IN THE HIGH COURT OF JUDICATURE AT BOMBAY BENCH AT AURANGABAD

991 WRIT PETITION NO. 11244 OF 2022

ASSISTANT PROVIDENT FUND COMMISSIONER
VERSUS
M/S SHRIKRISHNA EDUCATIONAL AND CULTURAL MANDALS SURESHDADA POLYTECHNIC AND ANOTHER

…

Mr. Nitin K. Chaudhari – Advocate for Petitioner
Mr. R.B. Dhaware – AGP for Respondent No.2, State

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CORAM : SIDDHESHWAR S. THOMBRE, J.

DATE : 12.12.2025

PER COURT :

1. This Court issued a notice on 17.11.2011 and pursuant thereto respondent No.1 was served. On 09.06.2023 as none appeared for respondent No.1, a fresh notice was issued indicating that the petition would be taken up for final hearing at the stage of admission. The office report shows that the fresh notice issued to respondent No.1 was duly served. However, on 05.12.2025, when the matter was listed for hearing, despite service, none appeared on behalf of respondent No.1. Therefore, this Court observed in paragraph 2 as under :

> *"2. Today, despite of service, none appears for respondent No.1. To give on more opportunity to respondent No.1, stand over to 12.12.2025."*

2. In view thereof, it is apparent that despite service, today also none

appears for respondent No.1 and therefore, in view of the earlier order dated 05.12.2025, the matter is proceeded further.

3. Heard learned Counsel – Mr. Nitin Chaudhari for the petitioner and learned A.G.P. for Respondent No.2, State.

4. By way of the present petition, the petitioner challenges the order dated 30.12.2019 passed by the learned Central Government Industrial Tribunal in Appeal REF. No. CGIT/ NGP/ EPFA/ 35 of 2018–19, whereby the appeal filed by respondent No.1 came to be allowed and the damages amount of Rs.24,51,588/- was reduced to 50% i.e. Rs.14,70,000/- and respondent No.1 was directed to deposit the said amount within a period of one (1) month from the date of the award.

5. Learned Counsel for the petitioner submits that on 13.11.2018, a notice under Section 14-B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (for short *"the Act"*) was issued, intimating respondent No.1 about delayed payments for the period from 01.02.2016 to 06.11.2018. The details of delayed payments were also furnished and were accepted by respondent No.1. Thereafter, by order dated 07.01.2019, the Assistant Provident Fund Commissioner directed respondent No.1 to pay damages of Rs.24,51,588/-. Aggrieved thereby, respondent No.1 filed an appeal before the Central Government Industrial Tribunal – cum – Labour Court, Nagpur, wherein the learned

Tribunal reduced the damages by about 50%.

6. Learned Counsel for the petitioner submits that once the liability was accepted by the establishment, there was no justification to file an appeal. He submits that the learned Tribunal allowed the appeal only on the ground of financial hardship, which is impermissible in law and therefore, the order under challenge suffers from an apparent error on the face of the record.

7. Heaving heard learned Counsel for the petitioner and perused the record, it is evident that the notice under Section 14 – B of the Act clearly reflects delayed payments corresponding to wages for the period from 10/2013 to 02/2017. After receipt of the show-cause notice, respondent No.1 appeared before the authority and accepted the delay, stating that upon receipt of scholarship amounts, the dues would be cleared. The said admission is placed on record at page 32.

8. It is further evident that the representative of respondent No.1 appeared before the authority on 05.12.2018 and sought time to remit the amount. Despite such admission and assurance, respondent No.1 filed an appeal under Section 7-I of the Act. The competent authority had specifically objected to the maintainability of the appeal on the ground that liability was admitted.

9. The appellate Tribunal, without considering these admissions,

allowed the appeal only on the ground of financial hardship. The said reasoning is contrary to the law laid down by the Hon'ble Supreme Court in **Hindustan Times Ltd. Vs. Union of India and Ors.**, reported in ***(1998) 2 Supreme Court Cases 242***, wherein it is held that financial hardship cannot be a ground to waive or reduce damages under Section 14-B of the Act. More particularly, paragraphs 20, 28 and 29, which reads as under :

> **20.** In spite of all these amendments, over a period of more than thirty years, the legislature did not think fit to make any provision prescribing a period of limitation. This in our opinion is significant and it is clear that it is not the legislative intention to prescribe any period of limitation for computing and recovering the arrears. As the amounts are due to the Trust Fund and the recovery is not be suit, the provisions of the Indian Limitation Act, 1963 are not attracts. In Nityanand M. Joshi vs. Life Insurance Corporation of India [1970 (1) SCR 396], it has been held that the Limitation Act, 1963 has no application to Labour Courts and, in our view, that principle is equally applicable to recovery by the concerned authority under section 14-B. Further in Bombay Gas Co. Ltd. vs. Gopal Bhiva [1964 (3) SCR 709], it has been held that in respect of an application under section 33(c)(2) of the Industrial Disputes Act, 1974, there is no period of limitation. In that context, it was stated that the Courts could not imply a period of limitation. It was observed:
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> "It seems that where the legislature has made no

provision for limitation, it would not be open to the Court to introduce any such limitation on the grounds of fairness or justice"

The above decisions have been recently accepted in Mukri Gopalan vs. Cheppilet Puthanpurayil Aboobackar [1995 (5) SCC 5(at p.20-22)] to which one of us (Majmudar, J.) was a party while dealing with the applicability of section 29(2) of the Limitation Act, 1963 to Courts or Tribunals. We may also point out in this connection that several High Courts have rightly taken the view that there is no period of limitation for exercise of the power under section 14B of the Act.

28. We have already stated that in Organo [1980 (1) SCR 61], the Regional Provident Fund Commissioner held that power cut financial problems, disputed between partners were not relevant explanations and that the said view was not interfered with by this Court.

29. From the aforesaid decisions, the following principles can be summarised: The authority under Section 14-B has to apply his mind to the facts of the case and the reply to the show cause notice and pass a reasoned order after following principles of natural justice and giving a reasonable opportunity of being heard; the Regional Provident Fund Commissioner usually takes into consideration the number of defaults, the period of delay, the frequency of default and the amounts involved; default on the part of the employer based on pleas of power cut, financial problems relating to other indebtedness or the delay in realisations of amounts paid by the cheques or drafts, cannot be justifiable grounds for the employer to escape liability; there is no period of limitation prescribed by the legislature for initiating action for recovery of damages under section 14B. The fact that proceedings are initiated or demand for damages is made after several years cannot by itself be a ground for drawing an inference of waiver or that the employer was lulled into a belief that no proceedings under section 14B would be taken; mere delay in initiating action under section 14B cannot amount to prejudice inasmuch as the delay on the part of the department, would have only allowed the employer to use the monies for his own purposes or for his business especially when there is no additional provision for charging interest. However, the employer can claim prejudice if there is proof that between the period of default and the date of initiation of action under section 14B, he had changed his position to his detriment to such an extent that if the recovery is made after a large number of years, the prejudice to him is of an "irretrievable" nature: he might also claim prejudice upon proof of loss of all the relevant records and/or non-availability of the personnel who were, several years back in charge of these payments and provided he further establishes that there is no other way he can reconstruct the record or produce evidence; or there are other similar grounds which could lead to "irretrievable" prejudice; further, in such cases of "irretrievable" prejudice, the defaulter must take the necessary pleas in defence in the reply to the show cause notice and must satisfy the concerned authority with acceptable material; if those pleas are rejected, he cannot raise them in the High Court unless there is a clear pleading in the writ petition to that effect.

10. This Court, in Writ Petition No.7791 of 2017 **(Municipal Council Vaijapur Through its Chief Officer V D Dake Vs. The Regional Provident Fund Commissioner Aurangabad and Another**, in similar circumstances, has also taken a view that once delayed payment is admitted, reduction of damages solely on the ground of financial hardship is unsustainable.

11. Learned Counsel for the petitioner further placed the reliance on the judgment of the Hon'ble Apex Court in **Horticulture Experiment Station Gonikoppal, Coorg Vs. Regional Provident Fund Organization** reported in ***(2022) 4 Supreme Court Cases 516***, more particularly paragraphs 15 and 19, which reads as under :

> "**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 the three-Judge Bench judgment of this Court in *Union of India V. Dharamendra Textile Processors,* 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 quo non for imposition of levy of

> damages under Section 14-B of the 1952 Act and mens rea or actus reus is not an essential element for imposing penalty/damages for breach of civil obligations/liabilities."

12. Considering the totality of the facts and the settled legal position, the order passed by the learned Tribunal cannot be sustained in the eyes of law.

13. In view of thereof, the Writ Petition is allowed. The order dated 30.12.2019 passed by the learned Central Government Industrial Tribunal in Appeal REF. No. CGIT/ NGP/ EPFA/ 35 of 2018–19 is quashed and set aside.

[SIDDHESHWAR S. THOMBRE]
JUDGE

Pooja Kale/