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W.A.(MD)NO.1260 OF 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.02.2025

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

AND

THE HON'BLE MR.JUSTICE M.JOTHIRAMAN

W.A.(MD)No.1260 of 2020

The Assistant Provident Fund Commissioner,
Employees Provident Fund Organisation,
Regional Office,
No.1, Ladu Doak College Road,
Madurai – 625 002.

... Appellant/ Petitioner

Vs.

1. The Employees Provident Fund Appellate Tribunal,
Scope Minor Core II, 4th Floor,
Laxmi Nagar District Centre,
Laxmi Nagar, New Delhi – 110 092.

2. M.A.V.M.M.Viravaisyar College,
Kallampatti,
Madurai District.

... Respondents / Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent, to allow the writ appeal and set aside the order dated 26.03.2019 passed in W.P.(MD)No.9235 of 2010 on the file of this Court.

For Appellant : Mr.K.Muralisankar

For Respondents : Mr.C.Karthikeyan

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J U D G M E N T**(Order of the Court was delivered by G.R.SWAMINATHAN, J.)**

Heard both sides.

2. The second respondent herein is an establishment covered under the Employees Provident Fund and Miscellaneous Provisions Act, 1952. The case on hand pertains to the default period from 1994-2001. The authority levied damages under Section 14B of the Act. Questioning the same, the establishment filed ATA.No.869(13) 2003 before the appellate Tribunal. The Tribunal after a careful consideration of the materials on record, reduced the rate of damages to 15% vide order dated 03.03.2009. Challenging the same, the Assitant Provident Fund Commissioner, Madurai filed W.P.(MD)No. 9235 of 2010. The learned single Judge vide order dated 26.03.2019 dismissed the writ petition in the following terms:-

“4.According to the learned counsel for the petitioner, the first respondent failed to take note of the fact that amendment has been made to [Section 14B](#) of the Act, with effect from 26.09.2008. According to him, the damages imposed on the second respondent under [Section](#)



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[14B](#) of the Act cannot be revised by the first respondent, in view of the amendment under [Section 14B](#), which came into force with effect from 26.09.2008. According to the learned counsel for the petitioner, the petitioner does not have the power to reduce damages under [Section 14B](#) r/w Section 32 A and 32 B of Employees Provident Fund Schemes, 1952. Further, the learned counsel for the petitioner contended that gross reduction in the levy of damages will have an adverse impact on the Provident Fund Schemes. According to him, unless the provident Fund is maintained intact, there is every chance that it will be depleted, causing irreparable loss and hardship to workmen employed by the second respondent.

5. [Section 14\(B\)](#) of the Act reads as follows:

“14B. Power to recover damages where an employer makes default in the payment of any contribution to the Fund [the [pension] Fund or the Insurance Fund] or in the transfer of accumulations required to be transferred by him under Sub-[Section 15](#) [or sub-Section of [Section 17](#)] or in the payment of any charges payable under any other provision of this Act or of [any Scheme or Insurance Scheme] or under any of the conditions specified under [Section 17](#), [the Central Provident Fund Commissioner or such other officer as may be authorised by the Central



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Government, by notification in the Official Gazette, in this behalf] may recover [from employer by way of penalty such damages, not exceeding the amount of arrears, as may be specified in the Scheme] [Provided that before levying and recovering such damages, the employer shall be given a reasonable opportunity of being heard:] [Provided Further that the Central Board may reduce or waive the damages levied under this Section in relation to an establishment which is a sick industrial company and in respect of which Scheme for rehabilitation has been sanctioned by the Board for industrial and Financial Reconstruction established under [Section 4](#) of the Sick Industrial Companies (special Provisions) Act, 1985 (1 of 1986), subject to such terms and conditions as may be specified in the Scheme.]

6.As seen from [Section 14\(B\)](#), the power to recover damages from the employer is only discretionary, as the Section says only “may recover”. In the instant case admittedly, the second respondent is a company and even in the reply made to the demand made by the petitioner for the payment of damages under [Section 14B](#), they have expressed that they are facing a financial crisis.



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7.The impugned order passed by the first respondent is a detailed and well considered order. Each and every ground raised by the petitioner in this writ petition has been answered in the impugned order dated 03.03.2009, passed by the first respondent. The first respondent has rightly held that the imposition of damages under [Section 14B](#) of the Act is only discretionary. As rightly observed, [Section 14B](#) does not mandate that the order for damages must follow in the event of every default. As seen from the materials available on record, there was no deliberate intention on the part of the second respondent to delay the payment of Provident Fund.

8.The Tribunal has rightly held that the regulation 32A in which a graded scale for imposition of damages has been provided cannot be regarded as a rigid or inflexible prescription and regulations cannot be a fetter to the exercise of the power that is conferred upon the Provident Fund Commissioner by the provisions of the enactment, but guide and channelise the exercise of discretion. The Tribunal has also rightly held that neither regulation 32A or 32B can be regarded as inflexible. The Tribunal has also rightly held that the words used in Clause 32A that “may recover from the employer by way of penalty damages at the rates given below” would also suggest and the same is intended only as a guideline and is not mandatory. The Tribunal has also followed the



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Judgment of High Court of Kerala in the case of Indian Telephone Industries Limited Vs. APFC and others reported in 2006(3) KLJ 698 and the decision of High Court of Bombay in the case of M/s.Cable [Corporation of India Ltd. Vs. Union of India](#) reported in 2006 (003) CLR 349 Bombay and the decision of Honourable Supreme Court in the case of [Organo Chemical Industries and another Vs. Union of India and Others](#) reported in AIR 1979 SC 1803, while coming to the conclusion.

9.This Court does not find any infirmity in restricting the damages imposed on the second respondent up to 15% per annum on the arrears of contribution. This Court is in agreement with the view taken by the Tribunal in following the decision of the High Court of Orissa in the case of [Bhubaneswar City Distribution Division Vs. Union Of India and another](#) reported in 1998 II LLJ 1044 for the said purpose.”

3. Challenging the same, the Assistant Provident Fund Commissioner filed this appeal. The learned Standing counsel appearing for EPFO pointed out that the Tribunal did not take note of the unamended provision of the statute which alone applies to the case on hand.



4. This contention may be technically sound. But then, we cannot lose sight of the subsequent developments. The learned counsel appearing for the second respondent drew our attention to the order dated 15.04.2024 passed by the Hon'ble Division Bench in W.A.(MD)No.298 of 2024 which reads as follows:-

“11.A perusal of the section 14-B of the Act would clearly indicate that the Provident Fund Commissioner or any other officer authorized by the Central Government may recover from the employer such damages not exceeding the amount of arrears as may be specified in the scheme contemplated under para 32-A of the Act. The first proviso to the above section makes it clear that the before levying and recovering of such damages, the employer should be given a reasonable opportunity of being heard. The second proviso confers power upon the central board to reduce or waive damages which is a sick industrial company subject to the terms and conditions as specified in the scheme in paragraph No.32-B.

12. A perusal of Section 7-I and 14-B makes it clear that all orders including the order passed by the Central Board under Section 14-B are also appealable to the Appellate Tribunal. When the order of Central



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Board is appealable to the Appellate Tribunal, the contentions of the learned counsel appearing for the appellant that the Central Board (Original Authority) would have exclusive power to reduce or waive damages, but the Appellate Tribunal (Appellate Authority) would not have any power to reduce or waive damages is not legally acceptable.

13.A close reading of Section 7-L would reveal that the Tribunal has got power either to confirm, modify or to annul the orders of the original authority or it can remit it back to the original authority for fresh adjudication. Therefore, the power of the Appellate Tribunal to modify the orders of the original authority cannot be in dispute. The original authority cannot contend that his orders cannot be modified or set aside by the Appellate Authority. It is very strange that the original authority had questioned the power of his Appellate Authority by way of filing this writ petition.

14.A comparative reading of 7-Q which relates to imposition of interests for the belated payment of their contribution amount and damages under Section 14-B of the Act clearly reveals that the imposition of interest is automatic and it is not necessary to provide any opportunity of being heard to the employer. But before imposing damages, hearing is mandatory. Therefore, it



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is clear that some kind of discretion is vested with the authorities to consider the mitigating circumstances before imposing the damages. If there is no discretion whatsoever, the legislature would not have mandated granting of opportunity to the employer before imposing damages.

15.A Division Bench of Bombay High Court in a Judgement reported in 2011-III-LLJ 446 (Bombay) (Regional Provident Fund Commissioner, Sub-Regional Office, Nagpur Vs. Manoharbai Ambalal, Gondia) has categorically held that the Appellate Tribunal under the EPF Act has got powers to reduce the damages imposed on the employer. The Division Bench of our High Court in a recent decision reported in 2023-IV-LLJ-234(Mad) (Laven Technoblend Limited, Formerly known as M/s.Coimbatore Popular Spinning Mills Ltd., Tirupur District Vs. Regional Provident Fund Commissioner, Coimbatore and others) in paragraph No.11 is held as follows:

“11..... Now, after the formation of the Tribunal in 1996, pursuant to the introduction of Section 7-I of EPF Act, even bypassing para 32B, the aggrieved person can approach the Tribunal for relief. Firstly, it is a time saving process. In case, the matter is taken up by the



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Central Board of Trustees and in case of adverse order, it is open to the party to challenge the same before the Tribunal. There is no guarantee about the time by which the Central Board might dispose of the application. The Tribunal presided over by a judicial officer is empowered to decide about the grant of waiver or reduction of damages that is levied by the authority concerned. Hence, we are of the view that in the case on hand, the order of the learned Single Judge interfering with the order of the Tribunal is not correct and the order passed in the writ petition is set aside.”

16.In view of the above said deliberations, we are of the considered opinion that the Appellate Tribunal which is an Appellate Authority not only for the authorized officer under the Act, but also for the Central Board, is empowered to reduce or waive damages as per the scheme. In the present case, in exercise of the said powers, the Appellate Tribunal has reduced the damages to 15%. Therefore, we do not find any illegality or infirmity in the order passed by the Appellate Tribunal or by the writ Court in confirming the order passed by the Appellate Tribunal. There are no



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merits in the writ appeal. The Writ Appeal stands dismissed. No costs.”

5. We are respectfully following the very same approach and holding that interference with the impugned order passed by the learned single Judge is not warranted. This writ appeal stands dismissed. No costs.

(G.R.SWAMINATHAN, J.) & (R. POORNIMA, J.)
4th February 2025

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No
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