16.06.2025
Item No.12
Ct. No. 30
Aloke

WPA 7727 of 2025

Assistant Provident Fund Commissioner, Regional Office, Durgapur
Vs.
The Registrar, Central Govt. Industrial Tribunal-cum-Labour Court, Asansol, & Anr.

Ms. Aparna Banerjee
... for the Petitioner

None
...... for the Respondents

1. Affidavit-of-service filed be kept with the record.
2. The present writ application has been preferred against an order dated 8th September, 2023 passed in Appeal No. EPFA 4 of 2015, by the CGIT, Assansol.
3. The petitioner/RPF Commissioner is aggrieved with the said order of the Tribunal, on the ground that the summon dated 17/22.01.2014 passed by Assistant Provident Fund Commissioner, Durgapur was directed to be issued afresh as per the observation in the award which is not in accordance with law.
4. It is submitted by the learned counsel that default period in the present case is from 01.04.2008 to 30.06.2013 and thus the period of default from 01.04.2008 to 28.06.2008 herein is prior to the amendment to Para 32-A of the EPF Scheme which came into force on 29.06.2008 and the period from 29.06.2008 to

30.06.2013 is after the amendment and as such the damages/penalty levied has been as per the provision, which was in force at the time of default.

5. Relying upon the judgments of Calcutta High Court in:-

i. *Andrew Yule and Company Limited vs. Regional Provident Fund Commissioner and others [C.O. No. 15347 (W) of 1992].*

ii. *Atal Tea Company Limited and Another vs. Regional Provident Fund Commissioner [C.O. No. 17462 (W) of 1996],* the Tribunal directed as follows:-

> *"I find from the summons in proceeding and the impugned order that the Provident Fund Commissioner had exceeded its jurisdiction and acted in an arbitrary manner by applying rates of damages which have already been amended and did not exist at the time the assessment of damages was made. The impugned order therefore is not sustainable under the facts and law and the same is liable to be set aside. The appeal is accordingly allowed on contest. The instant case is remanded to the Provident Fund authority for passing a fresh order after hearing the appellant establishment."*

6. It appears that the learned tribunal was of the view that the penalty is to be assessed as per Para 32A of the EPF Scheme which was in effect on the date the proceedings under Section 14B was initiated on the basis of a summon. It has been held that though part of the period of default is prior to the amendment, the rate of penalty for the total default period in this case is to be as per the provision of Para 32A of the EPF Scheme which was in force when the proceeding under Section 14B was initiated.

7. The tribunal was of the view that the assessment could not be made at the rate for the period of default as per the pre amended Para 32A of the EPF Scheme as the proceedings were initiated subsequently, even though part of the default period is prior to the amendment.

8. The case of the petitioner is that the assessment made by the petitioner/authority is in accordance with law and though the proceeding was initiated after the amendment to Section 32A EPF Act, the assessment of penalty (for the said period) in respect of the period of default has been duly assessed as per the prevailing provision of law at the time of default.

9. The amendment to Para 32A of the EPF Scheme came into force (w.e.f.) on 29.08.2008, and no retrospective effect was given to the said amendment.

10. **An amendment** effective date is the specific date when changes made to a contract or legal document through an amendment become legally binding and enforceable. It signifies when the new or revised terms and conditions outlined in the amendment will start to apply. Purpose of an effective date is that **the effective date of an amendment clarifies when the changes in the document/law become active and legally binding.**

    Amendments can be effective from the date of the amendment itself, or they can be retroactive, meaning they apply to events that occurred before the amendment was enacted, but in the present case, no retrospective effect was given to the said amendment.

11. **In the present case** the amendment to Para 32A EPF Scheme **came into effect on (w.e.f.) 28.09.2008** and became enforceable also on that date.

12. **There was no retrospective effect to the said amendment.**

13. Section 14B of the EPF Act does not prescribe any period of limitation for levy or recovery of damages.

14. In ***M/s K. Streetlite Electric Corporation vs R.P.F. Commissioner, (2001) 4 SCC 449,*** the Supreme Court held:-

That where order for levying damages passed was after delay of 6-10 years, but it caused no irretrievable prejudice to the employee, then the delay would not vitiate the order.

15. In the present case there has been a delay of about 6 years.

16. **Thus, as the amendment to Para 32A of EPF Scheme came into effect from 28.09.2008, with no retrospective effect, the period of default prior to the amendment would be governed by the provision which was in force prior to the amendment and the default period after the amendment came into force would be covered by the amendment.**

17. The tribunal's order thus not being in accordance with law is set aside.

18. The order dated 8th September, 2023 passed in Appeal No. EPFA 4 of 2015 by the CGIT, Assansol, is thus set aside.

19. The authority (APFC Durgapur) is at liberty to proceed in accordance with law as per their summons dated 17/22.01.2014, against the company, who has chosen not to contest this case.

20. **WPA 7727 of 2025 is disposed of.**

21. All connected applications, if any, stand disposed of.

22. Interim order, if any, stands vacated.

23. Let a copy of this order be sent to the tribunal.

24. Urgent Photostat certified copy of this order, if applied for, be given to the parties, upon usual undertakings.

(Shampa Dutt (Paul), J.)