**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

(107+237) **CM-17493-CWP-2024 in/and
CWP-20911-2016
Date of Decision : July 21, 2025**

Central Board of Trustees, Provident Fund Organization through Assistant Provident Fund Commissioner (Legal), Regional Office, Haryana

.. Petitioner

Versus

M/s SPL Industries Ltd and another **.. Respondents**

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Sandeep Goyal, Advocate, for the petitioner.

Mr. S.K. Gupta, Advocate, for respondent No.1.

HARSIMRAN SINGH SETHI J. (ORAL)

CM-17493-CWP-2024

Present application has been filed for placing on record the replication to the written statement filed on behalf of the respondents.

Keeping in view the facts mentioned in the application, which are duly supported by an affidavit, the application is allowed. Replication to the written statement filed on behalf of the respondents, is taken on record.

CWP-20911-2016

1. In the present writ petition, the challenge is to the order dated 06.05.2016 (Annexure P-8) passed by the Employee's Provident Fund Appellate Tribunal, New Delhi by which, order dated 04.05.2010 (Annexure P-3) passed by petitioner-APFC, has been set aside.

2. It may be noticed that assessment for determining the contribution to be done by respondent No.1-institution was made vide order dated 30.11.2005 (Annexure P-1) passed by APFC against the respondents for the year 2000-2001 and 2001-2002 for wages which were paid by the respondent-establishment and they were held liable to pay a sum of Rs.6,65,013/- on account of the wages paid by them. Though, in the said order of assessment, the contribution to be done by respondent No.1 qua the leave encashment paid was also assessed to be paid by the respondent-establishment to the tune of Rs.1,87,438/- but the said order of assessment kept the said assessment qua the leave encashment in abeyance.

3. Thereafter, the order dated 04.05.2010 (Annexure P-3) passed under Section 14-B of the Employee's Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred as '1952 Act') was passed with regard to the imposition of penalty as well as interest under the 1952 Act and only the amount of Rs.6,65,013/- assessed qua the wages paid was taken into account for said purpose and a penalty of Rs.3,63,156/- was imposed under Section 14-B of the 1952 Act, which order was impugned by the respondent-establishment before the Appellate Tribunal. The Employee's Provident Fund Appellate Tribunal considered the said fact and passed a final order holding that the provident fund is not liable to be paid on the amount qua the leave encashment and therefore, imposition of penalty and interest by the petitioner or the respondent-establishment is beyond jurisdiction and directed that no such amount as assessed vide order dated 04.05.2010 (Annexure P-3) amounting to Rs.3,63,156/- can be charged and the amount already paid by the respondent-institution be

adjusted against any future liability which may arise. The said order dated 06.05.2016 (Annexure P-8) is under challenge before this Court.

4. Learned counsel for the petitioner argues that a bare perusal of the impugned order would show that the order of recovery of penal amount as well as interest under Section 14-B of the 1952 Act has been set aside on the ground that no jurisdiction exists with the petitioner to claim provident fund on the amount of leave encashment paid whereas, the assessment qua amount of leave encashment paid was assessed but same was kept in abeyance and even the order dated 04.05.2010 (Annexure P-3) under Section 14-B of the 1952 Act is only qua the amount of liability of provident fund wages for the year 2000-2001 and 2001-2002 amounting to Rs.6,65,-013/- and therefore, the Tribunal misread the order while setting aside the same.

5. Learned counsel for respondent No.1, on the other hand, submits that once by the same order dated 30.11.2005 (Annexure P-1), the assessment was also made qua the leave encashment paid, the order passed by the Tribunal is valid.

6. I have heard learned counsel for the parties and have gone through the record with their able assistance.

7. A bare perusal of the order of assessment dated 30.11.2005 (Annexure P-1) would show that the assessment was done in two parts: one for the provident fund for the wages paid and one for the leave encashment paid. For the amount qua the provident fund on the wages paid which was not deposited, the assessment was done to the tune of Rs.6,65,013/- and qua the leave encashment paid, the assessment was separately done to the tune

of Rs.1,87,438/-. The ultimate order was passed only with regard to the liability of the respondent-establishment for Rs.6,65,013/- and the assessment qua the leave encashment paid was kept in abeyance which is clear in the order itself.

8. Further, the order under Section 14-B of the 1952 Act for imposing the penalty and seeking interest on the liability imposed upon the respondents was also on the sum of Rs.6,65,013/- which assessment is qua the wages paid by respondent No.1.

9. Learned counsel for respondent No.1-establishment has not been able to show that an amount of Rs.1,87,438/- which is the amount assessed qua the leave encashment aid has also been added while computing the penalty or the interest payable by respondent No.1.

10. The Appellate Tribunal has totally ignored the said relevant fact while setting aside the order of imposition of penalty and interest under Section 14-B of the 1952 Act. The Tribunal misread the order dated 30.11.2005 (Annexure P-1) wherein, the assessment of the respondent No.1-establishment qua leave encashment paid had already been kept in abeyance.

11. Keeping in view the above, the order dated 06.05.2016 (Annexure P-8) is perverse to the facts available on record and cannot be upheld hence, the same is set aside. The amount already paid by the respondent-establishment keeping in view the order dated 04.05.2010 (Annexure P-3) under Section 14 of the 1952 Act was valid and the petitioner will be entitled to retain the same. In case the same has not been adjusted in the future, the same will be retained otherwise, the same will be

recovered from the respondent-establishment in accordance with law.

12. The present writ petition is allowed in above terms.

July 21, 2025 **(HARSIMRAN SINGH SETHI)**
harsha **JUDGE**

Whether speaking/reasoned : Yes
Whether reportable : No