BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.02.2025

CORAM:

THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.(MD) No.16771 of 2016
and
W.M.P.(MD) No.12182 of 2016

Nadar Mahajana Sangam
S.Vellaichamy Nadar College
Nagamalai Pudukottai
Madurai District
through its Correspondent / Secretary ... Petitioner

-vs-

1.The Assistant Provident Fund Commissioner
Employees' Provident Fund Organization
Lady Doak College Road
Chokkikulam
Madurai-625 002

2.The Presiding Officer
Employees' Provident Fund Appellate Tribunal
New Delhi ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorari to call for the records from the second respondent in ATA 213(13)/2011, dated 20.02.2012, and the review order dated 05.12.2013 and the order passed by the first respondent in No.TN/RO/MDU/57354/RO/Circle2/PDC/I.D/2011, dated 04.02.2011 and quash the same.

For Petitioner : Mr.C.Karthikeyan

For Respondents : Mr.P.Karthick for R1
R2 - Tribunal

ORDER

The petitioner - Establishment was brought under the purview of the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (in short, "the Act, 1952"), through proceedings No.TN/MD/57354/ENF/SRO/05, dated 11.02.2005, making a demand for remitting contributions in respect of 47 employees employed in the petitioner - Establishment for the period from 01.07.1995 to April, 2004.

2. The petitioner – Establishment is admittedly an Aided Establishment exempted under Section 16(1)(b) of the Act, 1952, insofar as the employees, who are being paid from the aid of the Government and the provisions of the Act, 1952 have no application to that extent. The application of the provisions of the Act, 1952 is only in respect of the self-finance courses and the employees, who are not receiving aid from the Government. Therefore, the petitioner - Establishment appears to have represented the matter before the respondent – EPF Organization objecting in requiring them to remit contributions in respect of 47 employees working in their Establishment and thereafter, remitted the contributions in respect of the unaided employees, who are working in the self-finance courses belatedly. The damages and interest that are payable by the petitioner under Section 7Q and 14B of the Act, 1952, after the provisions of the Act, 1952 were made applicable, have already been paid by the petitioner. The dispute in the present writ petition is with regard to the delay in remitting the contributions during the pre-discovery period i.e., period prior to 11.02.2005.

3. The first respondent, by an order dated 04.02.2011, passed under Section 14B of the Act, 1952, fixed liability to the tune of Rs.6,55,998/- against the petitioner - Establishment and the appeal filed by the petitioner - Establishment in ATA No.213(13)/2011, against the said order before the Appellate Tribunal / second respondent, came to be dismissed by order dated 14.02.2012.

4. Thereafter, the petitioner - Establishment filed a review petition before the second respondent bringing to its notice that the reliance placed by them on a Circular, dated 15.06.2004, issued by the respondent - EPF Organisation, was not taken into consideration. However, the said review was rejected by the second respondent by passing a cryptic order dated 05.12.2013. It is aggrieved by the said order dated 04.02.2011, passed by the first respondent under Section 14B of the Act, 1952 and the order, dated 14.02.2012 and the review order dated 05.12.2013, both passed by the second respondent, the petitioner has approached this Court by filing the present writ petition.

5. Heard Mr.C.Karthikeyan, learned counsel for the petitioner - Establishment and Mr.P.Karthick, learned counsel appearing for the first respondent – EPF Organization.

6. A perusal of the order dated 04.02.2011, passed by the first respondent, does not indicate any consideration of the case set up by the petitioner – Establishment. On the other hand, the said order discloses that the same was passed in a mechanical manner by passing an order in a proforma. The said order also does not prescribe the date by which the petitioner – Establishment is required to pay the contributions for the pre-discovery period. The said order also does not show when exactly the petitioner remitted the contributions. No doubt, some of the particulars appear to have been furnished while issuing a show cause notice, whereby the date of the actual due and the date of the actual remittance of the contributions were mentioned.

7. But, here is a case, where the provisions of the Act, 1952 were made applicable to the petitioner – Establishment only by issuing a coverage notice dated 11.02.2005 and there is no dispute about the remittance of the contributions thereafter. Even if there is a delay in remitting the contributions thereafter, the petitioner had already paid damages and interest payable thereon. The dispute is only for the pre-discovery period i.e. from 01.07.1995 to April, 2004.

8. The perusal of the grounds of appeal filed by the petitioner before the second respondent, under Section 7-I of the Act, would disclose that the petitioner has placed reliance on a Circular dated 15.06.2004, which deals with the liability to pay damages in respect of the belated remittance of contributions for the pre-discovery period. But, the said Circular was neither referred to nor considered by the second respondent while disposing of the appeal filed by the petitioner.

9. Learned counsel for the petitioner placed strong reliance on the said Circular dated 15.06.2004 and contended that the first respondent is not entitled to levy damages for the pre-discovery period, on the ground that the petitioner failed to remit the contributions within the prescribed time and is entitled only to levy 12% simple interest under Section 7Q of the Act, 1952.

10. However, learned counsel appearing for the first respondent contended that the said Circular dated 15.06.2004 relied upon by the petitioner was withdrawn subsequently through the order dated 13.02.2009 prospectively and therefore, the petitioner is not entitled to claim benefit of the said Circular, dated 15.06.2004, especially in the context of the fact that the impugned order, passed under Section 14B of the Act, 1952, was passed on 04.02.2011, much after the withdrawal of the Circular dated 15.06.2004.

11. This Court has carefully considered the submissions made on either side and also perused the entire materials on record.

12. The respondent – Employees' Provident Fund Organization issued the Circular dated 15.06.2004 having taken note of various circumstances and the said circumstances were also taken note of in the said Circular, which reads as under:

> *"Very often establishments are covered retrospectively leaving a gap between the effective date of coverage and the actual date of communication on of the coverage notice. When establishments are covered retrospectively the EPFO is required to credit interest to the members account from the date of coverage irrespective of*

the fact that the establishment has started compliance only after receiving the coverage intimation from the PF office. This interest burden on the EPFO on account of such belated remittance is normally taken care of by the employers by virtue of section 14B of the Act.

Many establishments have represented against the levy of damages for the 'pre-discovery period' (the gap between the actual date of coverage and the date of intimation of the coverage notice) that they were prevented from making remittance in the absence of any code number allotted to them. Various High Courts also have taken strong exception to this particularly after introduction of Section 7Q of the Act. Moreover, different regions adopt different standards in levying damages in such cases.

The matter was discussed in detail by the CET in its 165th meeting held on 3.12.2003. It has been decided that no damages shall be levied for the pre-discovery period where the number was allotted belatedly by the EPFO and the establishment was prevented from remitting the contributions in the absence of a code number allotted to it by the EPFO. In order to have uniformity of approach by different field offices and with a view to alleviate the difficulties experienced by the establishments the following guidelines are issued in the matter of levy of damages in respect of establishments covered belatedly:-

1	*Levy of damages on workers' share for pre-discovery period*		*No damages shall be levied if the workers' share for the pre-discovery period has been waived.*
2	*Establishment which paid PF dues within the time prescribed in the coverage notice*		*No damages shall be levied, however to compensate the interest loss to the EPFO, only simple interest @ 12% p.a. shall be levied.*
3	*Establishments which paid PF dues beyond the date fixed in the coverage notice*		*No damages shall be levied till the date of payment fixed in the coverage notice. Only simple interest @ 12% upto the date mentioned in the coverage letter and damages at appropriate rates for the period of delay beyond the date fixed in the coverage letter be levied.*

4	*Establishments which were having their own private PF system before coverage and who deposited the PF in banks or finance establishments.*		*Only difference of interest amount between 12% simple interest p.a. and the actual interest earned by the private PF shall be levied if the latter is less than 12% ?.?. Beyond the date fixed in the coverage notice, damages shall be levied at the appropriate rates.*

However, the past cases already decided may not be reopened. To avoid confusion and inconvenience in the matter of remittance of PF dues where the establishments are covered belatedly, the coverage notices shall henceforth contained instructions that 'payments of PF contributions and allied dues shall be made within 15 days from the date of receipt of the coverage notice'."

13. From the perusal of the above, especially Column No.3 would make it clear that the Establishments, which paid the provident fund dues beyond the date fixed in the coverage notice, shall not be liable for damages, but only liable for payment of 12% simple interest upto the date mentioned in the coverage letter and for payment of damages at appropriate rates only for the period of delay beyond the date fixed in the coverage letter.

14. Thus, it is evident that the liability of the Establishment to pay damages is only from the date fixed in the coverage notice for payment of the provident fund dues, but not prior thereto. However, the Establishment is liable to pay interest at the rate of 12% per annum upto the date mentioned in the coverage notice from the date of the actual due.

15. In the instant case, the petitioner – Establishment claimed to have already paid the interest payable under Section 7Q of the Act. Thus, the case of the petitioner herein would directly fall under the Column No.3 of the Circular dated 15.06.2004. Whether the said Circular would apply to the case of the petitioner, wherein damages were levied through order dated 04.02.2011 is the issue to be decided in the present writ petition.

16. Admittedly, the pre-discovery period for which the damages are now sought to be levied by order dated 04.02.2011 is for the period from 01.07.1995 till April, 2004, which is much prior to the Circular dated 15.06.2004. The said Circular dated 15.06.2004 was in force till 13.02.2009 when the same was withdrawn by proceedings dated 13.02.2009 prospectively. Had the first respondent initiated steps for recovery of the impugned damages for the period in question immediately after the provisions of the Act, 1952, were made applicable through the coverage notice dated 11.02.2002 and prior to 13.02.2009, the petitioner would have been entitled for the benefit of the Circular dated 15.06.2004. Admittedly, the said Circular was in force till 13.02.2009. But, the first respondent failed to initiate proceedings for recovery of damages under Section 14B of the Act, 1952 till 2010 and for the first time, a second show cause notice was issued only on 15.09.2010 i.e. six years after the withdrawal of Circular dated 15.06.2004. Therefore, it is necessary to examine what is the scope of the proceedings No.C.IV/Misc/Damages/09, dated 13.02.2009 through which the earlier Circular dated 15.06.2004 was withdrawn.

17. As already noted above, the said Circular dated 15.06.2004 came to be issued in the light of various orders passed by different High Courts and taking into consideration various factual circumstances. While withdrawing the said Circular dated 15.06.2004, absolutely no reason was assigned in the proceedings dated 13.02.2009, for withdrawing the Circular dated 15.06.2004.

18. Be that as it may, as already observed above, had the first respondent initiated proceedings immediately after the petitioner became liable for damages under Section 14B of the Act, 1952, the benefit of the Circular dated 15.06.2004 would have been available to the petitioner and the first respondent would not have been in a position to levy damages under Section 14B of the Act, 1952. But, it is only because of the delay on the part of the first respondent in initiating proceedings under Section 14B of the Act, 1952, the said Circular was not available for consideration by the first respondent.

19. Whether the benefit of a particular provision of law or circular, as available to the petitioner at the relevant point of time i.e., when proceedings were initiated against the petitioner under the provisions of the Act, 1952, would be applicable or not is the question that is required to be considered besides examining the scope of the proceedings dated 13.02.2009.

20. The Circular dated 15.06.2004 was applicable in respect of the damages that were payable under Section 14B of the Act, 1952 for the pre-discovery period and the said benefit was available till 13.02.2009.

Admittedly, the proceedings, dated 13.02.2009, is given prospective effect. Paragraph No.2 of the proceedings dated 13.02.2009 reads as under:

> *"The instructions issued has been reviewed by the competent authority. It has been decided to withdraw the above mentioned circular prospectively w.e.f 16.2.09. In future all cases for levy of damages should be processed as per the provisions contained u/s 14B read with Para 32A of the EPF & MP Act 1952." (emphasis applied)*

21. From the above, it is evident that the Circular dated 15.06.2004 (though the date is wrongly mentioned as 17.06.2004) was withdrawn prospectively with effect from 16.02.2009 and further directed that in future all case for levy of damages should be processed as per the provisions contained under Section 14B read with Para 32A of the Act, 1952.

22. From the above, especially the word "in future", it is evident that the benefit of the Circular dated 15.06.2004 would not be available for the damages payable for the period after 13.02.2009. Therefore, the damages that have already fallen due prior to 13.02.2009 is concerned, the Circular dated 15.06.2004 would apply. The said proceedings dated 13.02.2009 is bound to be understood in this manner. Otherwise in all cases, where proceedings for recovery of damages under Section 14B of the Act, 1952, were initiated for the pre-discovery period prior to 13.02.2009, the Establishment would be eligible for the benefit of the Circular dated 15.06.2004 and not liable for the damages payable for the pre-discovery period and in all other cases, where the concerned officers, who failed to initiate the proceedings prior to 13.02.2009 for recovery of damages for the pre-discovery period, the Establishment will be deprived of the benefit of the Circular dated 15.06.2004. If such a situation is allowed, the persons, who are similarly situated would be subjected to differential treatment, which is prohibited under Article 14 of the Constitution of India. Therefore, the proceedings dated 13.02.2009 is bound to be understood as the one having prospective application vis-a-vis the period during which the liability to pay damages arise. In other words, the proceedings 13.02.2009 is to be understood in the manner that the benefit of the Circular dated 15.06.2004 is not available in respect of the Establishments in respect of which the coverage notice was issued on or after 13.02.2009 and in respect of pre-discovery period falling after 13.02.2009.

23. In the light of the above and also taking into consideration the fact that the pre-discovery period in the instant case is admittedly prior to 15.06.2004, this Court has no hesitation to come to the conclusion that the petitioner – Establishment is entitled to claim the benefit of the Circular dated 15.06.2004, especially Column No.3 noted above and it is not liable to pay damages for the period prior to the date prescribed under the coverage notice. Though the said Circular dated 15.06.2004 was brought to the notice of the second respondent Appellate Tribunal in the appeal filed by the petitioner – Establishment under Section 7-I of the Act, 1952, the Appellate Tribunal failed to take note of the said Circular dated 15.06.2004 and also failed to consider the same at all, resulting in passing of the order dated 14.02.2012 in ATA 213(13)/2011.

24. As this Court has already arrived at a conclusion that the petitioner – Establishment is entitled for the benefit of the Circular dated 15.06.2004, the same would go to the root of the matter, but the same was not considered by the respondents at all, the impugned orders are liable to be quashed.

25. Insofar as the contention of the learned counsel appearing for the first respondent – EPF Organization that the benefit of the Circular dated 15.06.2004 is available only in cases, where the code number was allotted belatedly, but not otherwise, is concerned, the same does not deserve any consideration, as admittedly, in the instant case, the code number was allotted for the first time to the petitioner – Establishment only on 11.02.2005 and the damages that are being claimed under the impugned proceedings is admittedly for the period prior to 11.02.2005 i.e., for the period from 01.07.1995 to April, 2004.

26. In the light of the above, the impugned orders passed by the respondents cannot be sustained and the same are accordingly, quashed.

27. Accordingly, this writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

27.02.2025

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

krk

To:
The Presiding Officer,
Employees' Provident Fund
Appellate Tribunal,
New Delhi.

MUMMINENI SUDHEER KUMAR, J.

krk

W.P.(MD) No.16771 of 2016
and
W.M.P.(MD) No.12182 of 2016

27.02.2025