

(2016) 11 OHC CK 0003
In the Orissa High Court
Case No : W.P.(C) No. 22273 of 2010

Orissa Manganese and Minerals Pvt. Ltd.	APPELLANT
Vs	
Assistant Provident Fund Commissioner	RESPONDENT

Date of Decision : 03-11-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14B,
Section 17(1)

Citation : (2017) LabLR 382 : (2017) LIC 91

Hon'ble Judges : Mr. D. Dash, J.

Bench : Single Bench

Advocate : M/s. A.K. Parija, S.P. Sarangi, P.P. Mohanty, P.K. Dash, B. Ch. Mohanty and A. Pattnaik, Advocates, for the Petitioners; M/s. P.K. Parhi, G. Mohanty, D. Rath and B.K. Parhi, Advocates, for the Opposite Party

Final Decision : Partly Allowed

Judgement

Mr. D. Dash, J. - (A) The writ application has been filed questioning the legality and validity of the order dated 27.10.2010 passed by the Assistant Provident Commissioner, Rourkela in the matter of a proceeding under section 14-B of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter for short as the "EPF Act").

The order in question arises out of the proceeding initiated for recovery of damages for default in payment of the contributions under the EPF Act in time for the period ranging from March, 1978 to July, 1981 by way of penalty followed by issuance of notice dated 23.06.2010 to the Petitioner-Company.

(B) The writ application has been filed questioning the legality and validity of the order dated 27.10.2010 passed by the Assistant Provident Commissioner, Rourkela in the matter of a proceeding under section 14-B of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter for short as the "EPF Act").

The order in question arises out of the proceeding initiated for recovery of damages for default in payment of the contributions under the EPF Act in time for the period ranging from November, 1999 to April, 2002 by way of penalty followed by issuance of notice dated 23.06.2010 to the Petitioner-Company.

(C) The writ application has been filed questioning the legality and validity of the order dated 27.10.2010 passed by the Assistant Provident Commissioner, Rourkela in the matter of a proceeding under section 14-B of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter for short as the "EPF Act").

The order in question arises out of the proceeding initiated for recovery of damages for default in payment of the contributions under the ESI Act in time for the period ranging from December, 1999 to May, 2002 by way of penalty followed by issuance of notice dated 28.06.2010 to the Petitioner-Company.

2. The Petitioner-Company on receipt of the show cause notice as aforementioned submitted the written explanation contending therein that the mine in question was transferred to it in the year 2007 and after the said transaction the Petitioner-Company paid all the arrear provident fund dues. Therefore, the petitioner-company submitted that in view of such diligent conduct making timely payment, no case is made out for imposition of penalty in adherence to the provision of section 14-B of the EPF Act. According to it that liability in so far as the damage by way of penalty is concerned for default in payment of the contributions/dues under the EPF Act in time remains with the previous management and not with the Petitioner-Company which has immediately acted upon in clearing contributions/dues under the EPF Act with utmost promptitude. In essence, it is said that the default being at the behest of earlier Management, the recovery of the damage by way of penalty is not with the present Management. The initiation of the proceedings was further challenged being barred by limitation:-

(A) being initiated after lapse of 30 years,

(B) having been initiated after lapse of almost 10 years; and

(C) for initiation after lapse of almost 9 years.

The Assistant Provident Fund Commissioner repelled the above contentions raised by the Petitioner-Company with the following findings :-

(1) the Petitioner-Company has to make the good the default of the past management and as such the liability on that account remains on its shoulder; and

(2) no limitation is prescribed for levy of damages in consonance with the provision of section 14-B of the EPF Act.

Finally penalty has been imposed computing the damage @ 37% which was the rate prevailing during the period of default and not the rate as was prevailing at

the time of issuance of show cause notice and thereafter.

3. All the above writ applications (A, B & C), thus involve common points and questions of law having the only difference in factual setting relating to the period for which the penal damage has been imposed which also refers to the period concerning the prevalence of same rate of penal damages; all being prior to the year 1991. Therefore, the said writ applications have been heard together for their disposal by this common order.

4. (a) Mr. Ashok Parija, learned Senior Counsel appearing on behalf of the Petitioner-Company first of all going to refute technical objection raised by the opp. party in the counter affidavit as regards the maintainability of the writ application in view of the availability of alternative and efficacious remedy as provided under section 7-I of the EPF Act and having approached this Court without exhausting those, contends that the instant cases purely concern on question of law and that too being also questioned as barred by limitation even though no provision of law exists prescribing the time period for initiation of the proceeding under section 14-B of the Act and alternatively the rate of damage payable if that first contention stands repelled which again depends upon the interpretation of statutory provisions introduced by amendment keeping settled position of interpretation in view.

According to him, the matter having remained pending before this Court since 2010 for about six years by now, it would not be proper to drive the petitioner again to exhaust the alternative and efficacious remedy serving absolutely no useful purpose which would rather be best served on being answered by this Constitutional Court putting a quitus to the lis.

In a bid to place the bona fides of the Petitioner-Company in approaching this Court directly invoking the writ jurisdiction, he next contends that here in this case, the conduct of the Petitioner-Company is not blameworthy for having approached this Court by filing the writ application in order to avoid the rigours of law in wriggling out from depositing the imposed damages so as to be attributed with any oblique motive. In fact, the Petitioner-Company has deposited that required percentage of imposed damages which he would have normally deposited, had there been the approach to exhaust the alternative and efficacious remedy. He further contends that this deposit of 70% of the demand as per the interim order of this Court is approximately the same which it would have been called upon to deposit in the event of resorting the provision of section 17-I of the ESI Act. In support of the said contention, he relies upon the decision of the Division Bench of this Court in case Janajiban Fruits Pvt. Ltd. v. Sales Tax Officer, Ganjam and others; 1987 (65) STC 185 in finally submitting for a decision on merit by this Court in these writ applications.

(b) His first limb of submission on merit is that although no period is prescribed for initiation of proceeding under section 14-B of the EPF Act in the statute, in consonance with the public policy, it cannot be said that it is open for the

authority to initiate the proceeding at any point of time at their sweet will and whim keeping the matter thus open for eternity. According to him, the principles of law as settled in case of Hindustan Steel Ltd. v. State of Orissa; 1917 (25) STC 211 stand to favour Petitioner-Company for quashment of the order regarding imposition of damage for its recovery by way of penalty with the aid of section 14-B of the EPF Act.

(c) The next last limb of submission of course is in the alternative that in any event the maximum of damage of 25% is leviable in the case and not 37% inasmuch as the day on which such proceeding was initiated; the maximum damage prescribed under Para- 32-A of the Employees Provident Funds Scheme, 1952 was 25% and that maximum which may be livable in these cases but not 37% which was the earlier rate prescribed under the Scheme prior to the initiation of the proceeding be it that said rate was prevailing covering the period of default but that had by then already spent its force in the eye of law.

5. Mr. P.K.Parhi, learned counsel for Asst. Provident Fund Commissioner reiterates the objection raised in the counter affidavit relating to maintainability of this writ application. According to him in view of the specific provision contained in section 17-I of the EPF Act, this Court ought to refuse to exercise the writ jurisdiction.

His next contention is that the statute having provided no limitation for the purpose of initiation of proceeding under section 14-B of the EPF Act, there remains no bar for initiation of the proceeding for recovery of damages by way of penalty under section 14-B of the EPF Act even after long lapse of time. He also contends that the principles set at rest in case of Hindustan Steel Pvt. Ltd (Supra) have no applicability to the case in his hand. Lastly, he contends that the rate of damage as it was prevailing during the period of default is liable to be imposed and that has been so rightly done.

In summing up, he argues that, the prayers advanced in the writ applications are devoid of merit and the Petitioner-Company's defence is neither saved from Scylla nor Charybdis.

6. At the outset question arises for decision in the case is regarding maintainability of this writ petitions in refusing to entertain without examining the merits of the contentions of the parties on the ground that the Petitioner-Company should have availed the alternative remedy provided under the provision of section 17(I) of the EPF Act and exhausted the same before approaching this Court.

In Whirlpool Corporation v. Registrar Trade Marks, Mumbai and others: (1998) 8 SCC 1, the Apex Court referring to earlier decisions in case of Rashid Ahmed v. Municipal Board, Kairana (AIR 1950 SC 163); K.S. Rashid and son v. Income Tax Investigation Commission (AIR 1954 SC 207); State of U.P. v. Md. Nooh (AIR 1958 SC 86); A.V. Venkateswaram, Collector of Custom v. Ramchand Sobhraj Wadhwanic (AIR 1961 SC 1506) and Calcutta Discount Co. Ltd. v. ITO Companies

District (AIR 1961 SC 372) has held:-

"20. Much water has since flown under the bridge but there has been no corrosive effect on these decisions which though old, continue to hold the field with the rest that law as to the jurisdiction of the High Court in entertaining a writ petition under Article 226 of the Constitution, in spite of the alternative statutory remedies, not affected specially in a case whether the authority against whom the writ is filed is shown to have had no jurisdiction or had purported to usurp jurisdiction without any legal foundation.

21. That being so, the High Court was not justified in dismissing the writ petitions at the initial stage without examining the contention that the show cause notice issued to the appellant was wholly without jurisdiction and that the Registrar, in the circumstances of the case was not justified in acting as the Tribunal."

Law is also well settled by now that though existence of alternative remedy is not a bar for filing a writ application under Article 226 of the Constitution, yet the constitutional courts are slow in exercising the jurisdiction under the article where adequate and efficacious remedy is available.

7. In the instant case the challenge is to the very initiation of the proceeding after long lapse of time and thus the initiation is called to have been wholly unjustified and unreasonable. The next ground of attack is purely a question of law as regards the construction of para-32A of the EPF Scheme which has the statutory backing standing amended at the time of initiation of the proceeding by way of substitution and thus their attractibility to the cases which though relates to the past inaction nonetheless the consequential action for those by the authority are at the time when the amendment has already come into force. The contention is that the old rate of damage being no more visible in the statute, the authority had lost the jurisdiction to impose that rate being repealed without any saving provision and that too the assessment damage at the rate is attacked as without jurisdiction.

The writ petitions have been pending before this Court since 2010 and it is further seen that the Petitioner-Company by coming to invoke the writ jurisdiction has not attempted to circumvent the statutory provision in that way as regards the deposit of the assessed damage had it gone for seeking the remedy under section 17(I) of the ESI Act and to exhaust it inasmuch as this Court in granting interim order of stay has also directed deposit of 70% of the assessed damage.

The contentions raised by the Petitioner-Company are not at all touching any factual aspect and those stand undenied. The first contention is that the proceeding is nonest in the eye of law and the second point is that the authority had no jurisdiction to take the aid of repealed provision of rate of damage being not permissible upon proper legal interpretation. In other words, the final demand is attacked to be without any legal foundation.

In the cited case of "Janajivan Food Pvt. Ltd. (supra) the Division Bench of this Court in spite of the fact that the order in question was appellable and there was no appeal, since the case was not involved with any disputed question of fact refused to shut the door of the Court for its direct approach for invocation of the jurisdiction of the Court under Article 226 of the Constitution more particularly as the case was found to be involved with pure interpretation of law.

On the anvil of the above settled position of law, the case in hand where the contentions only revolve round the legal orbit posing before this Court to ascertain its circumstance as per law in determining its legal diameter, I do not think it appropriate to close the door of this Court on the ground of the available remedy after lapse of more than six years by now when also I find that it would now serve no purpose in driving the Petitioner-Company to seek the remedy there before the said forum resulting further round of litigations.

In view of above discussion and reasons, I find that the submission of learned Senior Counsel for the Petitioner-Company merits acceptance. For the same, the objection raised by the opposite party as also the Counsel's contention stand repelled.

8. Addressing the first limb of submission as regards the unreasonable delay in initiating the proceeding for recovery of the damages under section 14-B of the EPF Act on the question of limitation, at the risk of the repetition, it may be stated that the statute does not provide any period of limitation for initiating such proceeding so as to recover the damage and for non-payment of contributions under the ESI Act as provided therein under section 14-B of the EPF Act. First of all, it may be kept in view that the legislation is a socio welfare one. It is true that as yet, over a period of more than forty five years, the legislature has not thought it fit to prescribe any period of limitation. The legislation by now is quite clear in not going for it. The reasonings can be well culled out from the fact that 50% of the employees' contribution is trust money with the employer as provided under the statute is for deposit in the statutory fund with matching contribution of employer. The delay in the deposit on his part of the contribution clearly amounts to breach of trust and squarely falls within the ambit of violation of the trust reposed on the employer. The amounts are due to the Trust Fund and the recovery is not by suit. The monies payable into the Fund are for the ultimate benefit of the employees when there remains no provision by which the employees can recover these amounts. So the provisions of Limitation Act, 1963 are not attracted. The law has been well settled that the provisions of the Limitation Act are not applicable to the Labour Courts which principles get squarely attracted for recovery of the damage by the authority concerned under section 14-B of the ESI Act. The legislature when therefore has made no provision for limitation, it is not open for the court to introduce any such limitation on the ground of fairness or justice. These matters are not dealing with rights of the parties remaining settled for long not only amongst the parties but also for that many others having come to intervene during the period

believing in good faith that the matter has been set at rest over quite a long a period of time reaching finality in that way. This legislation is a class of its own and for the reasons described above, the legislature having not prescribed any period of limitation no fault can be found with it and therefore, it is not permissible to say that the initiation of the proceeding for exercise of the power has to be within a reasonable time necessarily leading to say that the exercise has been in a reasonable manner. The question of deprivation of property which rightfully and lawfully belonging to the person does not arise in these matters. The employer who has defaulted in making over the contributions to the Trust Fund had, on the other hand, the use of monies which did not belong to him at all and just coming to the employer for short retaintion for being further passed over along with further contribution from his end being added to it. Such a situation cannot be compared to the above line of cases which involve prolonged suspense in regard to deprivation of property. In fact, in cases under section 14-B of the EPF Act if the authority would have made computations earlier and sent a demand immediately after the amounts fell due, the defaulter would not have been able to use these monies for any purpose whatsoever but would have been compelled to deposit. At this juncture, the authorative views expressed by the Apex Court in the case of Hindustan Times Ltd. v. Union of India and others, (1998) 2 SCC-242 run as under :-

" xx xx xx

It does not lie in the mouth of such a person to say that by reason of delay in the exercise of powers under section 14-B, he has suffered loss. On the other hand, the defaulter has obviously had the benefit of the "boon of delay" which "is so dear to debtors", as pointed out by the Privy Council in Nagendranath De v. Sureshchandra De, AIR 1932 PC 165, wherein it has been observed that the equitable consideration were out of place in matters of limitation and the strict grammatical construction alone was the guide. Sir Dinshaw Mulla stated:-

"Nor in such a case as this is the judgment debtor prejudiced. He may indeed obtain the boon of delay, which is so dear to debtors, and if he is virtuously inclined there is nothing to prevent his paying what he owes into court."

The position of the employer in the case of defaulter under section 14-B is no different.

At the end, the Apex Court has set out the following principles:-

"The authority under Section 14-B has to apply his mind to the facts of the case and the reply to the show-cause notice and pass a reasoned order after following principles of natural justice and giving a reasonable opportunity of being heard; the Regional Provident Fund Commissioner usually takes into consideration the number of defaults, the period of delay, the frequency of default and the amounts involved; default on the part of the employer based on plea of power-cut, financial problems relating to other indebtedness or the delay in realization of amounts paid by the cheques or drafts, cannot be justifiable grounds for the

employer to escape liability; there is no period of limitation prescribed by the legislature for initiating action for recovery of damages under Section 14-B. The fact that proceedings are initiated or demand for damages is made after several years cannot by itself be a ground for drawing an inference of waiver or that the employer was lulled into a belief that no proceedings under Section 14-B would be taken; mere delay in initiating action under Section 14-B cannot amount to prejudice inasmuch as the delay on the part of the Department, would have only allowed the employer to use the monies for his own purposes or for his business especially when there is no additional provision for charging interest. However, the employer can claim prejudice if there is proof that between the period of default and the date of initiation of action under Section 14-B, he has changed his position to his detriment to such an extent that if the recovery is made after a large number of years, the prejudice to him is of an "irretrievable" nature; he might also claim prejudice upon proof of loss of all the relevant records and/or nonavailability of the personnel who were, several years back in charge of these payments and provided he further establishes that there is no other way he can reconstruct the record or produce evidence" or there are other similar grounds which could lead to "irretrievable" prejudice; further, in such cases of "irretrievable" prejudice, the defaulter must take the necessary pleas in defence in the reply to the show-cause notice and must satisfy the authority concerned with acceptable material; if those pleas are rejected, he cannot raise them in the High Court unless there is a clear pleading in the writ petition to that effect."

9. Adverting to examine the case in hand in the light of the above principles, let us now see as to what and how the prejudice for delay if any has been claimed and proved by the Petitioner-Company and if he has changed its position to its detriment to such an extent that if the recovery is made after a large number of years, the prejudice ought to be taken to be of irretrievable nature, or if it has proved the loss of all the relevant records and/or non-availability of the personnel who were, several years back in charge of these payments leaving no scope or way to reconstruct the record or produce evidence or if there exists similar ground which lead to irretrievable prejudice. The reason assigned here is that the default being by the past Management, the present Management is not responsible for the said liability and therefore there has also been the advancement of a prayer for waiver of the damage. Admittedly, the current Management took over the establishment in April, 2007 and thereafter deposited the amount. To that, there is no dispute. Now the delay is for past period and undeniably wherein the earlier Management had delayed in making payment of the contributions as required under the statute. The present Management first of all has not shown as to what was the terms and conditions of shouldering the unpaid statutory dues including the consequential liability springing therefrom for non-compliance of statutory provisions in said matter of nonpayment of the dues as above within the time frame prescribed therein when the establishment's management changed hands. In the absence of the same being neither pleaded in the show-cause nor thereafter shown during the hearing, no case of

irretrievable prejudice can be said to have been made out.

The above discussion thus puts an end to the matter of consideration of a case of irretrievable prejudice since no other factors have been established and therefore the answer runs against the Petitioner-Company on that score.

In the wake of the above discussion and reasons, the first limb of submission of learned Senior Counsel appearing on behalf of the Petitioner-Company does not find favour of acceptance by this Court.

10. Now let me come to the second limb of submission of Mr. Parija, learned Senior Counsel for the petitioner. The matter requires to be addressed is as to whether the rate of damage as introduced in the Scheme under Para 32-A by virtue of the notification dated 26.04.2008 would come to be applied for these cases which have been initiated long thereafter although concerning the default for the period anterior to it when the rate was different.

11. The Authority derives his power to levy and recover damages under section 14B of the EPF Act, whenever an employer makes default in the payment of any contributions under any provision of the EPF Act or as per the Scheme as stated therein. Undoubtedly, the damages leviable under section 14B are both punitive and compensatory. It is punitive in the sense that for violation of statutory provision, the person doing so must be visited with some penal consequences and compensatory in the sense that the persons for whose benefits the Fund has been created must not in any way suffer and for their sufferance due to delay, the person responsible must compensate. The word "may" used under section 14-B is squarely indicative of the discretion which has been vested with the Authority capping the maximum limit at the amount of arrears as specified in the Scheme. This exercise of course has to be affording due opportunity of being heard in the matter to take care of all those relevant factors for viewing the inaction on the part of the person in accordingly decide the matter in imposing the damage. The maximum rate of the leviable damages stands at 100 per cent of the arrears. The provisions are subject to the Scheme as at Para 32-A.

Prior to the notification dated 26.04.2008, the rate of damage prescribed at Para 32-A of the EPF Scheme were higher. In the present case, the old rate prescribed has been adhered to for the purpose of computation of the damage.

12. Learned Senior Counsel contends that the very show-cause notice pursuant to the initiation of the proceeding has been sent long after the amendment of the Scheme at Para 32. So, the Authority is no more vested with the power to impose the rate of damage as provided under the pre-amended Para of the said Scheme.

13. Mr. P.K.Parhi, learned Counsel for the Assistant Provident Fund Commissioner contends that the rate of damage as it was prevailing during the period of default, has to be taken into account for the purpose of computation of the damage and not rate as it has come to be introduced later.

14. From the beginning it has to be kept in mind that we are not concerned here with a case of payment of tax/rate/fees as covering the period as it was during prevalence of said old rate of tax/rate/fees prescribed in the statute nor it's a case of levy of tax/rate/fees having any nexus either directly or indirectly with any transactions during a period. In the instant cases the consideration remains as to computation of damage for non-payment within the time limited under the statute and its rate; whether as per the old rate in force during period of non-payment or the rate as it stands on the date of initiation of the proceeding or order which here is not automatic or done in a mechanical manner by mere arithmetical calculation but after hearing with the discretion remaining with the authority. At this stage, it may be stated that under section 14-B of the E.P.F. Act, the Authority go to initiate the proceeding for recovery of damage in case of default of payment of contributions in time as per the said Act against the employer for his statutory default. The fundamental reason remains that these proceeding are initiated to penalize the person for his default. This recovery of damage is as per the wordings of section 14-B of the ESI Act is as if penalty.

So, normally as on date, there takes place the initiation of the proceeding, the rate of damage as it prevails then has to be taken into account unless in introducing the changed rate of damage in substitution of the earlier rate, a contrary intention is seen to have been expressed. If we look at the rate of damage, it is quite clear that the same has been reduced favouring the employer on that count obviously finding the earlier rate as more harsh or oppressive in the fact and situation prevailing at the time of said reduction of the rate by amendment by way of substitution. Thus it cannot be said to have been intended only for the inaction/default made thereafter. It has not been brought to the notice of the court that there remains any such saving provision either in the ESI Act or in the Scheme that notwithstanding the date of commencement of the proceeding for recovery of the damage, the computation of damage has to be as per the rate provided in the Scheme covering the period of default and imposition of the damages as it was then provided. It is a matter of computation of the damage and nothing else when the principal i.e. the contributions has already been paid. The recovery of this damage is as if penalty. The reason is clear that State cannot claim damage for such inaction; so the damage is on behalf of the employees for being caused to the Trust Fund meant for their benefit since they have no right to recover it as the State is the custodian and distributor of that Fund and the State thus can recover as if penalty such damage. That too its only for nonpayment of the same in adherence to the time frame which the statute provides.

15. In construing a socio welfare legislation, it's the settled position that 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. This approach in my considered opinion has to be in all those matters save and except in the matters concerning recovery of damage to primarily take

care of the factum of withholding contribution as measure of compensation.

By virtue of this amendment, the rates to some extent have been decreased. So in my considered view the Authority cannot levy the damage at the old rate which no more finds place, in the Scheme either on the date when the proceeding was initiated or on the date of passing of the order when no contrary intention is expressed in making said substitution of rates by way of reduction in the rate of damage. The legislature thus appears to have manifested its intention to divest the Authority's power to impose penalty as per the earlier rate and so has substituted the rate by bringing out the notification dated 26.04.2008 which is with the intention and purpose of providing some relief to the employers. From the aforesaid date of coming into force of the amended rate of damage by substituting the rate as described in para 32-A of the Scheme, the legislature is conspicuously silent in expressing any intention as regards the fact that for the delay or default of anterior period, the said rate of damage as it was then would still hold good. No such contrary intention has been expressed to continue with the earlier rate in so far as either for the pending proceeding for recovery of damage is concerned or in relation to the default period for which the new proceedings have been initiated to culminate with the imposition of damage, if any, at the rate as was higher than the substituted rate especially, when the rate has been reduced. An ambiguous situation is clearly visualized if the view of the Authority as taken in the matter is accepted that in so far as the later proceeding concerning the default period prior to the said substituted rate of damage and the default period being after that; for the same length of period of default, the employer would be asked to pay the damage being computed at different rate by one order of the same day. This clearly cannot be taken to be the intention of the legislature in making reduction of rate of damage sending a wrong message and thereby running contrary to the purpose and object behind such reduction/decrease in rate of damage; furthermore when the authority decides the damage, it so decides as to be continuing till the date of decision and for the sufferings incurred till that decision.

16. In view of the aforesaid discussions, the opposite party is found to have acted in excess of the authority in passing recovery of the damage in the above noted cases in excess of the rate as mentioned in Para 32-A of the Scheme as it was in force on the date of initiation of the proceeding when on the date of the order said authority has been lost so as to impose such damage at the rate which was prior to 26.04.2008. Thus while holding Petitioner-Company's liability to pay the damage on the above account of default and the action of the Authority by initiation of the proceeding for recovery of the damage as legal, the order impugned is liable to be quashed to the extent of manner of computation/assessment of the damage. The Authority is to recovery the damage strictly following the provisions contained in section 14-B of the E.P.F. Act read with Para 32-A of the EPF Scheme at such rate, as it stands on the date of initiation of the proceeding as also the final order continuing to hold the field till completion of the said proceeding.

The liability of the Petitioner-Company thus is hereby held to pay the damage as provided in the EPF Act and para 32-A of the EPF Scheme being computed at the rates for the length of period as stand after amendment of Para 32-A of the EPF Scheme vide notification dated 26.04.2008 but not as per the rate for the length of default as prevailant during the period of default.

17. The writ applications are thus allowed in part to the extent as aforesaid and in the peculiar facts and circumstances without cost.

It is further directed that the deposit of amount already made by the Petitioner-Company pursuant to the interim order of this Court would accordingly stand for being so adjusted.