
(2016) 08 KL CK 0041

In the High Court Of Kerala

Case No : Writ Petition (C). No. 12866 of 2016 (G)

Nikesh Kumar

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 22-08-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14B,
Section 7Q

Citation : (2017) 2 CLR 490 : (2017) 152 FLR 997 : (2017) LabLR 532 : (2017) 1 LLJ 13

Hon'ble Judges : Mr. K. Vinod Chandran, J.

Bench : Single Bench

Advocate : Dr. S. Gopakumaran Nair, Senior Advocate and Sri. S. Prasanth, SC, for the Respondent Nos. 2 and 3; Sri. N. Nagaresh, Assistant Solicitor General by Sri. Girish Kumar. V., CGC, for the Respondent No. 1; Senior Government Pleader Sri Surin George IPE, for

Final Decision : Dismissed

Judgement

Mr. K. Vinod Chandran, J. - Petitioner is aggrieved with Ext.P2 notice by which the petitioner was required to appear before the author of Ext.P2 on 27.1.2016 to show cause as to why the petitioner should not be committed to civil prison in execution of the certificate of demand of arrears bearing No.KR/KC/27767/Recovery/dated 22.5.2015. The certificate was obviously issued with respect to the default in respect of remittance of Section 14B damages and 7Q interest under the Employees' Provident Funds And Miscellaneous Provisions Act, 1952 (for brevity "EPF&MP Act"). Ext.P1 is the order levying Section 14B interest dated 26.5.2014 which has not been appealed against by the petitioner. The petitioner contends that there was a prayer for exemption as per Ext.P1/5 & P1/6 which has not been considered as well.

2. The exemption under Section 14B reads as under:

"14B. Power to recover damages- Where an employer makes default in the payment of any contribution to the fund [the Pension Fund or the Insurance Fund] or in the transfer of accumulations required to be transferred by him under subsection (2) of section 15 [or sub-section (5) of section 17] or in the payment of any charges payable under any other provision of this Act or of [any Scheme or Insurance Scheme] or under any of the conditions specified under section 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 such damages, not exceeding the amount of arrears, as it may think fit to impose].

[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 under section 4 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986), subject to such terms and conditions as may be specified in the Scheme.]

3. An exemption as contemplated under the proviso would be applicable only for establishments which are declared as sick industrial companies or in respect of which a scheme of rehabilitation has been sanctioned by the Board for Industrial And Financial Reconstruction. There is no such contention raised by the petitioner as to his establishment being so declared. In such circumstances, there can be no consideration of exemption nor is there any obligation on the P.F. Organisation to forward the same to the Central Government.

4. Petitioner having not challenged the damages under Section 14 B for the last three years cannot now raise a contention that the remedy by way of an appeal be left open, especially, since limitation period of 60 days from the date of the order and a further period of 60 days in which an appeal could have been filed with an application for condonation of delay has long expired.

5. In the circumstances noticed above, an appeal would not be maintainable as of now and the petitioner cannot also invoke jurisdiction under Article 226 as has been laid down in *Asst. Commr. of Central Excise v. Krishna Poduval*, 2005 (4) KLT 947. Learned Standing Counsel for the Employees Provident Fund Organisation, would also rely on the decision in *M/s. Arcot Textile Mills Ltd. v. Regional Provident Fund Commissioner and others* -AIR 2014 AIR (SC) 295, wherein the provision under Section 7Q has been interpreted and the Hon'ble Supreme Court to find that the delay in payment would automatically attract Section 7Q and that there is also no provision for appeal which indicates that the levy is automatic.

6. In such circumstances, the writ petition is devoid of any merit and is dismissed.

7. However considering the impecunious circumstances pleaded by the petitioner, he is granted ten equal monthly instalments to satisfy the demands under Section 14B and 7Q of the EPF & MP Act. The 1st instalment shall be paid on or before 22.08.2016 and thereafter; the due date of instalments falling on the 22nd of each succeeding month. On the petitioner making two consecutive defaults, the recovery steps initiated shall revive and continue. Recovery proceedings shall be kept in abeyance on condition that the remittances as per this order are made. On the petitioner satisfying the entire amounts, the recovery proceedings shall be unenforceable.