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W.P.No.5229 of 2021 and W.P.(MD).No.7452 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.01.2026

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.5229 of 2021 and W.P.(MD).No.7452 of 2021
& W.M.P.Nos.5793 and 5794 of 2021; W.M.P.(MD).Nos.5628 and 5629
of 2021

In W.P.No.5229 of 2021:-

The Radhamangalam Primary
Agricultural Cooperative Bank,
Rep. by President,
Thevur Post, Kilvalur Taluk, Nagapattinam District,
Pin – 611 109.

.. Petitioner

Versus

The Assistant Provident Fund Commissioner,
Employees Provident Fund Organisation,
Sub-Regional Office,
P.B.No.588, Shree Complex, D-Block,
18, Madurai Road,
Trichirapalli – 620 008.

.. Respondent

In W.P.(MD).No.7452 of 2021:-

The Assistant Provident Fund Commissioner,
Employees' Provident Fund Organisation,
P.B.No.588, Sree Complex "D" Block,
No.18, Madurai Road,
Trichirapalli.

.. Petitioner

Versus



W.P.No.5229 of 2021 and W.P.(MD).No.7452 of 2021

M/s.The Radhamangalam Primary Agricultural
Co-operative Credit Society Ltd.,
Thevur Post,
Kivalur Taluk,
Nagapattinam District - 611 109.

.. Respondent

Prayer in W.P.No.5229 of 2021 : Writ Petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorari calling for the records of the respondent relating to his order No.SDC/TN/TRY/27545/Circle:33/SRO-TRY/2013, dated 17.07.2013 and also of the Employees Provident Fund Appellate Tribunal, Chennai No.EPFA/367/2017 ATA No.464(13) 2014, dated 07.08.2020 and quash both the orders in so far as the levy of penal damages under Section 14B of the Employees Provident Funds and Miscellaneous Provisions Act, 1952.

Prayer in W.P.(MD).No.7452 of 2021 : Writ Petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorari to call for the records relating to the order passed by the Employees Provident Fund Appellate Tribunal, Chennai in EPFA No.367 of 2017, dated 07.08.2020 and quash the same as illegal.

In W.P.No.5229 of 2021:-

For Petitioner : Mr.A.Praveen Kumar

For Respondents : Ms.R.Meenakshi



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In W.P.(MD).No.7452 of 2021:-

For Petitioner : Ms.R.Meenakshi

For Respondents : Mr.A.Praveen Kumar

COMMON ORDER

These two Writ Petitions are filed challenging the self-same order of the Appellate Tribunal under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as 'the Act') made in E.P.F.A.No.367 of 2017, dated 07.08.2020 and as such, are taken up and disposed of by this common order.

2. The brief facts leading to the filing of the Writ Petitions are that the Radhamangalam Primary Agricultural Co-operative Bank (hereinafter referred to as the 'society') is a Co-operative Society registered under the Co-operative Societies Act, 1912. While so, it received a show-cause notice, dated 10.05.2013 directing it to show cause as to why a sum of Rs.5,75,162/- should not be recovered from it as damages. After considering the explanation submitted on behalf of the society, an order was passed on 17.07.2013 levying damages of Rs.5,75,162/- and a sum of Rs.3,12,262/- as the interest. Though the



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society initially filed a Writ Petition, ultimately, the said order came to be challenged by way of an appeal and by the order impugned in the Writ Petitions, the Appellate Tribunal, while confirming the interest under Section 7Q of the Act that was imposed against the society, reduced the damages to an extent of 30% of the total sum, determined under Section 14B of the Act. Aggrieved thereby, both the society as well as the Provident Fund authorities have filed these Writ Petitions.

3. Learned Counsel for the society would submit that the society, being a Co-operative Society, is exempt from the provisions of the Act and would rely upon Section 16 of the Act which reads as under:-

“16. Act not to apply to certain establishments.—(1) This Act shall not apply—

(a) to any establishment registered under the Co-operative Societies Act, 1912 (2 of 1912), or under any other law for the time being in force in any State relating to co-operative societies, employing less than fifty persons and working without the aid of power; or

(b) to any other establishment belonging to or under the control of the Central Government or a State Government and whose employees are entitled to the benefit of contributory provident fund or old age pension in accordance with any scheme or rule framed by the Central Government or the State Government governing such benefits; or

(c) to any other establishment set up under any Central, Provincial or State Act and whose employees are entitled to the benefits of contributory provident fund or old age pension in accordance with any scheme or rule framed under that Act governing such



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benefits;

* * * * *

(2) If the Central Government is of opinion that having regard to the financial position of any class of establishments or other circumstances of the case, it is necessary or expedient so to do, it may, by notification in the Official Gazette, and subject to such conditions as may be specified in the notification, exempt whether prospectively or retrospectively that class of establishments from the operation of this Act for such period as may be specified in the notification.”

4. The learned Counsel would submit that it is not even the case of the authorities that the society runs on power or it has more than 50 persons employed. As a matter of fact, admittedly, there were only 8 employees. The learned Counsel would further submit that once the enquiry was conducted, immediately, the determined amount was paid. Therefore, there was no occasion for the respondent to have levied the damages. In any event, when the appellate authority had decided that the damages levied are inequitable, it ought to have waived the entire damages. Considering the fact that the society is run on a non-profit motive for the welfare of its members and is already in a huge loss, the provisions contained in the scheme for sick industries should have been extrapolated to the Co-operative Societies also and the entire damages ought to have been waived. The authorities were also not right in imposing the interest.



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5. Per *contra*, the learned Counsel for the Provident Fund authorities, would submit that though a Co-operative Society is exempt from the provisions of the Act under Section 16, it got coverage under the Act on voluntary basis. The learned Counsel would draw the attention of the Court to Section 1(4) of the Act where any establishment can also voluntarily get itself covered under the Act and once the establishment gets covered under the Act, then, all the provisions are applicable and even if the number of employees go lesser than 20 and still, the Act will be applicable. The learned Counsel would produce the consent letter, dated 29.02.1992 and the undertaking given by the society consenting that the provisions of the Act to be applied to them and undertaking to pay the contribution as per the scheme. Once the consent is given in the year 1992, the society willfully and wantonly failed and omitted to pay the contributions from the year 2002-2003 and the entire amount due was belatedly paid only in the year 2012-2013. Therefore, the Act does not vest with any discretion, but, to levy damages and the interest on the belated payment. Even the rate is prescribed by the scheme under paragraph No.32A. Paragraph 32 provides for the waiver and that is not applicable for the society. Therefore, the Appellate Tribunal ought not to



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have waived even the part amount and when the society has not willfully paid the contribution in time, it is liable to pay the damages. Therefore, this Court should interfere with the order of the Appellate Tribunal and restore the order of the original authority.

6. I have considered the rival submissions made on either side and perused the material records of the case.

7. Section 1(4) of the Act is extracted hereunder for ready reference:-

“1. Short title, extent and application.—

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. .

(4) Notwithstanding anything contained in sub-section (3) of this section or sub-section (1) of section 16, where it appears to the Central Provident Fund Commissioner, whether on an application made to him in this behalf or otherwise, that the employer and the majority of employees in relation to any establishment have agreed that the provisions of this Act should be made applicable to the establishment, he may, by notification in the Official Gazette, apply the provisions of this Act to that establishment on and from the date of such agreement or from any subsequent date specified in such agreement.”

8. In this regard, the consent letter that was given on 29.02.1992 clearly reads that the society and majority of its employees are consenting



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to be covered under the Act and an undertaking is also filed on behalf of the society undertaking to pay 10% of the pay as contribution. Therefore, the argument of the learned Counsel for the society that the society is exempted under Section 16, cannot be accepted and as such, stands rejected. As far as the order of the appellate authority is concerned, the appellate authority had considered the period of delay, the fact that the society is a Co-operative Society which has chosen voluntarily to be covered under the Act and all the attendant circumstances and had reduced the damages to 30% of the total sum, originally assessed by the authorities. I do not see any perversity or illegality in the said order.

9. As a matter of fact, even paragraph No.32B(c), depending upon the merits, the damages, upto 50%, can be reduced by the board itself. The Appellate Tribunal, which has the authority to consider the justifiability including the reasons for delay etc., certainly, has the jurisdiction to reduce the damages upto 30%. There is no perversity or illegality in the said order. Already, the relief has been given by the appellate authority, whereby, it has also directed the adjustment of interest of Rs.3,12,262/- under Section 7Q of the Act and another sum of Rs.1,31,450/- towards the damages under Section 14B of the Act from the



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amount already deposited by the society by way of conditional order. It is now stated that another sum of Rs.41,099/- is due. In view of the overall facts and circumstances of the case and the condition pleaded on behalf of the society, I am of the view that the relief can be extended to the said sum also.

10. In view thereof, these Writ Petitions are disposed of on the following terms:-

(i) The order of the appellate authority in E.P.F.A.No.367/2017, dated 07.08.2020 is confirmed to the extent it reduced the damages upto 30% of the amount assessed and adjusted the amount.

(ii) However, it is further modified that the sum of Rs.41,099/- which is said to be outstanding, shall also stand waived.

(iii) There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

20.01.2026

Neutral Citation : no
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To

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D.BHARATHA CHAKRAVARTHY, J.

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