



**W.P.(MD) No.12974 of 2016**

**WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED : 20.02.2025**

**CORAM:**

**THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR**

**W.P.(MD) No.12974 of 2016**

**and**

**W.M.P.(MD) No.9772 of 2016**

The Regional Provident Fund Commissioner  
Employees Provident Fund Organization  
P.B.No.588, Sree Complex, 'D' Block  
No.18, Madurai Road, Tiruchirapalli

... Petitioner

-VS-

- 1.The Presiding Officer  
Employee's Provident Fund  
Appellate Tribunal  
Scope Minor, Core II, 4<sup>th</sup> Floor  
Lakshmi Nagar District Centre  
Lakshmi Nagar, New Delhi
- 2.M/s.Tamil Nadu Asbestos (Pipes)  
(A Unit of Tamil Nadu Cement Corp. Ltd.)  
Mayanur, Karur District-639 108  
rep.through its  
Deputy General Manager / Unit – Head

... Respondents



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**WEB COPY** **PRAYER:** Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorarified mandamus to call for the records relating to the order passed by the first respondent in A.T.A.No.442(13)2012, dated 04.03.2013 and quash the same as unconstitutional and consequently direct the second respondent to pay the damages as Proceedings No.SDC/TN/TRY/19983/Circle-24/SRO-TRY/2011, dated 26.04.2012, within a time frame as fixed by this Court.

For Petitioner : Mr.I.Pinaygash

For Respondents : R1 – Tribunal  
Mr.A.Sivaji for R2

### **ORDER**

This writ petition has been filed by the Employees Provident Fund Organisation questioning the order dated 04.03.2013, passed in A.T.A.No. 442(13)2012, on the file of the Employees' Provident Fund Appellate Tribunal, New Delhi, whereby the appeal filed by the second respondent herein was allowed by placing reliance upon a decision of the Honourable Apex Court in the case of ***Employees' State Insurance Corporation vs. HMT Ltd., and another***, reported in ***(2008) 3 SCC 35***, on the ground that there was no



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willful default on the part of the second respondent in remitting the provident fund contributions belatedly and there is no finding recorded by the petitioner holding that the second respondent has willfully and deliberately withheld the provident fund contributions.

2. As a matter of fact, the above referred decision was overruled by the subsequent decision of the Honourable Supreme Court in the case of ***Horticulture Experiment Station vs. Provident Fund Organisation***, reported in **(2022) 4 SCC 516** and thereafter, a Full Bench of this Court, having taken note of the said decision i.e., the decision in the case of ***Horticulture*** (cited supra), by a common Judgment dated 03.06.2024, passed in W.P.(MD) Nos.7339, 9688 of 2013, 2765 & 2782 of 2014, has laid down certain guidelines in Paragraph No.39 in the matter of deciding the liability under Section 14B of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (in short, “the Act, 1952”). Paragraph No.39 of the said decision reads as under:

*39. Therefore, following the principles reiterated by the Hon'ble Supreme Court and different High Courts including our High Court in similar circumstances, this Court hold that Section 14B of the Act is an enabling provision and it does not envisage any compulsion to levy*



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*damages in all cases, and is inclined to frame the following guidelines:-*

- (i) Before levying damages in terms of Section 14B of the Act, every authority is required to follow principles of natural justice. The particulars of the default, period, etc., and every adverse information that may be relied upon for levying damages should be indicated or furnished to the employer and a fair opportunity should be given to the employer to put forth his case in defence to the proposed action.*
- (ii) The authority, while exercising power under Section 14B, shall keep in mind that the liability as per the table given in Para 32A of the Scheme, should be treated as upper limit within which damages can be levied for the delay in making contributions by the employer.*
- (iii) In appropriate cases where the employer is able to provide sufficient reasons or cause justifying the delay with verifiable materials, the authority is competent to waive or fix the quantum of damages less than what is shown in the table under Para 32A of the Scheme.*
- (iv) When an employer is not in a position to make payment in order to save the industry from closure or on account of protecting the industry*



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*or establishment from being put to face proceedings under the SARFAESI Act or other inevitable circumstances which compels the employer to divert the funds only to save the industry and the employees, there cannot be a levy of damages.*

- (v) The authority under the Act has to consider all the mitigating circumstances including financial difficulties projected by the employer and pass a reasoned order.*
- (vi) When the employer is able to produce all the documents or verifiable material within his reach to substantiate any mitigating circumstance, the authority exercising power under Section 14B has to pass orders giving reasons, if he is unable to find truth or bona fides in the claim of the employer.*
- (vii) There shall be proper application of mind objectively on the merits of each case and in any case, the authority cannot resort to the arithmetical calculation or for levying damages as per Para 32A of the Scheme without considering the mitigating circumstances.*
- (viii) While assessing the quantum of damages, the past and present conduct of the employer also should be taken note of. For example, there can be levy of damages as per Para 32-A of*



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*EPF Scheme in every case when the employer is a chronic defaulter despite having surplus funds or found to have diverted funds.*

- (ix) *There may be variety of circumstances to which the employer is put to while managing an industrial establishment or a factory within the purview of the Act. The proviso to Section 14B gives a special power to the Board to waive damages when a rehabilitation scheme is pending before the BIFR. There may be similar circumstances for the employer of any industry to save the industry from the clutches of private/public financial institutions and the employer might be facing proceedings under the SARFAESI Act. Whenever the employer is forced to make huge amounts by mobilizing funds from other resources to save the industry from closure or to avoid similar situations, such payment need not be considered as an act to avoid payment of provident fund dues.*
- (x) *The delay in payments by profit making establishments has to be seriously viewed and every profit making employer is bound to pay the provident fund contributions promptly, unless there are strong reasons or circumstances that prevent the employer from*



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*making the payment on the due dates. If there is an element of willful negligence in payment of Provident Fund dues, the Assistant Provident Fund Commissioner or the competent authority can levy damages exercising his discretion.*

- (xi) *Though mens rea is not an essential ingredient, there cannot be levy of damages at the maximum limit merely because there is a default. Before levying damages, there must be definite finding or reason, after considering the explanation or reasons given by the employer for the delay in payment of dues and other mitigating circumstances. The discretion vested with the Assistant Provident Fund Commissioner or the competent authority shall be exercised judiciously in tune with the settled principles of law and keeping in mind the interest of the employees concerned.”*

**3.** The learned counsel appearing for the second respondent strenuously contended that there is abnormal delay on the part of the petitioner in filing the present writ petition as the impugned order was passed as early as in the year 2013 and the present writ petition came to be filed only



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in the year 2016. He further contended that the Assistant Provident Fund Commissioner is not the competent authority and it is only the Commissioner, who is the competent authority to pass orders under Section 14B of the Act, 1952 and in the absence of any such delegation of power, the order passed by the Assistant Provident Fund Commissioner under Section 14B of the Act, 1952 is liable to be set aside as it was passed without jurisdiction.

4. Insofar as delay in filing the writ petition is concerned, this Court finds no reason to disallow the petition on this sole ground for the simple reason that the Act, 1952 is a social welfare and beneficial legislation and just because of delay committed by the officers or the authorities, the beneficiaries should not be deprived of benefits of such beneficial legislation. Even otherwise, the delay of three years cannot be construed as an abnormal delay and in fact there is no limitation prescribed for entertaining the writ petition under Article 226 of the Constitution of India and therefore, the contention of the learned counsel appearing for the second respondent with regard to delay in filing this writ petition stands rejected.

5. Insofar as the competency of the Assistant Provident Fund Commissioner to pass orders under Section 14B of the Act, 1952 is concerned,



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the second respondent can agitate the same before the Appellate Tribunal as this Court is inclined to remit the matter for reconsideration of the matter.

**6.** In the light of the above, especially the fact that the impugned order has been passed basing upon the decision of the Honourable Apex Court in the case of **HMT Ltd.**, (cited supra) and subsequently, it has been overruled by the Apex Court in the case of **Horticulture** (cited supra), this Court is of the considered view that this is a fit case, where the matter has to be remanded back for fresh consideration by the Appellate Tribunal by duly taking into consideration the guidelines laid down by the Full Bench of this Court, which are extracted supra.

**7.** At this juncture, it is brought to the notice of this Court that the jurisdiction to entertain the appeal against the orders passed by the Employees' Provident Fund Appellate Tribunal under Section 14B of the Act, 1952, is now conferred upon the Central Government Industrial Tribunal-cum-Labour Court, situated at First Floor, B-Wing, No.26 Haddows Road, Shastri Bhawan, Chennai – 600 006.



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**8.** In the light of the above, the matter is remanded back to the Central Government Industrial Tribunal-cum-Labour Court for deciding the matter in A.T.A.No.442(13)2012 afresh by duly taking into consideration the decision of the Honourable Apex Court in the case of ***Horticulture Experiment Station*** (cited supra) and the guidelines laid down by the Full Bench of this Court, which are extracted supra.

**9.** The Central Government Industrial Tribunal-cum-Labour Court is further directed to dispose of the said appeal as expeditiously as possible, at any rate, within a period of six months from the date of receipt of a copy of this order.

**10.** It is open to the either side to make available the relevant records before the Central Government Industrial Tribunal-cum-Labour Court by reconstruction of the files, if necessary, for the expeditious disposal of the matter as directed above.



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**11.** Accordingly, this writ petition is disposed of. No costs.

Consequently, connected miscellaneous petition is closed.

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NCC : Yes / No

Index : Yes / No

Internet : Yes / No

**Note to Office:** Mark a copy of this order to the Central Government Industrial Tribunal-cum-Labour Court, situated at First Floor, B-Wing, No.26 Haddows Road, Shastri Bhawan, Chennai – 600 006.

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To:  
The Presiding Officer,  
Employee's Provident Fund  
Appellate Tribunal,  
Scope Minor, Core II, 4<sup>th</sup> Floor,  
Lakshmi Nagar District Centre,  
Lakshmi Nagar, New Delhi.



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**MUMMINENI SUDHEER KUMAR, J.**

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