IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.08.2025

CORAM

THE HONOURABLE Mr. JUSTICE P.DHANABAL

W.P. No.17883 of 2023
and W.M.P. No.17006 of 2023

The Assistant Provident Fund Commissioner,
Sub-Regional Office,
Employees Provident Fund Organization,
S.J. Plaza, Swarnapuri,
Salem – 636 004. … Petitioner

Vs.

M/s. Venus PP Varadharaju Spinning
Mills Private Limited … Respondent

PRAYER: The Writ petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for records relating to the proceedings of the Employees Provident Fund Appellate Tribunal dated 18.11.2014 in A.T.A No.901(13) of 2014 and to quash the order..

For petitioner : Mr. R. Meenakshi

For Respondent : No appearance.

ORDER

This Writ petition has been filed as against the order passed by the Appellate Authority under the Employees Provident Funds and Miscellaneous Provisions Act dated 18.11.2014 in A.T.A No.901(13) of 2014, wherein the respondent herein has preferred an appeal as against the order passed by the

Regional Provident Fund Commissioner, Salem dated 21.08.2014 by quantifying the damages under Section 14-B of the Act and Para 32-A of the Scheme to the tune of Rs.2,94,333/-. The Appellate Authority allowed the appeal through an order dated 18.11.2014. Aggrieved by the said order, the Assistant Provident Fund Commissioner, Salem has preferred this Writ petition.

2. The learned counsel appearing for the petitioner would submit that the respondent establishment is covered under the Employees Provident Funds and Miscellaneous Provisions Act and also allotted a Code No.TN/34962 The respondent is a chronic defaulter in payment of Provident Fund contributions and other dues from 06/2008 to 12/2013. The belated remittance of EPF dues by the respondent attracted the provision of Section 14B of the EPF & MP Act. Thereby, the Authorities quantified the damages to the tune of Rs.2,94,333/- and a Show Cause Notice was issued on 21.04.2014 and personal hearing was also afforded on 27.05.2014 and subsequently adjourned to 23.06.2014 as no representation on the side of the respondent and thereafter, on behalf of the respondent, one R.G. Venkatesh, the Spinning Master of the respondent establishment attended the personal hearing on 23.06.2014 and thereafter only, the Authority passed the order by quantifying the amount of damages to the tune of Rs.2,94,333/- and interest to the tune of

Rs.1,45,427-. Thereafter, the respondent preferred an appeal as against the order before the Appellate Authority and the Appellate Authority erroneously allowed the appeal by holding that Section 14-B of the Act uses the words 'may recover' and also limited the jurisdiction of the Authority to levy penalty, not exceeding the amount of arrears. Para 32-A of the Scheme provides a sliding scale for the imposition of damages, therefore, the determination of damages is not an inflexible application of a rigid formula and the words 'may recover' shows that the Authority is required to apply its mind to the facts and circumstances of the case and also referred the judgment of Hon'ble Supreme Court in ***M/s. Hindustan Steel Ltd., vs. The State of Orissa reported in AIR 1970 SC 253*** and set aside the order by referring the judgment of Hon'ble Supreme Court in ***HMT Limited case.*** The Appellate Tribunal failed to consider that as per the case law of ***Horticulture Experiment Station Gonikoppal, Coorg vs. The Regional Provident Fund Organization,*** *mensrea* has no relevance to levy the damages under Section 14-B of the Act. Therefore, the order passed by the Authority by setting aside the order of the Authority in quantifying the damages is against law and the same is liable to be quashed.

2.1. The learned counsel appearing for the petitioner has relied upon the following judgments, in support of her contention:

(1) *Organo Chemical Industries and another vs. Union of India and others (SCC) reported in 1979 AIR 1803.*

(2) The Chairman SEBI vs. Shriram Mutual Fund and Another (SCC) in Appeal (Civil) No.9523-9524/2003.

(3) Sakthi Aishwarya Spinning Mills vs. EPF (High Court of Madras) in W.P. No.4903 of 2001 and batch.

(4) M/s. Streetline Electric vs. Regional Provident Fund Commissioner in Appeal (Civil) No.6498 of 1998 (SCC).

(5) N.E.P.C. Tea Garden vs. The Regional Provident Fund Commissioner in W.P. No.4879 & 4880 of 2016.

(6) Assistant Provident Fund Commissioner vs. Employees Provident Fund Appellate Tribunal and another in W.P. No.4633 of 2012.

(7) The Regional Provident Fund Commissioner vs. Employees Provident Fund Appellate Tribunal and another in W.P. No.6643 of 2014.

(8) M/s. PGC Textiles Corporation vs. EPF in W.A. No.101 of 2020.

(9) M/s. PGC Textiles Corporation vs. EPF in SLP No.10547 of 2020.

(10) Horticulture Experiment Station, Gonikoppal, Coorg vs. The Regional Provident Fund Organization in Civil Appeal Nos.2136 of 2012 – Hon'ble Supreme Court of India.

(11) Sri Ramalinga Choodambikai Mills vs. Employees Provident Fund Appellate Tribunal and another in W.P. No.2435 of 2012.

(12) The Assistant Provident Fund Commissioner vs. M/s. Lakshmi Machine Works in Civil Appeal No.6100 of 2023.

(13) Guru Nanak College vs. Employees Provident Fund Appellate Tribunal and others in W.A. No.2855 of 2023 – Madras High Court.

(14) The Assistant Provident Fund Commissioner vs. Employees Provident Fund Appellate Tribunal and another in W.P. (MD) No.8808 of 2016.

3. There was no representation on the side of the respondent.

4. This Court heard petitioner's side and perused the records.

5. In this case, there is no dispute about the coverage of the Act to the respondent establishment and they have made contributions with delay, thereby, the Authority has passed an order under Section 7Q of the Employees Provident Fund Act by quantifying the interest and under Section 14-B of the Act by quantifying the damages. There is no dispute about the quantum of the amount quantified by the Authority and before the Authority, during the time of enquiry under Section 14-B proceedings, the respondent requested to waive the damages on the ground that the respondent establishment was unable to pay the amount due to the financial crisis and it was under the proceedings of BIFR. In spite of that, the Authority has quantified the amount without any reduction. Therefore, the respondent preferred an appeal before the Appellate Authority under the Employees Provident Fund Act and the Appellate

Authority after considering the rival submissions, modified the order by directing the appellant to remit the outstanding determined interest amount in 24 instalments be payable by the 7th January and the subsequent installments be payable by the 7th day of every calendar month.

7. This Writ petition has been filed as against the order passed by the Appellate Authority under EPF and MP Act. The Assistant Provident Fund Commissioner, Salem computed the damages under Section 14-B of the Act on 21.08.2014 by quantifying the amount as Rs.2,94,333/- after hearing the employer i.e., the respondent herein. However, the respondent preferred an appeal before the Appellate Tribunal under the Employees Provident Funds and Miscellaneous Provisions Act and the Appellate Tribunal after discussing about the provisions of Section 14-B of the Act and after referring the judgments of Hon'ble Supreme Court, came to a conclusion that "there was no wilful default committed by the appellant in remitting the Provident Fund dues and the penal damages should be more or less compensatory in nature. The appeal preferred by the appellant to this extent is succeeded and came to a conclusion that the respondent has failed to prove on record that the appellant establishment has willfully defaulted in remitting the provident fund contributions and the delay in remittance of PF Contributions cannot be held as deliberate". Thereby, allowed the appeal by setting aside the order of the

Assistant Provident Fund Commissioner, Salem. Aggrieved by the said order, the Assistant Provident Fund Commissioner, has filed the present Writ petition with delay of around 9 years.

8. In fact, the Appellate Authority passed the order on 18.11.2014, the petitioner has filed this Writ petition on 06.06.2023. There is no any explanation for the above said inordinate delay of 9 years. The Writ petitioner ought to have challenged the order of the Appellate Authority within a reasonable time and after a lapse of 9 years, this Writ petition has been filed without any explanation for the delay. Therefore, as rightly contended by the learned counsel appearing for the respondent that this Writ petition is to be dismissed on the grounds of 'delay and laches'. Therefore, this Court, without going into the merits of the case, is inclined to dismiss the Writ petition on the ground of delay and laches.

9. Accordingly, the Writ petition is dismissed. There shall be no order as to costs.

19.08.2025
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Index : Yes/No
Speaking order/non-speaking order

mjs

To

The Employees Provident Fund
Appellate Tribunal,
New Delhi.

P.DHANABAL, J.,

mjs

W.P. No.17883 of 2023

19.08.2025
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