.2024

skn
NCC : Yes/No
Index : Yes / No
Internet : Yes

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