THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT/EPF APPELLATE TRIBUNAL, JABALPUR

NO. CGIT/LC/EPFA-19/2021

PRESENT: P.K.SRIVASTAVA
H.J.S.(Retd.)

M/S Jain Public School

APPELLANT

Versus

The Assistant Provident Fund Commissioner
Sagar(M.P.)

RESPONDENT

Shri Uttam Maheshwari : Learned Counsel for Appellant.

Shri J.K.Pillai :Learned Counsel for Respondent.

(J U D G M E N T)

(Passed on this 4th day of May-2022)

1. Under challenge in this appeal is order dated 4-2-2010 passed by the Respondent Authority under Section 7Q and 14B of the Employees Provident Fund And Misc. Provisions Act,1952, herein after referred to the word Act", whereby the Respondent Authority has held the Appellant Establishment liable for payment of damages in the form of penalty for the period September-2002 to September-2007 and interest under Section 7Q of the Act for the said period amounting to Rs.1,24,622/- as damages under Section 14B and Rs.1,00, 182 as interest under Section 7Q of the Act for defaulting payment of employees provident fund dues of its employees within the stipulated period.

2. . Facts connected in brief are that the Respondent Authority issued a provident fund coverage letter on 17-9-2007 informing the Appellant Establishment that it has come into coverage of provident fund contribution from 1-9-2002. This was challenged by the Appellant Establishment before the Respondent Authority. The Respondent Authority passed the order under Section 7A of the Act on 17-10-2008 affirming the provident fund coverage. A Review filed by the Appellant Establishment was dismissed by the Respondent Authority vide order dated 31-12-2008, thereafter the Appellant Establishment deposited provident fund dues for the said period i.e. Sepatember-2002 to September-2007. Thereafter the Respondent Authority issued a show cause notice on 30-10-2009 under Section 14B of the Act for damages towards delayed payments. The Appellant Establishment took the case before the Respondent Authority that damages for pre discovery period cannot be recovered. The Respondent Authority thereafter passed an impugned composite order under Section 14B and 7Q of the Act rejecting the contention of the Appellant Establishment.

3. The grounds of the appeal taken in the Memo of Appeal are mainly that the inquiry period was within pre discovery period because the letter of coverage was issued only on 17-9-2007. The Respondent Authority committed error in law in considering this fact and holding the Appellant Establishment liable to pay the damages and interest for pre discovery period also. The Respondent Authority failed to notice the fact that the Appellant Establishment is an educational institution run by a Society as a charity and on no profit basis, thus committed error in law.

4. In its counter/reply, the Respondent Authority has defended the impugned order on the ground that the applicability of the Act could be decided in the light of the provisions of the Act. Letter of coverage is a simple reminder. The liability of the Appellant Establishment to pay the employees provident fund dues of its employees since 1-9-2002 has been adjudicated in separate proceedings under Section 7A of the Act and is final between the parties. Payment of damages and interest are consequential to the main order, thus according to the Respondent Authority, there is no error of law and fact in the impugned order .

5. I have heard arguments of Mr. Uttam Maheshwari, learned counsel for the Appellant Establishment and Shri J.K.Pillai , learned counsel for the Respondent Authority and have gone through the record.

6. After perusal of the record in the light of rival arguments, the following point arises for determination:-

> **"Whether the finding of the Respondent Authority that the Appellant Establishment is liable to pay damages under Section 14B and interest under Section 7Q of the Act for delayed payments of employees provident fund contributions of its employees between the period Septembe-2002 to September-2007 and the assessment can be faulted in law or fact or not?"**

7. Both the learned counsel have attacked and defended the impugned finding in their arguments. The main contention of learned counsel for Respondent is that imposition of interest under Section 7Q of the Act is only consequential when the liability to pay employees provident fund dues by the Appellant Establishment for the period in question has been settled and has become final . The Appellant Establishment cannot escape from paying interest on damages under Section 7Q of the Act. This is also because the Respondent Authority has to pay interest to the contributions on their deposits. The arguments of learned counsel for Appellant Establishment on this point is mainly that the Appellant Establishment cannot be held liable to pay interest for pre discovery period.

8. Section 1(3) of the Act requires to be reproduced here, which is as follows:-

> **3) Subject to the provisions contained in section 16, it applies-**

(a) to every establishment which is a factory engaged in any industry specified in Schedule I and in which 6[twenty] or more persons are employed, and

(b) to any other establishment employing 7[twenty] or more persons or class of such establishments which the Central Government may, by notification in the Official Gazette, specify in this behalf:

Provided that the Central Government may, after giving not less than two months' notice of its intention so to do, by notification in the Official Gazette, apply the provisions of this Act to any establishment employing such number of persons less than 8[twenty] as may be specified in the notification.

9. A simple reading of this provision makes it clear that an establishment is under obligation to pay employees provident fund dues of its employees and is covered under the Scheme automatically as and when conditions mentioned as above are satisfied. Thus the arguments of learned counsel for Respondent that the Appellant Establishment is covered under the Act for provident fund deposits since September-2002 when the conditions under Section 3a and 3b as mentioned above are satisfied and letter of coverage does not make any difference in this liability, is liable to be accepted accordingly. This is also to be mentioned here that liability to pay interest under Section 7Q is a consequential one. In the case in hand, when the liability to pay employees provident fund dues for the period in question has become final between the parties, the appellant establishment is under obligation to pay interest for late deposits under Section 7Q of the Act, hence the finding of the Respondent Authority with regard to liability under

Section 7Q of the Act and assessment cannot be faulted in law or fact and is affirmed accordingly.

10. As regards the liability of the Appellant Establishment to pay damages under Section 14B of the Act for the late deposits and assessment, the learned counsel for the Appellant has referred to decision of Hon'ble the High Court of M.P. in **Naveen Vidya Bhawan Vs. Union of India** (2015)(III) CLR 484, Manu/MP/0814/2015, the facts of the case referred are same with the case in hand. In the referred case Hon'ble High Court of M.P. has reduced the damages under Section 14B of the Act to 25% of the assessed amount. Keeping in view the facts and circumstances which are similar to the case in hand , para 7 & 9 of this judgment are being reproduced as follows:-

> 7. Section 16(1)(b) as amended can apply only if there is a finding that the institution is covered by some scheme. In the instant case as pointed out, the petitioners are required to abide by the provisions of Rule 10 of the M.P. Ashaskiya Shikshan Sanstha (Institutional Fund) Rules, 1983 and to make deduction towards the contributory fund and under clause (6) of Rule 10. Old procedure for deposit of the provident fund given in sub-rules (1) to (6) of Rule 10. The applicability of theEmployees' Fund & Misc. Provisions Act, 1952 has been specifically stated and the deposits have to be made to the accounts maintained as per scheme of the Act. Thus,it is amply clear that the provisions of the Central Provinces & Berar Manual Appendix XVIII do not apply to the present case.
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> Even if the petitioners are following the said arrangement, the said arrangement cannot continue as the petitioners are not covered by Section 16 (1) (b) of the Act, also in view of State Act of 1978 & Rules.
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> 9. In the instant case, the petitioners submit that they have been depositing the provident fund as per Appendix XVIII of the C.P. & Berar Education

Manual. The question is whether they can be allowed to continue with the said arrangement and the view which we have taken the petitioners cannot be allowed to retain the amount already collected and whatever amount has been collected will have to be deposited in the Reserve Bank or the State Bank as per the provisions of Employees Provident Fund & Misc. Provisions Act, 1952 & Scheme."

10. In the light of the case referred above, holding the findings of the Respondent Authority regarding the liability of the Appellant Establishment to pay damages under Section 14B of the Act for delayed payments is justified in law and fact. The assessment is reduced to 25% of the assessed amount under Section 7Q of the Act in the impugned order.

12. Point for determination is decided accordingly.

13. In the light of the above discussion, the appeal succeeds partly.

ORDER

Appeal succeeds partly. The liability and the assessment of amount under Section 7Q of the Act in the impugned order is confirmed. The liability and assessment of amount under Section 14B of the Act in the impugned order is reduced to 25%.

No orders as to costs.

(P.K.SRIVASTAVA)

PRESIDING OFFICER

JUDGMENT SIGNED , DATED AND PRONOUNCED.

(P.K.SRIVASTAVA)

PRESIDING OFFICER

Date:4/5/2022