BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 13.11.2025

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THE HONOURABLE MR. JUSTICE B.PUGALENDHI

W.P.(MD)Nos.15033 of 2021 and 20820 of 2022
and
WMP(MD)No.11979 of 2021

W.P.(MD)No.15033 of 2021

M/s.Ambalakaranpatti Primary
Agriculture Co-operative Bank,
Rep. by its Secretary,
Kottanathampatti, Melur Taluk,
Madurai – 625 106.
Through its Secretary. ... Petitioner

Vs.

1. The Presiding Officer,
Employees Provident Fund Appellate Tribunal
Central Government Industrial Tribunal
cum Labour Court,
Chennai.

2. The Assistant Provident Fund Commissioner,
Employees Provident Fund Organization,
Sub-Regional Office,
No.1, Lady Doak College Road,
Chokkikulam,
Madurai – 625 002. ... Respondents

PRAYER:- Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, to call for the records from the file of the first respondent herein in EPFA 47 of 2018 and to quash the order dated 19.04.2021 and waive off the entire amount of damages determined by the second respondent vide order Ref.No.TN/RO/MDU/29065/M40/PDC/LD/2015 dated 07.05.2015 for the period 05/1999 to 07/2013.

For Petitioner : Mr.C.Karthikeyan

For R2 : Mr.A.John Xavier,
Standing Counsel

W.P.(MD)No.20820 of 2022

The Assistant Provident Fund Commissioner,
Employees Provident Fund Organization,
Regional Office,
No.1, Lady Doak College Road,
Chokkikulam,
Madurai – 625 002. ... Petitioner

Vs.

M/s.Ambalakaranpatti Primary Agriculture
Co-operative Bank,
Kottanathampatti,
Melur Taluk,
Madurai – 625 106. ... Respondent

PRAYER:- Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, to call for the records pertaining to the impugned order of the C.G.I.T., cum EPF Appellate Tribunal, Chennai, in EPFA 47/2018 ATA No.1090(13)15 dated 19.04.2021 and quash the same by confirming the order passed by the Assistant Provident Fund Commissioner, Madurai, under Section 14B of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 in his proceedings No.TN / RO / MDU / 29065 / M40 / PDC / LD / 2015 dated 07.05.2015.

For Petitioner : Mr.A.John Xavier,
Standing Counsel

For Respondent : Mr.C.Karthikeyan

COMMON ORDER

The petitioner in W.P.(MD)No.15033 of 2021 is a Primary Agriculture Co-operative Bank. The petitioner Co-operative Bank is covered under the Employees' Provident Fund and Miscellaneous Provisions Act (hereinafter referred to as 'the EPF & MP Act') and assigned with PF Code No.TN/MDU/29065. The EPF authority has initiated a proceedings under

Section 14B of the EPF & MP Act that the petitioner Co-operative Bank has remitted the EPF contribution belatedly for the period from May 1999 to July 2013. The EPF Authority has also passed an order under Section 14B of the EPF & MP Act on 07.05.2015 directing the petitioner Co-operative Bank to pay a sum of Rs.6,58,488/- as damages for the period from May 1999 to July 2013. As against the order passed by the EPF Authority dated 07.05.2015, the petitioner Society has preferred an appeal before the EPF Appellate Tribunal in EPFA No.47/2018. The EPF Appellate Tribunal, by order dated 19.04.2021, partly allowed the appeal by reducing the quantum of damages levied by the Authority to 45%, by considering the financial condition of the petitioner Co-operative Bank. Challenging the same, the petitioner Co-operative Bank has preferred the writ petition in W.P.(MD)No.15033 of 2021.

2.The EPF Authority has also filed yet another writ petition in W.P.(MD)No.20820 of 2022, challenging the order of the Appellate Tribunal in EPFA No.47/2018 dated 19.04.2021 with regard to the manner in which the damages has been reduced to 45%.

3.Since both the writ petitions are pursuant to the order of the EPF Appellate Tribunal in EPFA No.47 of 2018 dated 19.04.2021, both the writ petitions are taken up together and disposed of by way of a common order. For the convenience, the parties are referred to as Co-operative Bank and EPF Authority.

4.The learned counsel appearing for the Co-operative Bank has raised a preliminary objection with regard to the maintainability of damages levied under Section 14B of the EPF & MP Act that the petitioner Co-operative Bank is not having more than 50 employees and therefore, they will not come under EPF & MP Act. In this regard, the learned counsel has also referred to the provisions under Sections 1(3) and 1(4) of the EPF & MP Act and Section 16 of the EPF & MP Act and the same are extracted as under:

> *1. [(3) Subject to the provisions contained in section 16, it applies –*
>
> *(a) to every establishment which is a factory engaged in any industry specified in Schedule I and in which [twenty] or more persons are employed, and*
>
> *(b) to any other establishment employing [twenty] or more persons or class of such establishments which the Central*

Government may, by notification in the Official Gazette, specify in this behalf:

Provided that the Central Government may, after giving not less than two months' notice of its intention so to do, by notification in the Official Gazette, apply the provisions of this Act to any establishment employing such number of persons less than [twenty] as may be specified in the notification.]

[(4) Notwithstanding anything contained in sub-section (3) of this section or sub-section (1) of section 16, where it appears to the Central Provident Fund Commissioner, whether on an application made to him in this behalf or otherwise, that the employer and the majority of employees in relation to any establishment have agreed that the provisions of this Act should be made applicable to the establishment, he may, by notification in the Official Gazette, apply the provisions of this Act to that establishment on and from the date of such agreement or from any subsequent date specified in such agreement.]

*16. **Act not to apply to certain establishments.** – [(1) This Act shall not apply –*

(a) to any establishment registered under the Co-operative Societies Act, 1912 (2 of 1912), or under any other law for the time being in force in any State relating to co-operative societies, employing less than fifty persons and working without the aid of power; or [(b) to any other establishment belonging to or under the

control of the Central Government or a State Government and whose employees are entitled to the benefit of contributory provident fund or old age pension in accordance with any scheme or rule framed by the Central Government or the State Government governing such benefits; or

(c) to any other establishment set up under any Central, Provincial or State Act and whose employees are entitled to the benefits of contributory provident fund or old age pension in accordance with any scheme or rule framed under that Act governing such benefits;

[****]

[****]

[(2) If the Central Government is of opinion that having regard to the financial position of any class of [establishments] or other circumstances of the case, it is necessary or expedient so to do, it may, by notification in the Official Gazette, and subject to such conditions as may be specified in the notification, exempt [whether prospectively or retrospectively] that class of [establishments] from the operation of this Act for such period as may be specified in the notification.]

Therefore, according to the learned counsel, since the petitioner Co-operative Bank is not having employees upto 50 persons, it cannot be covered under EPF&MP Act, however, it has been erroneously registered under the

EPF&MP Act. Therefore, on this ground alone, the order passed by the EPF Authority under Section 14B of the EPF & MP Act is liable to be set aside.

5.The learned counsel appearing for the EPF Authority submits that the Co-operative Bank has voluntarily registered under the EPF&MP Act and it has also been assigned with PF Code No.TN/MDU/29065. The Co-operative Bank was enrolled under the EPF&MP Act on 01.02.1993 and it has been continuously paying the contribution for more than 10 years. Therefore, they cannot take this stand that they will not come under the purview of the EPF&MP Act. The learned counsel further submits that the Appellate Tribunal has passed an order that there is no *mens rea* for the Co-operative Bank for default and therefore, modified the order passed under Section 14B of the EPF & MP Act. He further submits that the finding of the Appellate Tribunal of *mens rea* has already been decided by the Hon'ble Supreme Court in ***Horticulture's case*** and therefore, the order passed by the appellate Tribunal on the ground of *mens rea* needs to be interfered with.

6.These writ petitions are arising out of the damages levied under

Section 14B of the EPF & MP Act. Admittedly, the Co-opeartive Bank has been registered under EPF&MP Act and has been assigned with PF Code No.TN/MDU/29065. Though it is a voluntary one, now, the petitioner Co-operative Bank is raising a legal issue that the Bank, which is not having the required employees upto 50 persons, is not coverable under EPF&MP Act.

7.Even an Establishment, which is not coverable under Section 1(3)(a) or 1(3)(b) of the EPF&MP Act, can apply for the coverage of the EPF&MP Act under Section 1(4) of the EPF&MP Act. This coverage is considered as a voluntary coverage. In cases of Establishment so covered under Section 1(4) of the EPF&MP Act, a Notification is required to be issued by the Central Provident Fund Commissioner in an official gazette.

8.The Regional Provident Fund Commissioner, while registering the petitioner Co-operative Bank on voluntary basis under Section 1(4) of the EPF & MP Act, has recorded in his proceedings dated 15.03.1993 as under:

> *"With reference to your application No. Nil dated 21.1.93 received for extension of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 under Section 1(4) of the said*

Act, on a voluntary basis, a code No. is hereby allotted to your factory/establishment namely A.2235, Ambalakaranpatti Primary Agriculture Co-operative Bank provisionally covering your establishment with effect from 01.02.1993 pending issue of notification by the Government of India/The Central Provident Fund Commissioner in exercise of the powers conferred on them by Sub-section (4) of Section 1 of the Employees Provident Funds and Miscellaneous Provisions Act, 1952.

2. A Code No.TN/29065 is allotted to your estt. for the purpose of making compliance with the various provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and the scheme/s framed thereunder namely, the Employees' Provident Fund Scheme, 1952, the Employees' Family, Pension Scheme 1971 and the Employees Deposit Linked Insurance Scheme 1976."

9.By referring to this proceedings dated 15.03.1993, the learned counsel for the Co-Operative Bank took a stand that the Co-operative Bank has been provisionally covered under the EPF & MP Act with effect from 01.02.1993, subject to the notification to be issued by the Government of India/The Central Provident Fund Commissioner, as provided and the notification has not been issued so far.

10.Considering this preliminary objection raised by the learned counsel for the Co-operative Bank, this Court directed the learned Standing Counsel for the EPF Authority to produce the notification, if any issued as required under Section 1(4) of the EPF & MP Act. The learned counsel Standing Counsel for the EPF Authority, through the additional typed set of papers, has produced the notification issued by theGovernment of India/The Central Provident Fund Commissioner dated 13.09.1993 and submits that by way of notification the Co-Operative Bank has been brought under the purview of the EPF & MP Act from the year 1993 and they have been continously paying the contribution from 1993.

11.The learned counsel for the Co-operative Bank submits that the 14B damages has been levied at the rate of 37% upto 2008 as per the scheme which was in existence at the relevant point of time. After 2008, Pargraph 32(A) of the scheme has been amended and maximum amount of damages has been restricted upto 25%. Earlier damages have been collected along with this maximum damages of 25% together with interest at the rate of 12%. This, according to the learned counsel, damages have been levied along with interest for the period from 1999 to 2008. Thereafter, they have also demanded under Section 7Q and interest portion has been paid by the Co-operative Bank. Therefore, according to him, for this belated payment of EPF contribution for the period from 1999 to 2008, this damages has been levied only in the year 2008. In the event, if the proceedings has been initiated well in advance, in the year 1999 itself, the Co-Operative Bank would have paid the EPF contribution for the subsequent period, without any fail. Hence, according to him, there is a lapse on the part of the EPF authority in initiating the proceedings under Section 14B of the EPF & MP Act.

12.This Court has considered the submissions made by the learned counsel on either side and perused the available materials.

13.These writ petitions are filed as against the orders passed by the EPF appellate tribunal. The appellate tribunal, by following the earlier decision in Employees State Insurance Corporation Vs. HMT Ltd. and another (AIR 2008 SC 1322), has reduced the damages to 45% on the ground that there was no *mens rea* on the part of the Co-operative Bank for the belated payment of EPF contribution. The necessity of *mens rea and actus reus* has already been declared as not essential element for imposing penalty or damages for breach of civil obligations and liabilities, by the Hon'ble Supreme Court in ***Horticulture Experiment Station Gonikoppal Vs Regional Provident Fund Organisation reported in* (2022) 2 SCC 516** as under:

> *"19.Taking note of the three-Judge Bench judgment of this Court in Union of India Vs Dharmendra 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 qua 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."*

14.Admittedly, the Co-operative Bank has failed to pay the contribution for the periods from 1999 to 2008. Section 14B of the EPF & MP Act enables the EPF Authority to levy damages. The Co-operative Bank has not assigned any valid reasons for the non-payment of the contribution for the relevant priods. They are not justified in taking a plea that in the event if the autority has claimed for this amount at the earliest in the year 1999, then they would have paid the amount in time without any default. The Co-operative Bank has volunarily subscribed with the EPF. Knowing the fact that they have enrolled with the EPF authority, they are liable to pay the contribution to the EPF authority.

15.The Co-operative Bank has also taken a stand that there is no notification and therefore, they will not cover under the EPF & MP Act. This Court is not able to appreciate the manner in which this ground has been taken when the notification has been issued by the Central Provident Fund Commissioner on 13.09.1993 itself. Since the findings of the appellate tribunal was made by following the Employees State Insurance Corporation Vs. HMT Ltd. and another (AIR 2008 SC 1322), which has been clarified by the Hon'ble Supreme Court in ***Horticulture Experiment Station Gonikoppal Vs Regional Provident Fund Organisation reported in (2022) 2 SCC 516*** , the order passed by the appellate tribunal dated 19.04.2021 is set aside and the writ petition filed by the EPF authority in WP.(MD)No.20820 of 2022 is allowed and this Court remits the matter back to the EPF appellate Tribunal for considering the issue afresh.

16.Since the writ petition filed by the EPF authority is allowed, the other writ petition filed by the Co-operative Bank in WP.(MD)No.15033 of 2021 is dismissed with liberty to raise all these grounds before the appeallate tribunal. The appellate tribunal shall complete the proceedings, as expeditiously as possible, preferably, within a period of six months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is cloed.

13.11.2025

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NCC : Yes/No

To

1. The Presiding Officer,
   Employees Provident Fund Appellate Tribunal
   Central Government Industrial Tribunal cum Labour Court,
   Chennai.

2. The Assistant Provident Fund Commissioner,
   Employees Provident Fund Organization,
   Sub-Regional Office, No.1, Lady Doak College Road,
   Chokkikulam, Madurai – 625 002.

B.PUGALENDHI, J.

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