(2016) 11 P&H CK 0032

In the Punjab And Haryana At Chandigarh

Case No : CWP No. 16067 of 2011 and CWP No. 18623 of 2011

Patiala Co-operative Sugar Mills Ltd. APPELLANT

Vs

Employees' Provident Fund Appellate Tribunal RESPONDENT

Date of Decision : 22-11-2016

Acts Referred:

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

Citation : (2017) 153 FLR 95 : (2017) LabLR 538 : (2017) 1 LLJ 338

Hon'ble Judges : Mr. P.B. Bajanthri, J.

Bench : Single Bench

Advocate : Mr. Sanjay Tangri, Advocate, for the Respondent Nos. 2 and 3 in CWP No. 16067 of 2011; Mr. Rahul Sharma-I, Advocate, for the Petitioner in CWP No.16067 of 2011; Mr. Sanjay Tangri, Advocate, for the Petitioner in CWP No. 18623 of 2011; Mr. Rahul Sharma-I,

Final Decision : Allowed

Judgement

P.B. Bajanthri, J. (Oral) - Both the petitioner-Patiala Co-operative Sugar Mills and EPF Department assailed the order of the Employees Provident Fund Appellate Tribunal dated 9.6.2011. The petitioner-Patiala Cooperative Society Sugar Mills Limited is a registered Society under the Punjab State Cooperative Societies Act, 1961 Co-operative Societies Act (for short petitioner - Cooperative Society). The petitioner-Cooperative Society during the period from June, 2002 to November, 2002 and June 2004 to March, 2008 PF contribution was deposited with the respondent EPF Department. On 17.7.2009 EPF Department issued a show cause notice under Section 7-P of the EPF Act. Thereafter, 7-A proceedings were held on 9.4.2010 and assessment order was passed on 25.5.2010 vide Annexure P-3. As on 9.4.2010, it was an ex parte proceedings. The petitioner Society aggrieved by the order dated 25.5.2010 preferred an appeal before the EPF Appellate Tribunal under Section 7(i) of the EPF and MP Act, 1952. The Appellate Tribunal passed order on 9.6.2011 remanding the matter to the authority to assess the damage @ 22% inclusive of interest. Both the petitioner Society and EPF Department are aggrieved by the order of the Appellate Tribunal dated 9.6.2011 presented these petitions.

2. Learned counsel for the petitioner-Society submitted that when 14-B proceedings were listed on 22.2.2010 it was adjourned to 9.4.2010 as Assessing Officer was on leave and 9.4.2010 and representative of the petitioner Society remained ex parte. The EPF Authority proceeded to pass orders under Section 7-Q and Section 14-B i.e. interest on provident fund, and levy of damages. Section 14-B proceedings determined the damages to the extent of Rs. 60,57,463/- and interest under Section 7-Q to the extent of Rs. 20,15,549/-. Learned counsel for the petitioner-Society submitted that perusal of proceedings under Section 14-B read with Section 7-Q, it is evident that he has not been given opportunity. It was further contended that Section 14-B read with para 32-A of the EPF Scheme, 1952, the word used is "may" that means discretionary power is vested with the Competent Authority. Therefore, while exercising power under Section 14-B read with para 32-A of EPF scheme, the Competent Authority has not appreciated the financial crisis of the petitioner having regard to the fact that on 26.10.2003, Registrar of Cooperative Society took a decision to wind up the petitioner - Society. It was further contended that the EPF Department have taken 7 years time to determine the interest and levy of damages under Section 7-Q and 14-B, respectively. Therefore, while exercising discretionary power under Section 14-B read with para 32-A of the EPF Scheme, there should have been waiver for waiving interest as well as levying of damages. Having regard to the fact that the petitioner -Society is in financial crisis. It was further contended that the Appellate Authority appreciated the financial crisis and reduced the levy of damages from 37% to 22%. The Appellate Tribunal have power to modify the percentage of damages when the Competent Authority who determined the damages under Section 14-B such power is vested with the Appellate Tribunal also.

3. On the other hand, learned counsel for the respondent-EPF Department submitted that admittedly there is an inordinate delay in depositing EPF amount and taking action under Section 7-Q and 14 is in accordance with statutory provisions. Delay would not be a hurdle as held by the Supreme Court in the case of Hindustan Times Ltd. v. Union of India and others 1998(2) SCC 242. Further it was contended that Appellate Tribunal erred in reducing the rate of interest from 37% to 22% which is contrary to para 32-A of the EPF Scheme. The said statutory provision relates to terms and conditions for reduction or waiver of damages. The power is vested with the Central Board for the purpose of reducing or waiver of damages levied under Section 14-B of the Act. Therefore, the Appellate Tribunal exceeded its jurisdiction while reducing the damages from 37% to 22% inclusive of interest. Further learned counsel for the respondent EPF Department relied on latest decisions of this Court passed in CWP No.22297 of 2012 The Regional Provident Fund Commissioner v. M/s Shivon International and another) wherein identical question was considered with

reference to para 32-B of the EPF Scheme, 1952 and also considering the decision of the Supreme Court passed in Hindustan Times Ltd. v. Union of India 1998(2) SCT 256 , M/s Shanti Garments v. RPFC, 2003(1) CLR 228 and Organo Chemical Industries v. Union of India and others, 1980 (1) SCR 61.

4. Heard learned counsel for the parties.

5. It is undisputed that the petitioner Society remitted PF contribution belatedly for which statutory provision provided for EPF Department is required to determine levy of interest and damages. Accordingly, notice was issued under Section 7-Q and 14-B before determining the interest as well as damages. After giving due opportunity to the petitioner-Society, the assessment of damages to the tune of Rs. 60,57,463/- and interest of Rs. 20,15,549/- has been determined. The petitioner''s contention that he has not been provided opportunity which has been recorded while determining interest as well as damages. Even assuming that petitioner is given opportunity, the same cannot be taken into consideration for the reasons that date of PF contribution is evident on record that it is admittedly belated and has been calculated. In the present petition, the petitioner has not disputed the dates and events so as to dispute the levy of interest and damages. Hence, even further opportunity is given things like fixture of interest & damages would not change. Therefore, there is no infirmity in determination of interest and damages. Delay in taking action by the EPF Department would not condone the levy of interest and damages and there is no limitation for assessing interest and damages. Petitioner''s interpretation of Section 14-B read with para 32-A of the EPF scheme is concerned even though power is vested with the competent authority to levy interest and damages. Merely use of word "may" that does not empower the competent authority to waive off the interest and damages only on the ground of financial crisis. Financial crisis issue has been taken note of in the case of Hindustan Times Ltd. v. Union of India 1998(2) SCT 256. Insofar as reducing the rate of interest of damages and interest by the Appellate Tribunal is concerned, it is contrary to Para 32-A of the EPF Scheme where the power is vested with the Central Board and not with the Appellate Tribunal so as to contend that the Appellate Tribunal has jurisdiction to modify the rate of interest as well as damages. In view of these facts and circumstances, the order of EPF Appellate Tribunal dated 9.6.2011 is set aside. In view of setting aside of the order dated 9.6.2011 of the EPF Tribunal, CWP No.16067 of 2011 is dismissed and CWP No. 18623 of 2011 is allowed.

