
(1996) 10 CAL CK 0023
In the Calcutta High Court
Case No : C.O. No. 17462 (W) of 1996

M/s. Atal Tea Company Ltd. and Another	APPELLANT
Vs	
Regional Provident Fund Commissioner	RESPONDENT

Date of Decision : 15-10-1996

Acts Referred:

Constitution of India, 1950 — Article 226
Employees Provident Fund and Miscellaneous Provisions (Amendment) Act, 1988 — Section 1(2), 20
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14(1), 14(1)A, 14(A, 14B, 15(2)
General Clauses Act, 1897 — Section 6
Income Tax Act, 1922 — Section 28
Income Tax Act, 1961 — Section 271(1)
Sick Industrial Companies (Special Provisions) Act, 1985 — Section 4

Citation : (1998) 1 CALLT 257 : (1998) 79 FLR 372 : (1997) LabIC 1207

Hon'ble Judges : Dibyendu Bhusan Dutta, J

Bench : Single Bench

Advocate : Mr. Malay Ghosh, Mr. Ajit Ghosh, Mr. Debabrata Sen and Mr. O.P. Singhanian, for the Appellant; Mr. Benoy Mishra, for the Respondent

Judgement

D.B. Dutta, J.—An order dated 31.7.96 passed by the Regional Provident Fund Commissioner levying damages against the petitioner company u/s 14B of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the Act) for the failure of the petitioner company to deposit on time (i) Provident Fund Contributions u/s 6 of the Act read with para 38 of the Employees' Provident Fund Scheme 1952, (ii) Family Pension Fund Contributions u/s 6A of the Act read with para 9(1) of the Employees' Family Pension Scheme 1971, (iii) Employees' Deposit Linked Insurance Scheme Contributions u/s 6C of the Act, (iv) Administrative Charges under para 38 of the Employees' Provident Fund Scheme, 1952 and (v) Administrative Charges on Deposit Linked Insurance Scheme u/s 6C of the Act for the months of September 1978 to October 1988 excepting the months of March 1987 to April 1988, forms

the subject matter of challenge in the Instant writ application.

2. The petitioner's case, in substance, may be stated as follows.

The Petitioner company was running its business at a loss during the period from 1971 to 1983 and the amount payable by the petitioner towards provident Fund due fell into arrears with effect from September 1982 to the tune of Rs.2,08,000/- and odd. The respondent by issuing a requisition dated 20.7.84 informed the petitioner that he had advised the Collector and the Certificate Officer, Darjeeling, to initiate certificate proceeding for recovery of the said arrears. The respondent also initiated criminal proceedings being G.R. case Nos. 210 to 213 of 1984 u/s 14, 14A and 14(1)A of the Act as also proceedings for levy of damages for late payment of Provident Fund dues against the petitioner. The petitioner then moved the High Court under Article 226 of the Constitution and in the year 1985 obtained an order from the High Court for payment of the aforesaid arrears by monthly instalments and also for stay of all the aforesaid proceedings. Out of the said arrears the petitioner had made payment to the extent of Rs. 1,61,000/- and odd together with current Provident Fund dues upto April 1986 leaving an outstanding balance of Rs. 46,786/-. A further sum of Rs. 8,03,069/- fell into arrears towards the Provident Fund dues for the period from July 1986 to April 1988. The arrears thus totalled Rs. 8,49,855. The Board of Directors of the petitioner company was re-constituted in April, 1988 and since May, 1988, Provident Fund dues are being paid by the petitioner regularly. The respondent by issuing another requisition dated 23.12.88 threatened to take steps against the petitioner for realisation of the total amount of arrears to the tune of Rs. 8,49,855/- due for the period from July 1986 to April 1988 whereupon the petitioner again moved the High Court by filing another writ application in the year 1989. The said application was disposed of by the High Court by its order dated 30.1.89 by granting 30 equal monthly instalments in payment of the said arrears and also for payment of Interest @ 11 1/2% for the period of default, with a direction upon the respondent not to initiate or proceed with any criminal or certificate proceeding against the petitioner in case the petitioner goes on paying the monthly instalments subject to the condition that the stay of the said proceedings would stand vacated and the respondent would be at liberty to take steps in case of default in payment of any two instalments and/or current dues. The respondent thereafter by its third requisition dated 2.3.93 called upon the petitioner to produce challans so as to show that the payment of interest as directed by the High Court by order dated 30.1.89 was made in full. The petitioner then moved the High Court for the third time on filing a writ application in May, 1993. The High Court passed an Interim order on 14.5.93 in the said writ application directing the respondent to maintain status quo with regard to demand made by him. The said interim order was extended from time to time by orders dated 4.6.93, 9.6.93, 30.6.93 and 20.7.93 and finally the writ petition was disposed of by the court by its order dated 8.10.93 which is as follows :

"The subject matter of dispute in the writ petition relates to the payment of interest on the arrears paid earlier. It is the petitioner's case that a sum of Rs. 3213.15 p. is due as such Interest to the respondents.

The petitioner is directed to deposit the said amount with the RPFC without prejudice to his rights and contentions. The RPFC is directed to hear the petitioner on the question of Interest and the payment made by him will be subject to the final decision that may be taken by the RPFC upon proper scrutiny and adjudication.

Since no affidavit in opposition has been used the allegations contained in the writ petition will not be deemed to have been admitted.

The writ petition is thus disposed of.

There will be no order as to costs."

The petitioner thereafter received a notice dated 16.4.96 of institution of a proceeding u/s 14B of the Act for levying damages for default in the payment of dues payable under the provisions of the Act and the schemes framed thereunder for the period from September 1978 to October 1988 and in response to that notice submitted its written objection on 23.7.96.

3. Upon hearing the petitioner, the respondent Commissioner passed the Impugned order levying the damages amounting to Rs. 14,69,528/- for the periods from September 1978 to February 1987 and May 1988 to October 1988, in exercise of his powers conferred by section 14B of the Act read with Government of India, Ministry of labour. Notification No. SC 548(B) dated 16.10.73. In levying the damages the respondent No.2 observed that the petitioner was a chronic defaulter and that the default extended upto thousand days on many occasions. He relied on the Supreme Court decision in the case of Organo Chemical Industries reported in AIR 1978 SC 1603 wherein it was held that the damages leviable u/s 14B are both compensatory and penal. The respondent Commissioner also relied on another Supreme Court decision reported in 1995 (1) LLJ 574 setting aside the decision of the Bombay High Court in the case of K.T. Rolling Mills reported in 1993 LAB I.C. 1466 which laid down the proposition that the proceeding u/s 14B is to be initiated within a reasonable time. The petitioner took the plea before the Commissioner that the delay in payment of the dues related to the period during which the present management of the company was not in possession of the property and the Commissioner negated the plea holding that this ground could not absolve the petitioner of its liability to pay the penalty. The respondent Commissioner also assigned the reasons for the delay that was occasioned in initiating the proceeding u/s 14B. The delay according to the Impugned order, was not intentional and was caused by the petitioner by reason of its having moved the High Court on different occasions necessitating production of files and papers before the court. Moreover, according to the Impugned order, although the account was being maintained by the office of the petitioner as Siltgurl and as per provisions of the Scheme,

deposits were supposed to be made at the place where the factory was situated, the fact that the deposits were made in Calcutta at their sweet will resulted in extreme problem in compiling the figures and this constituted one of the major reasons for the delay Initiating the said proceeding.

4. Being aggrieved by this order, the petitioner has prayed for quashing the impugned order and for a writ in the nature of prohibition restraining the respondent from taking any step in terms of that order.

5. Section 14B of the Employees Provident Fund and Miscellaneous Provisions Act, 1952, as it now stands, reads as under: "14B. Power to recover damages.-- Where an employer makes default in the payment of any contribution to the Fund (the Family Fund or the Insurance Fund) or in the transfer of accumulations required to be transferred by him under sub-section (2) of section 15 or sub-section (5) of section 17 or in the payment of any charges payable under any other provisions of this Act or of any Scheme or Insurance Scheme or under any of the conditions specified u/s 17, the Central Provident Fund Commissioner or such other officer as may be authorised by the Central Government, by notification in the Official Gazette in this behalf may recover from the employer by way of penalty such damages, not exceeding the amount of arrears, as may be specified in the Scheme :

Provided that before levying and recovering such damages, the employer shall be given a reasonable opportunity of being heard :

Provided further that the Central Board may reduce or waive the damages levied under this section in relation to an establishment which is a sick Industrial company and in respect of which a scheme for rehabilitation has been sanctioned by the Board for Industrial and Financial Reconstruction established u/s 4 of the Sick Industrial Companies (Special Provisions) Act. 1985, subject to such terms and conditions as may be specified in the Scheme."

6. The respondent Commissioner derives his power to levy and recover damages u/s 14B, whenever an employer makes default in the payment of any contribution to the Family Fund or the Insurance Fund or in the transfer of accumulations required to be transferred u/s 15(2) or 17(5), in the payment of any charges payable under any other provisions of the Act or of any scheme. Admittedly the damages leviable u/s 14B are both punitive and compensatory. The word "may" in this section is Indicative of the discretion which has been vested in the respondent Commissioner. It enables the respondent to impose or not to Impose damages. The expression "not exceeding the amount of arrears" clearly suggests that the section prescribes the maximum rate of the leviable damages at 100 per cent of the arrears. The section further suggests that its provisions are subject to a Scheme. Paragraph 32A of the Employees' Provident Fund Scheme, 1952 is the Scheme referred to in section 14B of the Act. The provisions of paragraph 32A of the said Scheme are set out 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 or subsection (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 u/s 17 of the Act, the Central Provident Fund Commissioner or such officer as may be authorised 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.

Period of Default Rate of Damages: [Percentage of arrcars per annum)

(a) Less than two months Seventeen

(b) Two months and above but less than four months Twenty Two

(c) Four months and above but less than six months Twenty Seven

(d) Six months and above Thirty seven

(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."

7. It appears from the Scheme that it prescribe the rates at which the damages may be Imposed and recovered. The rates vary according to the periods of default, the minimum being 17% and the maximum being 37% of the arrear.

8. Mr. Moloy Ghosh, learned counsel appearing for the writ petitioner, raised only the following point in challenging the Impugned order. Ex-facle the order shows that the damages were levied in exercise of the powers conferred by section 14B of the Act in accordance with a notification dated 16.10.73 and not accordance with the provisions of para 32A of the Scheme referred to above. According to Mr. Ghosh, the respondent Commissioner was bound to follow the Scheme, in levying the damages u/s 14B and since the impugned order itself shows that he did not do so, the Impugned order could not be sustained in law and on this ground alone is liable to be quashed.

9. Mr. Benoy Mishra, learned counsel appearing for the respondent on the other hand contends that the Impugned order does not suffer from any illegality or infirmity by reason of the fact that the damages were not levied at the rates specified in the Scheme. He contends that the notification referred to in the impugned order contained the guidelines to be followed by the respondent Commissioner in levying the damages and the Commissioner was Justified in following the same. It is submitted by Mr. Mishra that the Instant case was not at all liable to be governed by the Scheme or for that matter, by the section 14B as it stood after Its amendment by Act 33 of 1988.

10. Section 14B was amended by section 20 of the Employees Provident Fund and Miscellaneous Provisions (Amendment) Act, 1988 and u/s 1 (2) of that Act, section 20 was brought into force with effect from 1.9.91. By the said

Amendment Act, for the words "from the employers such damages not exceeding the amount of arrears as it may think fit to impose, the words "from the employer by way of penalty such damages, not exceeding the amount of arrears as may be specified in the scheme" were substituted. Paragraph 32A of the relevant scheme was also Introduced w.e.f. 1.9.91.

11. Mr. Mishra submits that the right of the respondent to Impose damages and the corresponding liability of the petitioner company for the said damages accrued on the making of the default on the part of the petitioner company in making the deposits which had already occurred long before the said amendment of section 14B of the Act and the relevant Scheme were brought into force and as such the present case would be governed by the preamended section 14B minus the Scheme and not by the amended section read with the Scheme.

12. Mr. Ghosh on the other hand, submits that the proceeding for levying the damages having been Initiated u/s 14B at a time when the section had already stood amended and the relevant scheme had already become operative, the amended section and the relevant scheme would govern the Instant case and in case it is governed by the amended section, the Impugned order would be liable to be struck down simply because of the fact that the respondent a statutory authority, did not follow the procedure required to be followed in levying the damages.

13. Thus the next question that arises for my decision is as to which law-- whether section 14B, as it stood prior to Its amendment under amended Act 33 of 1988, coming Into force w.e.f. 1.9.91 or the section 14B which stood after the said amendment read with the scheme introduced w.e.f. 1.9.91-- is to govern the Instant proceeding for levy of damages u/s 14B.

14. A number of decisions were cited on behalf of the parties in support of their respective contentions.

On behalf of the petitioner reliance was placed on the following decisions namely (i) Maya Rani Punj Vs. Commissioner of Income Tax, Delhi, ; (ii) R. Abdul Azeez Vs. Commissioner of Income Tax, Karnataka-I, ; (iii) Memon Abdul Karim Haji Tayab Vs. Deputy Custodian General, New Delhi and Others, ; (iv) Rai Bahadur Seth Shreeram Durgaprasad Vs. Director of Enforcement, ; (v) AIR 1980 SC 208 ; Garbachan Singh v. Satpal Singh and Ors.; (vi) Union of India and others Vs. Jain Spinners Ltd. and another, :

Union of India v. Jain spinners Ltd.; and (vii) Union of India and others Vs. I.T.C. Limited,

On behalf of the respondent, reliance was placed on the following decision viz (1) Arjan Singh and Another Vs. The State of Punjab and Others, ; (ii) Arjan Singh v. State of Punjab; (iii) Dev Raj Vs. The Union of India and Others, ; (IV) T.S. Baliah Vs. T.S. Rangachari, ; T.S. Ballah v. T. S. Rangachari; (iv) Mithilesh Kumar and Another Vs. Prem Behari Khare, : Mithilesh Kumari and Anr. v. Prem Behari

Khare; (v) Lalappa Lingappa and Others Vs. Laxmi Vishnu Textile Mills Ltd., ; Lalappa Lingappa and Ors. v. Laxmi Vishnu Textile Mills; and (vi) R. Rajagopal Reddy (dead) by L.Rs. and others Vs. Padmini Chandrasekharan (dead) by L.Rs., ; R. Rajagopal Keddy v. Padmini Chandrasekharan.

On behalf of the respondent, reliance was also placed on the provisions of section 6 of the General Clauses Act, 1897.

14A. I now proceed to examine the decisions chronologically.

15. In *Maya Rani Punj Vs. Commissioner of Income Tax, Delhi*, the case was based on the Income Tax Act. The year of assessment was 1961 -62 and the return was due by September 1961. The assessee filed the return on May 3, 1962 beyond more than seven months of the due date. With effect from April 1, 1962. the Income Tax Act of 1961 had come into force. The Income Tax Officer took proceedings u/s 271(1)(a) of the 1961 Act and Imposed a penalty for failure to furnish the return within the time. The question arose whether the amount of penalty was required to be determined in accordance with the provisions of section 28 of the previous Act of 1922 or u/s 271(1)(a) of the new Act. Now, section 297(1) repealed the 22 Act but notwithstanding that repeal, sub-section 2(1) provided that any proceeding for the Imposition of a penalty in respect of any assessment completed before the first day of April, 1962 may be Initiated and any such penalty may be Imposed as if this Act had not been passed, while sub-section 2(g) provided that any proceeding for the imposition of a penalty in respect of any amendment, for the year ending on March 31, 1962, or any earlier year which is completed on or after first day of April, 1962 may be Initiated and any such penalty may be Imposed under this Act. The crucial date, therefore, for the purpose of penalty was the date of such completion, and the satisfaction of the authority that proceedings for levy of penalty be initiated, it was not the assessment year or the date of the filing of the return that was important but it was the satisfaction of the Income Tax authorities that a default had been committed by the assessee which attracted the provisions relating to penalty. It was held that though the default occurred in September 1961, the date relevant for the purpose of initiating proceedings for Imposition of penalty is when, following the assessment made, the Income Tax Officer decided to Initiate penalty proceedings. The proper provision to apply for dealing with the situation relating to penalty is as provided in section 271(1)(a) of the 1961 Act.

16. In *R. Abdul Azeez Vs. Commissioner of Income Tax, Karnataka-I*, the IT (Amend.) Act of 1975, which came into force with effect from 1.4.76 omitted section 274(2) and made some consequential changes. It was held that section 6 of the General Clauses Act 1897 applies to repeals and not to omissions. The authority which had the requisite power or Jurisdiction to pass order Imposing penalty in a pending proceeding was construed to have been divested of that power or jurisdiction to pass such order on and after 1.4.76 by reason of the omission made by the Amendment Act and section 6 of General Clauses Act was held inapplicable for the purpose of saving that proceeding.

In this case, the Supreme Court decision in *T.S. Baliah Vs. T.S. Rengachari*, was referred to wherein the Supreme Court laid down the principles on which the applicability or non-applicability of section 6 of the General Clauses Act should be decided, thus: "The principle of this section is that unless a different Intention appears in the repealing Act, any legal proceeding can be Instituted and continued in respect of any matter pending under the repealed Act as if that Act was in force at the time of repeal. In other words, where there is a repeal of an enactment, the consequences laid down in section 6 of the General Clause Act will follow unless, as the section itself says, a different Intention appears in the repealing statute. In the case of a simple repeal there is scarcely any room for expression of a contrary opinion. But when the repeal is followed by fresh legislation on the same subject the court would undoubtedly have to look to the provisions of the new Act, but only for the purpose of determining whether they indicate a different Intention. The question is not whether the new Act expressly keeps alive old rights and liabilities but whether it manifests an Intention to destroy them. Section 6 of the General Clauses Act, therefore, will be applicable unless the new legislation manifests an Intention incompatible with or contrary to the provisions of the section. Such Incompatibility would have to be ascertained from a consideration of all the relevant provisions of the new statute and the mere absence of a saving clause is by itself not material."

17. In *Memon Abdul Karim Haji Tayab Vs. Deputy Custodian General, New Delhi and Others*, the case was based on Administration of Evacuee Property Act, 1950. The amended section 48 came into the Act No. 91 of 1956 from October 22, 1956. Sub sections (1) and (2) are clearly procedural and as such were applicable to all cases which had to be Investigated in accordance therewith after October 22, 1956 even though the claim had arisen before the section was Inserted in the Act. It was held: "It is well settled that procedural amendments to a law apply, in the absence of anything to the contrary, retrospectively in the sense that they apply to all actions after the date they come into force even though the actions may have begun earlier or the claim on which the action may be based may be of an anterior date."

18. In *Rai Bahadur Seth Shreeram Durgaprasad Vs. Director of Enforcement*, the Foreign Exchange Regulation Act (7) of 1947 vis-a-vis the Amendment Act 39 of 1957 came up for Interpretation. It was held: "It is not correct to say that the amended section 23(1) does not apply to contraventions which took place before the Amendment Act came into force. Therefore the Initiation of adjudication proceedings for failure to repatriate foreign exchange on shipments of manganese Ore prior to September 30, 1957 the date when the Amendment Act came into force was permissible."

19. In *Gurbachan Singh Vs. Satpal Singh and others*, retrospectivity of section 113A of the Evidence Act came up for interpretation. It was held that the provisions of the section did not create any new offence and as such it did not create any substantial right but it was merely a matter of procedure of evidence

and as such it is retrospective. Halsbury's Laws of England (4th Edition) volume 44 was quoted in the decision as under: The general rule is that all statutes, other than those which are merely declaratory or which relate only to matters of procedure or evidence are prima facie prospective, and retrospective effect is not to be given to them unless, by express words or necessary implication it appears that this was the Intention of the legislature.

The presumption against retrospection does not apply to legislation concerned merely with matters of procedure or of evidence, on the contrary, provisions of that nature are to be construed as retrospective unless there is a clear indication that such was not the intention of Parliament."

20. In Union of India and others Vs. Jain Spinners Ltd. and another, , amendments made to section 11B of Central Excise and Salt Act, 1944 by the Central Excises and Customs Laws (Amendment) Act, 1991, were held to be retrospective in operation and applicable to all earlier orders and directions for refund given by any authority or court.

21. In Union of India and others Vs. I.T.C. Limited, the earlier decision in Union of India and others Vs. Jain Spinners Ltd. and another, , in which, the law, on the question of retrospectivity of section 11B(3) of the Central Excises and Salt Act, 1944 as amended from 20.9.91 had been settled, was reiterated.

22. In Arjan Singh and Another Vs. The State of Punjab and Others, , it was observed: "It is well-settled rule of construction that no provision in a statute should be given retrospective effect unless the legislature by express terms or by necessary Implication has made it retrospective and that where a provision is made retrospective, care should be taken not to extend its retrospective effect beyond what was Intended."

23. In Dev Raj Vs. The Union of India and Others, it was held that it is a well-recognised rule of construction that statutes should be interpreted, if possible, so as to respect vested rights, if the amended provision is not expressly made retrospective.

It was also held that between repeal and an amendment. In essence, there is no real distinction. Amendment is, in fact, a wider term and it includes abrogation or deletion of a provision in an existing statute. If the amendment of the existing law is small, the Act professes to amend; if it is extensive, it repeals the law and re-enacts it.

This decision quotes Bindra On the interpretation of Statutes (5th edition) thus: "Perhaps no rule of construction is more firmly established than this--that a retrospective operation is not to be given to a statute so as to impair an existing right or obligation otherwise than as regards matter or procedure, unless that effect cannot be avoided without doing violence to the language of the enactment. A statute which impairs vested rights or the legality of its transactions or the obligations of contract should not prima facie be held to be

retrospective. Such rights cannot be taken away by implication. A statute affecting private rights is to provide expressly for either the taking away of the private right or for imposing restrictions on that right. The rights cannot be - taken away or restricted by Implication it is well settled that a statute is not to be construed to operate retrospectively so as to take away a vested right unless that Intention is made manifest by language so plain and unmistakable that there is no possibility of any choice or meanings. If the enactment is expressed in language which is fairly capable of either interpretation, it ought to be construed as prospective only, The retrospectivlty of a procedural statute will not, how ever, affect substantive rights which have already vested in a citizen....."

This decision also quotes Crales on Statute Law (7th Edition) as under: A statute is to be deemed to be retrospective, which away or Impairs any vested right acquired under existing laws, or create a new obligation, or Imposes a new duty or attaches a new disability in respect to transaction or consideration already past. But a statute is not properly called a retrospective statute because a part of the requisites for Its action is drawn from a time antecedent to Us passing. In Laurie v. Renad, (1892) 3 Ch. 402 Lindley L.J. said: it is a fundamental rule of English Law that no statute shall be construed so as to have retrospective operation unless Its language is such as plainly to require such a construction. And the same rule Involves another and subordinate rule to the effect that a statute is not to be construed so as to have a greater retrospective operation than its language renders necessary....."

It also relied on the decision of Moti Ram Vs. Suraj Bhan and Others, in which the question of retrospective operation of amending provision was Involved and it was held: "It is well settled that where an amendment affects vested rights the amendment would operate prospectively unless. It is expressly made retrospective or its retrospective operate on follows as a matter of necessary implication."

It also relied on the observations of the Supreme Court in Income Tax Officer, Alleppey Vs. M.C. Poonnoose and Others, . The relevant observations are: "It is open to a sovereign legislature to enact laws which have retrospective operation. The courts will not ascribe retrospectivity to new laws affecting rights unless by express words or necessary Implication ft appears that such was the Intention of the legislature."

It also relied on a Division Bench decision of Punjab High Court in Ram Prashad Halwat v. Mukhttar Chand, ILR(1958) 11 Punj 1953 in which the following observations were made: "It is correct that the Intention to give retrospective operation to a statute so as to make it applicable to pending actions need not be stated in express terms, necessary Implication also is a recognised mode of expression. The freedom of legislature to express its mind in any form cannot be restricted. But where any such Intention is suggested the courts always insist on there being a clear adequate and unequivocal expression of the intention, which should not be easy to mistake. The matter is one of construction and if upon a

construction of the enactment it is absolutely apparent that it was the Intention of the legislature that provisions of the Act should apply to pending cases, they have to be so applied."

24. In *T.S. Baliah Vs. T.S. Rangachari*, , the Supreme Court decision in *State of Punjab v. Mohar Singh* AIR 1955 SC 84 in which the principle u/s 6 of the General Clauses Act had been succinctly stated was quoted as under: "Wherever there is a repeal of an enactment, the consequences laid down in section 6 of the General Clauses Act will follow unless, as the section Itself says, a different Intention appears. In the case of a simple repeal there is scarcely any room for expression of a contrary opinion. But when the repeal is followed by fresh legislation on the same subject the court would undoubtedly have to look to the provisions of the new Act, but only for the purpose of determining whether they indicate a different Intention. The line of enquiry would be, not whether the new Act expressly keeps alive old rights and liabilities, but whether it manifests an intention to destroy them. The court cannot therefore subscribe to the broad proposition that section 6 of the General Clauses Act is ruled out when there is repeal of an enactment followed by a fresh legislation. Section 6 would be applicable in such cases also unless the new legislation manifests an Intention incompatible with or contrary to the provisions of the section. Such incompatibility would have to be ascertained from a consideration of all the relevant provisions of the new law and the mere absence of a saving clause is by itself not material. The provisions of section 6 of the General Clauses Act will apply to a case of repeal even if there is simultaneous enactment unless a contrary Intention can be gathered from the new enactment. Of course, the consequences laid down in section 6 of the Act will apply only when a statute or regulation having the force of a statute is actually repealed."

25. In *Mithilesh Kumar and Another Vs. Prem Behari Khare*, , the Supreme Court on the question of retrospectively of a statute held: "A retrospective operation is not to be given to statute so as to Impair existing right or obligation, otherwise than as regards matter of procedure unless that effect cannot be avoided without doing violence to the language of the enactment. Before applying a statute retrospectively the court has to be satisfied that the statute is in fact retrospective. The presumption against retrospective operation is strong in cases in which the statute, if operated retrospectively, would prejudicially affect vested rights or the Illegality of part transaction, or Impair contracts, or impose new duty or attach new disability in respect of past transaction or considerations already passed. However, a statute is not properly called a retrospective statute because a part of the requisites for Its action is drawn from a time antecedent to its passing. The general scope and purview of the statute and the remedy sought to be applied must be looked Into and what was the former state of law and what the legislation contemplated has to be considered. Every law that Impairs or takes away rights vested agreeably to existing laws is retrospective, and is generally in Just and may be oppressive. But laws made just and for the benefit of Individuals and the community as a whole may relate to a time antecedent to

their commencement. The presumption against retrospectivity may in such cases be rebutted by necessary implications from the language employed in the statute. It cannot be said to be an invariable rule that a statute could not be retrospective unless so expressed in the very terms of the section which had to be construed. The question is whether on a proper construction of the legislature may be said to have so expressed its intention."

26. In *Lalappa Lingappa and Others Vs. Laxmi Vishnu Textile Mills Ltd.*, the Supreme Court held : "In construing a social welfare legislation, the court should adopt a beneficent rule of construction: if a section is capable of two constructions, that construction should be preferred which fulfils the policy of the Act, and is more beneficial to the persons in whose interest the Act has been passed. When, however, the language is plain and unambiguous effect must be given to it whatever may be the consequences, for, in that case, the words of the statute speak the intention of the legislature. When the language is explicit, its consequences are for the legislature and not for the court to consider."

27. In *R. Rajagopal Reddy (dead) by L.Rs. and others Vs. Padmini Chandrasekharan (dead) by L.Rs.*, the earlier decision of the Supreme Court in the case of *Mithilesh Kumar and Another Vs. Prem Behari Khare*, was overruled in so far as it held section 4 of the Benami Transactions (Prohibition) Act (45 of 1988) to be declaratory enactment.

28. Thus on a careful analysis of the principles enunciated in the decisions cited on behalf of the parties on the question of retrospectivity of an Act, the essence may be summed up as follows :

Legislature is competent to legislate both prospectively and retrospectively. There is, however, a presumption against retrospectivity. The rule against the retrospective effect of statute is not a rigid or inflexible rule but is one to be applied always in the light of the language of the statute and the subject matter with which the statute is dealing. A statute is retrospective which takes away or impairs any vested right acquired under existing laws or creates a new obligation or imposes a new duty or attaches a new disability in respect of transactions or considerations already past. A retrospective operation is not to be given to a statute so as to impair an existing right or a obligation otherwise than as regards matter of procedure unless that effect cannot be avoided without doing violence to the language of the enactment. No person has a vested right in any course of procedure and the presumption against retrospective construction has no application to enactments which deal with the procedural law and not substantive law. If a statute is in its nature a declaratory Act, the presumption against retrospectivity is inapplicable. The rule against retrospective operation is a presumption only and as such it may be overcome not only by express words in the Act but also by circumstances sufficiently strong to displace it. A repeal may be express or implied. If the provisions of a later enactment are so inconsistent with or repugnant with the provisions of an earlier one that the two cannot stand together, the earlier enactment can be said to have been repealed by implication.

There is no real distinction in essence between a repeal and an amendment.

29. Let me now consider the effect of the amendment that was made in section 140 of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 by section 20 of Amendment Act 33 of 1988 which came into force w.e.f. 1.9.91 as well as the insertion of paragraph 32A in the Employees Provident Fund Scheme 1952 w.e.f. 1.9.91. Both before and after the amendment it has been optional with the Regional Provident Fund Commissioner to levy and recover the damages by way of penalty. Prior to the amendment, he had the power to levy the damages at the rate, the maximum of which was fixed at 100%. It did not, however, prescribe any minimum rate. He was free to impose damages at such rate as he thought fit. After the amendment his power to levy the damages up to the maximum rate of 100% appears to have been curtailed. He is now to follow the sliding table incorporated in paragraph 32A of the Scheme for applying the rates for levy of damages according to the periods of default specified therein. The proceeding u/s 148 was not at all pending at the time when the relevant amendment was made and para 32A of the Scheme was introduced. Admittedly, such proceeding was initiated for the first time only in the year 1996 when the petitioner was served with a notice to show cause on 16.4.96, the defaults for which the writ petitioner did incur the liability for such damages, did occur at a time when the amendment was yet to be made, it is true that the right to levy the damages and already accrued to the Regional Provident Fund Commissioner long before the amendment was made. But such right or the liability was not sought to be enforced till the issuance of the said notice dated 16.4.96 when the amendment had already been brought into force. However, the amended and the unamended provisions of section 14B are really incompatible and inconsistent with one another so far as the rates for levy of damages are concerned. By this amendment, the provisions of section 14B so far as it conferred the discretionary power to determine the rates at which damages would have to be levied can be said to have been repealed by implication. The amendment has not provided for any saving clause expressly. But one thing is clear that the discretionary power of the authority which was to levy the damages stands curtailed by virtue of the amendment. The Regional Provident Fund Commissioner cannot now levy the damages @ 100% if he thinks fit and is now required to follow the scheme of the purpose of determining the rates at which the damages would have to be levied, even though the liability, or the right to enforce the liability, for such damages had already accrued long before the amendment was effected. The intention of the legislature in amending section 14B and introducing the relevant schemes in my view, was to curtail the discretionary power of the levying authority. The amendment thus affects both substantive right as well as procedural law and when the authority enforcing the right or liability which had already accrued prior to the amendment has been divested to a great extent of the discretionary power which he earlier had. As such, I have no hesitation to hold that in the instant case the levy of damages is to be governed by the amended provisions of section 148 read with para 32A of the Scheme referred to above.

In such view of the matter, there is no escape from the conclusion that in levying the damages the respondent did not exercise the Jurisdiction in the manner in which the statute required him to do. I am. therefore, Inclined to hold that the Impugned order was vitiated and is liable to be quashed.

Let an appropriate writ be Issued accordingly.

The Regional Provident Fund Commissioner will, however, be at liberty to initiate fresh proceeding for levy of damages in accordance with the law.

Since the affidavit-in-opposition has been filed, the allegations contained in the writ petition may not be deemed to have been admitted.

There will be no order as to costs. The writ petition is, thus, disposed of.

30. Petition disposed of