
(2016) 02 P&H CK 0111

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No.205 of 2016 (O&M)

Regional Provident Fund Commissioner

APPELLANT

Vs

The Employees Provident Fund Appellate Tribunal and
another

RESPONDENT

Date of Decision : 12-02-2016

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14B, 7Q

Citation : (2016) 150 FLR 512 : (2016) LabLR 852 : (2016) LabLR 409 : (2016) 2 LLJ 555 : (2016) 3 LLN 792

Hon'ble Judges : Surya Kant;Raj Mohan Singh, JJ.

Bench : Division Bench

Advocate : Divya Sharma, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Surya Kant, J. (Oral) - This order shall dispose of Letters Patent Appeals No.205 and 206 of 2016 as the point in issue which arises for consideration in both the appeals, is common.

2. The facts are being extracted from LPA No.205 of 2016.

3. The instant letters patent appeal is directed against the order 24.09.2015 whereby learned Single Judge has dismissed the appellant's writ petition, upholding the order dated 12.04.2010 passed by the Employees Provident Fund Appellate Tribunal, New Delhi.

4. The learned Single Judge has assigned two reasons for dismissing the writ petition, namely, (i) it is the Board of Trustees which manages the affairs of EPF Organisation which alone could approach the Writ Court against the order passed by the Competent Authority including the Appellate Tribunal or only if there was an authorisation by the Board of Trustees, and (ii) The Appellate Tribunal has reduced the penalty under Section 14-B of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as "the 1952 Act"),

from 100% to 22% in terms of Para-32A of the EPF Scheme for good and sufficient reasons.

5. We have heard learned counsel for the parties at a considerable length as the respondent-company is on caveat.

6. As regard to the first ground taken by the learned Single Judge re: non-maintainability of the writ petition for want of authorisation from the Board of Trustees, we are satisfied that the writ petitioner/appellant is duly authorised for initiating such legal action in view of express delegation of powers in favour of the Regional Provident Fund Commissioner by the Board of Trustees in their 119th meeting held on 14.04.1989, the proceedings whereof were circulated vide memo dated 25th May, 1989 (A-I). The finding returned by the learned Single Judge against non-maintainability of the writ petition thus cannot sustain and is hereby set-aside.

7. Adverting to the second ground, it is revealed that the Prescribed Authority had imposed damages @ 100% on respondent No.2-Company on account of the delay caused in deposit of the payments under the following heads:-

(I) the provident fund contributions under Section 6 of the Act.

(II) the Family Pension Contributions under Section 6A of the Act.

(III) the Insurance Fund Contributions under Section 6-C of the Act.

(IV) the Administrative Charges under Para 38 of the EPF Scheme, 1952/EDLI Scheme, 1976...."

8. The following averments made by the Regional Provident Fund Commissioner, Faridabad in his affidavit filed before the learned Single Judge in support of the writ petition are also relevant:-

".... That the respondent No.2 with a malafide intention did not deposit the contribution under the Employees Provident Fund Act for period from 11/99, 12/99, 02/2000, 03/2000 (A/c No.2 and 22) in time. As the respondent No.2 failed to deposit the provident fund dues in time, so the respondent No.2 is liable to pay the damages and the interest as per the provisions of Sections 14B and 7Q of the Act....."

(emphasis applied)

9. The aggrieved Company filed appeal before the Employees Provident Fund Appellate Tribunal, New Delhi who vide the impugned order dated 12.04.2010, partly allowed the same and remanded the case to the Provident Fund Authority observing as follows:-

"....7. The order of the PF Authority reveals that the assessment was made on the higher side. The material on record reveals that the company was facing financial problem due to the strike and the delay does not appear to be intentional one.

8. Thus in view of the discussion held above, the order of the PF Authority cannot be sustained. Hence ordered, the matter is remanded back to the PF Authority with direction to assess the liability @ 22% inclusive of interest and the appellant is directed to appear before the respondent within 2 months. If the appellant fails to appear before the authority within 2 months, the authority may decide the matter as per law....."

10. The appellant-organisation unsuccessfully challenged the Appellate Tribunal's order before the learned Single Judge, giving rise to this appeal.

11. In a case where an employer makes default in payment of any contribution to the fund or in the transfer of accumulations required to be transferred under different provisions of the 1952 Act, the Prescribed Authority can indisputably levy damages/penalty in exercise of its powers under Section 14-B of the Act and such a levy can be 100% damages, namely, equivalent to the defaulted amount but the parameters required to be followed while levying the penalty or damages are enumerated in para 32-A of the EPF Scheme.

12. Para 32-A of the EPF Scheme formulated under the 1952 Act which is the guiding factor for the recovery of damages reads as follows:-

".....32-A. 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 sub-section (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 under Section 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 (% of arrears per annum)

(i) Less than two months 17

(ii) Two months and above but less than four months 22

(iii) Four months and above but less than six months 27

(iv) Six months and above 37

(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....."

13. It may be seen that where the period of default is two months and above but does not exceed four months, the damages are leviable @ 22% of the arrears per annum. However, if the period of default is six months and above, the rate of damages increases to 37% per annum.

14. Keeping these parameters in view, it does appears that in the case of a

default of more than 6 months or above, the damages are leviable @ 37% per annum. May be, in a case of persistent, incorrigible, malafide and habitual defaulters, the penalty and damages equivalent to the defaulted amount, i.e., @ 100% can also be levied in view of powers conferred under Section 14-B of the Act.

15. In the instant case, the Tribunal has reduced the damages to 22% which are leviable where the period of default is two months and above but less than four months. If the period of default attributed to respondent No.2 as mentioned in the affidavit which is reproduced in para No.[8] of this order is kept in view, we are satisfied that the discretion exercised by the Appellate Tribunal is reasonable, fair and just and the learned Single Judge has rightly declined to interfere with it.

16. That the parameters laid down in para 32-A ought to be applied uniformly has been well settled by the Hon"ble Supreme Court in K.Streetlite Electric Corporation v. Regional Provident Fund Commissioner, Haryana 2001(4) SCC 449 also. In the reported case, having noticed that the damages were imposed without any rationale, namely, @65% in a case where the delay period was six months and at a much higher rate when the delay period was less than six months, the Apex Court reduced the rate of damages to 25% per annum.

17. The Appellate Tribunal in the instant case has exercised its discretion and reduced the damages after taking into consideration the mitigating circumstances like; (i) there was continuous illegal strike by the workers; (ii) the factory was closed down; (iii) respondent No.2 approached the BIFER to declare it a "sick industry", and (iv) its assets were disposed of to pay the dues of workers.

18. The appellant-Organisation has placed no material on record to suggest that the delay attributed to respondent No.2 was more than six months which could warrant the levy of damages @ 37% or above. No such plea was taken before the Appellate Tribunal. In such an eventuality, the discretion exercised by the Appellate Forum, even if erroneous, per se does not call for interference by a Writ Court.

19. Needless to say that where the Prescribed Authority establishes on facts before the Appellate Tribunal that the period of default is more than six months or above or it was an intentional breach, it may be entitled to seek the levy of damages @ 37% or above, in accordance with law.

20. For the reasons stated above, the appeal(s) stand(s) dismissed.

21. If respondent No.2 is entitled to any refund, let such a claim be considered in accordance with law within a period of four months from the date of receiving a certified copy of this order.