2025:PHHC:033556-DB

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

LPA-2804-2024 (O&M)
Date of decision: 24.02.2025

CENTRAL BOARD OF TRUSTEES EPFO, GURGAON
……Appellant

Versus

M/s HI-TRAC MANPOWER SERVICES PVT. LTD. & ANR.
…..Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MRS. JUSTICE SUKHVINDER KAUR

Present:- Mr. Sandeep Goyal, Advocate for the appellant.

SUDHIR SINGH, J.

Challenge in the instant intra Court appeal is to the order dated 04.09.2024 passed by the learned Single Judge, whereby the writ petition filed by the appellant was dismissed.

2. Before the learned Single Judge, the appellant had laid challenge to the order dated 30.03.2017 (Annexure P-2 with the writ petition), whereby the Appellate Authority had modified the order dated 27.01.2014/23.01.2015 (Annexure P-1 with the writ petition) passed by the Assessing Authority. As per the facts on record respondent No.1 is a registered Contractor, engaged in supplying labour to various establishments. Respondent No.1 is bound to comply with the provisions of an Employees Provident Fund and Miscellaneous Provisions Act, 1952 (for short 'the 1952 Act). The said Contractor during the period April, 2004-January, 2014 had

delayed the payment of employer and employee contribution in the provident fund. The Assessing Authority had issued a notice dated 03.04.2014, calling upon the Contractor to show cause as to why the damages and interest in terms of Sections 14-B and 7Q of the 1952 Act should not be levied. The Contractor filed reply pointing out that the delay had occurred due to global slowdown and the delayed receipt of monthly charges from the principal employer. It was further pointed out that the delay was not intentional and rather, beyond the control of the Contractor. The Assessing Authority disagreeing with the aforesaid explanation, had assessed the damages and interest to the tune of Rs.54,07,928/- vide order dated 23.01.2015. In an appeal, the Appellate Authority vide order dated 30.03.2017, had reduced the said amount to 20% of the assessed damages.

3. Learned counsel for the appellant has vehemently argued that as per para 32-A of the EPF Scheme, the maximum rate of penalty was 37% which was revised to be 25 per cent w.e.f. 26.09.2008, but the said aspect of the matter has totally been ignored by the learned Single Judge. It is further argued that the learned Single Judge and the Appellate Authority have wrongly held that interest is separately calculated w.e.f. 26.09.2008. Still further, it is contended that it is mandatory for the employer to deposit the EPF contribution within the stipulated time as per the provisions of the Act and scheme framed thereunder and the grounds of financial difficulties and pendency of litigation, cannot be made excuses for delayed deposit of the EPF contribution. Reliance is placed upon a judgment of the Madras High Court in W.A(MD).No.298 of 2024 titled as **The**

Regional Provident Fund Commissioner Employees' Provident Fund Organisation **Vs.** **The President Officer Employee's Provident Fund Appellate Tribunal and other,** to contend that the Appellate Authority is only empowered to reduce or waive the damages as per the scheme. It is, thus, contended that the impugned order passed by the Appellate Authority being in violation of the scheme, is not tenable in the eyes of law, but the learned Single Judge while passing the impugned order did not take the said legal aspect into consideration.

4. We have heard the learned counsel for the appellant and have also gone through the impugned judgment and decree.

5. The only question that arises for consideration by this Court is whether the order passed by Court, requires any interference.

6. It is not in dispute that there was delay on the part of the respondent-Contractor in payment of employer and employee contribution in the Provident Fund. It is also not disputed that in terms of Para 32-A of the EPF Scheme amended up to date, in case of default in the payment of any contribution to the fund, the Central Provident Fund Commissioner or such officer as may be authorized by the Central Government by a notification in the official Gazette, may recover from the employer by way of penalty, damages at the rates stipulated under the said para. It is the contention of the learned counsel for the appellant that as there was delay of more than six months in payment of the aforesaid contribution, the Contractor was liable to pay damages to the extent of not less than 25%.

7. The learned Single Judge, after considering the arguments raised by the learned counsel for the parties, has observed that there was no intentional delay or *mens rea* on the part of the Contractor and that the Appellate Authority had not reduced the amount of interest but only reduced the damages. It was further found that provisions qua damages are not mandatory and the authorities are bound to assess damages judiciously considering the prevailing facts and circumstances. It was further found that the Contractor had though the delayed in depositing the provident fund dues, yet the same were deposited without any asking of the appellant.

8. Para 32-A of the Scheme which reads as under:-

> "32A. Recovery of damages for default in payment of any contribution---
>
> (1) Where an employer makes default in the payment of any contribution to the fund, or in the transfer of accumulations required to be transferred by him under sub-Section (2) of Section 15 of sub-Section (5) of Section 17 of the Act or in the payment of any charges payable under any other provisions of the Act or scheme or under any of the conditions specified under Section 17 of the Act, the Central Provident Fund Commissioner or such officer as may be authorized by the Central Government by notification in the official Gazette, in this behalf, may recover from the employer by way of penalty, damages at the rates given below:-

Sl. No.	Period of default	Rates of Damages (percentage of arrears per annum)
(a)	Less than two months	5
(b)	Two months and above but less than four months	10
(c)	Four months and above but less	15

than six months

(d) Six months and above 25

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(2) The damages shall be calculated to the nearest rupee, 50 paise or more to be counted as the nearest higher rupee and fraction of a rupee less than 50 paise to be ignored.”

9. A perusal of the aforesaid extracts would show that the Central Provident Fund Commissioner or such officer as may be authorized by the Central Government by notification in the official Gazette in this behalf, may recover from the employer by way of penalty, damages at the rates indicated above. We have to examine as to whether the damages are required to be charged from the employer/Contractor at the rate of 25%. In this regard, reference may be made to the power of the Central Provident Fund Commissioner or any officer authorized in this behalf to recover such damages as the plain language of the aforesaid scheme stipulates that the Provident Fund Commissioner or any officer so authorised, may recover from the employer such penalty. We find that the aforesaid provisions are only directory in nature and not mandatory and, therefore, the Appellate Tribunal was perfectly justified in reducing the damages, may be less than 25%. In <u>Regional Provident Fund Commissioner Employees' Provident Fund Organisation's</u> case (supra), relied upon by the learned counsel for the appellant, the Madras High Court has dealt with the power of the Appellate Authority to reduce or waive off the damages as per the scheme formulated under the Act.

10. The order passed by the learned Single Judge has dealt with the power of the Tribunal to determine the damages judiciously. Thus, we find that the order passed by the learned Single Judge, does not suffer from any patent illegality or perversity.

11. No other point has been urged.

12. In view of the above findings, no merit in the present appeal, the same is hereby dismissed.

13. Pending application(s), if any, shall stand disposed of.

[SUDHIR SINGH]
JUDGE

[SUKHVINDER KAUR]
JUDGE

24.02.2025
himanshu

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No