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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 374/2024 & CM APPL. 1757/2024 & CM APPL. 1758/2024

DELHI PUBLIC SCHOOL MATHURA ROAD ..... Petitioner

Through: Mr Puneet Mittal, Senior Advocate with Mr. Rupendra Pratap Singh and Ms. Sakshi Mendiratta Advocates

versus

UNION OF INDIA AND ANR ..... Respondents

Through: Mr. Keshav Sehgal, Mr. Shivam Gaur, Mr. Aryan Kumar and Mr. Kshitij Joshi, Advocates for R-1
Mr. Siddharth, Standing Counsel for EPFO with Mr. Anshul Saxena, Advocate

**CORAM:**
**HON'BLE MR. JUSTICE CHANDRA DHARI SINGH**

**ORDER**

% **02.02.2024**

1. The instant petition under Article 226 of the Constitution of India read with Section 151 of the Code of Civil Procedure, 1908 has been filed on behalf of the petitioner seeking the following reliefs:

> *"(i) Issue a writ, order or direction In the nature of Mandamus quashing the order dated 30.11.023 passed on 09.11.2023, by respondent No. 2, The Regional Provident Fund Commissioner-II, Regional Office Delhi (Central) In enquiry proceedings conducted against the petitioner in notice No. RODC/ DL-6211/Damages-II/8840 dated 01.02.2023 for payment of interest under Section 7Q of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952*
> *(ii) issue any other suitable writ, order or direction in favour of the petitioner, which this Hon'ble Court may deem fit and proper;*

*(iii) award costs of the petition to the petitioner throughout."*

2. Briefly stated, the present petition pertains to the impugned order dated 30th November, 2023 passed on 9th November, 20203, passed by Employees' Provident Fund Organization or the Regional P.F. Commissioner -11, Regional Office Delhi, (Central) i.e., respondent no.2. The aforesaid order was passed in pursuance of the enquiry proceedings conducted against the petitioner school which were initiated as a result of the demand notice dated 1st February, 2023, issued by the respondent no.2. The primary grievance of the petitioner lies in the fact that the Regional P.F. Commissioner-II, Regional Office, Delhi (Central) while exercising quasi-judicial junctions grossly erred in the manner of passing the impugned order and also made certain calculation errors in interpreting the relevant provisions of the Act.

3. Learned counsel appearing on behalf of the respondents fairly conceded that vide order dated 29th January, 2024, the competent authority has scrutinized the order of the Regional Provident Fund Commissioner-II dated 9th November, 2023 under Section 14-B and 7Q of the Employees Provident Fund and Misc. Provision Act, 1952 in respect of the petitioner has already initiated the reviewing of the said assessment. During the course of the arguments, he placed the order dated 29th January, 2024 before this Court after providing the copy to the learned senior counsel appearing on behalf of the petitioner which has been taken on record. It is further submitted that since the order dated 9th November, 2023 is reviewed by the competent authority, nothing is left for further adjudication in the instant matter.

4. Without entering into the merits of the case, learned senior counsel appearing on behalf of the petitioner submitted that the reviewing authority may be directed to give an opportunity of hearing before reviewing the assessment as per the order dated 29th January, 2024.

5. Heard learned counsel appearing on behalf of the parties and perused the record. After perusing the order dated 29th January, 2024, it is observed as under:

> *"In view of above, it is observed as under:*
> *I. The establishment has delayed the deposition of past accumulations and is liable to pay damages & interest as per provisions of the EPF & MP Act, 1952 and the schemes framed thereunder.*
> *II. It is observed that points considered and reasoning given for reduction/revision of damages u/s 14B & 7Q by the Assessing Authority i.e. the then RPFC-II is not as per provisions of the EPF & MP Act, 1952 and schemes framed thereunder.*
> *III. Action u/s 14B & 7Q have not been completed in letter and spirit of the said Act.*
> *IV. Head Office circular C-1/Misc./2020-21/Vol.1/1112 dated 15.05.2020 was issued considering the difficulty faced by the establishments in timely deposit Contributions during the period of lockdown due to Covid-19 pandemic. However, this circular does not apply on the past accumulation remittances consequent upon surrender/cancellation of exempted trust as the accumulations are already available with the trust.*
> *V. As per para 32B of the EPF scheme, the authority to waive damages u/s 14B does not lie with the RPFC.*
> *VI. Cross adjustment made in the 7Q amount with that of surplus amount in the order dated 09.11.2023 is not as per the provisions of the Act.*
> *VII. As far as proof of dispatch of aforementioned order dated 19.03.2020 is concerned, the same is available in dispatch section of Delhi (Central).*
> *VIII. The references of orders passed in respect of M/s Azure Hospitality Pvt Ltd (DL/41057) and M/s Inox Wind (DL/40488)*

*have been made in aforementioned order dated 09.11.2023. However, it is observed that the facts and circumstances of those cases are entirely different and not relevant to the instant matter…"*

6. Insofar as the aforesaid order is concerned, it is evident that by way of the said order, certain observations have been recorded. It has been observed that respondent herein has delayed that deposition of the past accumulations and therefore is liable to pay damages and interest as per the provisions of the Act, and the schemes framed thereunder. It has also been observed that the reasoning provided while considering the reduction/revision of damages as under Sections 14B and 7Q of the Act and consequently, the action under the aforesaid Sections, has not been undertaken as per the provisions of the Act. While concluding, the competent authority observed that the matter before it must be revisited urgently and dealt with in accordance with the provisions of the Act.

7. Since the impugned order has already been reviewed by the competent authority, the authority concerned is directed to give an opportunity of personal hearing to the representative of the petitioner before passing any reviewing order of assessment and pass a fresh assessment order.

8. In view of the above terms, the instant petition stands disposed of along with pending applications, if any.

**CHANDRA DHARI SINGH, J**

**FEBRUARY 2, 2024/gs/ds**

Click here to check corrigendum, if any