



W.P.(MD) No.25252 of 2019

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.04.2025

CORAM:

THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.(MD) No.25252 of 2019

and

W.M.P.(MD) Nos.21840 & 21844 of 2019

The Regional Provident
Fund Commissioner
Employees Provident
Fund Organisation
No.18, Madurai Road
Triuchirapalli

... Petitioner

-VS-

M/s.J.J.College Engineering
and Technology
rep. through its Principal of
the Institution
Ammapettai
Trichy-620 009

... Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorari to call for the records relating to the order passed by the Employee's Provident Fund Appellate Tribunal, New Delhi, in A.T.A.No. 695(13)2014, dated 19.08.2014 and quash the same as unconstitutional.



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For Petitioner : Mr.N.Dilip Kumar

For Respondent : Mr.C.Karthikeyan

ORDER

This writ petition has been filed by the Employees Provident Fund Organisation aggrieved by an order dated 19.08.2014, passed by the Employees' Provident Fund Appellate Tribunal, New Delhi, in A.T.A.No. 695(13)2014, whereby the learned Appellate Tribunal allowed the appeal filed by the respondent against the order dated 23.05.2014, passed under Section 14B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, (in short, "the Act, 1952") levying damages of Rs.37,73,565/-.

2. The perusal of the impugned order dated 19.08.2014 would disclose that the learned Appellate Tribunal interfered with the order passed by the Primary Authority under Section 14B of the Act, 1952, on the ground that there is no mens rea on the part of the respondent herein in non-remittance of the provident fund contributions in time.



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3. The existence of *mens rea* is not a condition precedent for imposing damages under Section 14B of the Act, 1952 and the same is now well settled legal position in the light of the law laid down by the Honourable Apex Court in the case of ***Horticulture Experiment Station vs. Provident Fund Organisation***, reported in **(2022) 4 SCC 516**.

4. In the light of the above decision of the Apex Court, all previous decisions on the said issue stood overruled, wherein it is held that existence of *mens rea* is a condition precedent for imposing damages.

5. The impugned order herein is also an order passed by the Appellate Tribunal allowing the appeal filed by the respondent herein only on the ground that there is no *mens rea* on the part of the respondent herein in non remittance of the provident fund contributions and thereby allowed the appeal. Hence, in the light of the law laid down by the Apex Court in the case of ***Horticulture Experiment Station*** (cited supra), the impugned order cannot be sustained.



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6. A Full Bench of this Court also having taken note of the above said decision of the Honourable Apex Court, by a common Judgment dated 03.06.2024, passed in W.P.(MD) Nos.7339, 9688 of 2013, 2765 & 2782 of 2014, laid down certain guidelines in the matter of deciding the liability under Section 14B of 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 14-B of the Act is an enabling provision and it does not envisage any compulsion to levy damages in all cases, and is inclined to frame the following guidelines:-

- (i) Before levying damages in terms of Section 14-B 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.*



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- (ii) *The authority, while exercising power under Section 14-B, 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 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.*



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- (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 14-B 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 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 14-B gives a special power to the Board to waive damages when a rehabilitation scheme*



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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 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*



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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.”

7. Further, the learned Appellate Tribunal having found fault with the Assistant Provident Fund Commissioner in not considering the poor financial condition, as claimed by the respondent herein, has failed to examine the said aspect and no factual finding is recorded to conclude that the respondent herein is suffering poor financial condition on whatsoever ground. However, the learned Appellate Tribunal proceeded to set aside the order passed under Section 14B of the Act, 1952, only on the ground that there is no *mens rea* on the part of the respondent herein in non remittance of the provident fund contributions.



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8. In the light of the above, the appeal filed by the respondent herein is required to be reconsidered by the Appellate Tribunal in the light of the 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. Further, it is also necessary to note that the impugned order is dated 19.08.2014 and whereas, the present writ petition has been filed only on 19.11.2019 i.e., after a lapse of more than five years. Thus, there is considerable prejudice caused to the respondent herein on account of the delay in filing the present writ petition. In the circumstances, this Court is of the considered view that instead of non-suiting the petitioner on the ground of delay and laches, it is appropriate to compensate the respondent suitably in terms of money for the prejudice caused by the petitioner herein on account of the delay in filing the present writ petition challenging the order passed under Section 14B of the Act, 1952.

10. Further, it is the contention of the learned counsel appearing for the respondent that the Assistant Provident Fund Commissioner is not a



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person, who passed the original order under Section 14B of the Act, 1952 and therefore, this writ petition cannot be entertained at the instance of the petitioner herein / Regional Provident Fund Commissioner. However, this Court is unable to agree with the said contention as the Assistant Provident Fund Commissioner, who signed the affidavit filed in support of this writ petition, has asserted that he is duly authorized to file this writ petition and such an averment has not been contradicted by the respondent by filing counter affidavit or otherwise. Therefore, the oral submission made across the Bar cannot be taken into consideration to non-suit the petitioner.

11. Accordingly, the impugned order, dated 19.08.2014, passed by the Employees Provident Fund Appellate Tribunal, New Delhi, is set aside and the matter is remitted back to the Central Government Industrial Tribunal-cum-Labour Court, situated at First Floor, B-Wing, No.26 Haddows Road, Shastri Bhawan, Chennai – 600 006, for reconsidering the appeal *vide* A.T.A.No.695(13)2014 filed by the respondent herein afresh in the light of 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. The Appellate Tribunal is further directed to dispose of the said appeal as expeditiously as possible, at



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any rate, within a period of six months from the date of receipt of a copy of this order. Till the disposal of the appeal, as directed above, the petitioner herein shall not take any coercive steps against the respondent herein for recovery of the dues towards damages under Section 14B of the Act, 1952.

12. The petitioner shall pay a cost of Rs.25,000/- (Rupees twenty five thousand only) to the respondent, within a period of four weeks from the date of receipt of a copy of this order. Consequently, connected miscellaneous petitions are closed.

01.04.2025

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

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To:
The Presiding Officer,
Central Government Industrial
Tribunal-cum-Labour Court,
First Floor, B-Wing,
No.26 Haddows Road,
Shastri Bhawan,
Chennai – 600 006.



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MUMMINENI SUDHEER KUMAR, J.

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