BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.10.2024

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

WP(MD)No.14017 of 2018
and
WMP(MD)No.12717 of 2018

Central Board of Trustee, New Delhi, Rep. by
The Assistant Provident Fund Commissioner,
Employees Provident Fund Organization,
Regional Office,
Lady Dock College Road,
Madurai District.

.. Petitioner

v.

1.The Presiding Officer,
Employees Provident Fund Appellate Tribunal,
Scope Minor, Core II, 4th Floor,
Lakshmi Nagar District Centre,
Lakshmi Nagar, New Delhi.

2.M/s.A2159 Vadugambady Primary Agricultural
Co-op Credit Society,
Rep. by its Secretary,
Vadugambady Post, Vadugambady Taluk,
Dindigul District.

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India seeking issuance of a Writ of Certiorarified Mandamus calling for the records relating to the order passed by the first respondent in A.T.A.No. 715(13)2012, dated 14.03.2013, quash the same and consequently, directing the second respondent to pay the contribution of Rs.1,19,006/- as per the petitioner's proceedings in TN / RO / MDU / 24201 / Circle / M15 / PDC / LD / 2012 dated 18.07.2012, within a stipulated time limit.

For Petitioner	:	Mr.K.Muralisankar
For Respondents	:	No appearance

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ORDER

This writ petition is filed by the petitioner / Assistant Provident Fund Commissioner as against the order passed by the first respondent / Tribunal in ATA.No.715(13)2012, dated 14.03.2013, modifying the penalty imposed by the petitioner, vide proceedings dated 18.07.2012, u/s.14B of the Employees' Provident Fund and Misc. Provisions Act, 1952 [EPF Act].

2.The second respondent is a Primary Agricultural Co-operative Credit Society / establishment covered under the EPF Act. With an allegation that the establishment has failed to pay the contribution as required u/s.6, 6A, 6C of the Act in time, the petitioner / original authority has initiated proceedings u/s.14B of the EPF Act, by issuing summons and imposed penal damages to the tune of Rs.1,19,006/- u/s.14B and interest to the tune of Rs.49,882/- u/s.7Q of the EPF Act. This order was challenged by the second respondent / establishment before the first respondent / Tribunal and the Tribunal, by its order dated 14.03.2013, has modified the penal damages by restricting it to 50% of the actual amount levied by the petitioner. Aggrieved over the same, the present writ petition has been filed.

3.Learned Standing Counsel for the petitioner / original authority submitted that the penal damages has been imposed as per the guidelines in Para 32A of the EPF Scheme. However, the Tribunal, without any reasons, has simply modified the order restricting to 50% of the damages, which was already imposed as per the scheme. He further submitted that the second respondent / establishment has not made out any case for reducing the damages, however, the Tribunal has mechanically passed this order. Therefore, the impugned order is liable to be set aside.

4.Though notice has been served on the second respondent / Society, there is no representation for the second respondent.

5.This Court considered the submissions made by the petitioner's Counsel and perused the orders passed by the original authority and the appellate authority.

6.The appellate authority has modified the damages to 50%, by holding that there was no *mens rea*, that the damages was imposed by the original authority without any finding to the effect that there was a willful and deliberate withholding of contribution by the establishment and also in a mechanical manner by taking into account of the table as provided in Para 32A of the EPF Scheme.

7.The question with regard to *mens rea* is no longer *res integra*, inasmuch a Full Bench of this Court in ***Sun Pressing (P) Ltd and Others v. Presiding Officer and Others*** [***2024 (1) Writ L.R. 801***] has held that *mens rea* or *actus reus* is not an essential requirement or *sine quo non* for levying penalty under Section 14B of the Act. However, before levying damages in terms of Section 14B of the Act, the authority is required to follow the principles of natural justice and to consider all the mitigating circumstances projected by the employer / establishment. The Full Bench further held that there should be proper application of mind, objectively, on the merits of the case and in any event, the authority cannot resort to the arithmetical calculation or for levying damages as per Para 32A of the Scheme, without considering the mitigating circumstances.

8.In the case on hand, the petitioner / original authority has initiated proceedings as against the second respondent / establishment, by issuing summons dated 09.12.2011 fixing the date of enquiry as 11.01.2012. The hearing took place on 14.02.2012, 12.03.2012, 12.06.2012, 04.07.2012 and a representative of the second respondent appeared on those dates. Thereafter, the original authority has proceeded with the proceedings and imposed penal damages to the tune of Rs.1,19,006/- (maximum damage) u/s.14B and interest to the tune of Rs.49,882/- u/s.7Q of the EPF Act.

9.Admittedly, the second respondent / establishment is a Primary Agricultural Co-operative Credit Society. In the grounds of appeal filed before the Tribunal, the Society claimed that there was continuous crop loss due to monsoon failure and as such, they suffered huge loss. They further claimed that the Central Bank as well as the Apex Bank have also stopped payment of loan / grant. The Authority, while imposing the damages, has to consider the other mitigating circumstances. Since a maximum damage, as per the Table, has been imposed in this case, the Tribunal, considering the fact that it is a Primary Agricultural Co-operative Credit Society, has modified the damages to 50% of the amount levied by the PF Authority.

10.Therefore, this Court is not inclined to entertain this writ petition. To be noted, the second respondent / establishment has not challenged the order of the appellate authority in modifying the damages and directing them to pay 50% of the amount ordered by the original authority.

Accordingly, this writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Index	:	Yes / No	**19.10.2024**
NCC	:	Yes / No	
Internet	:	Yes	

LR/gk

B.PUGALENDHI, J.

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