(2015) 01 KAR CK 0573

In the Karnataka High Court

Case No : WP No. 104231/2014 (L-PF)

The Assistant Provident Fund Commissioner APPELLANT

Vs

I.K. Matgar RESPONDENT

Date of Decision : 16-01-2015

Acts Referred:

Citation : (2015) LLR 772

Hon'ble Judges : Aravind Kumar, J

Bench : Single Bench

Advocate : P.V. Gunjal, H.S. Holla and M.B. Kanavi, for the Appellant

Final Decision : Dismissed

Judgement

Aravind Kumar, J.—Heard Sri M.B. Kanavi, learned counsel appearing for petitioner. Perused the writ papers. Respondent is a covered establishment under the provisions of Employees'' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as "Act" for short). On account of non-payment of provident fund dues penalty proceedings under section 14B and 7Q of the Act came to be initiated against the respondent and after considering objections filed by covered establishment by order dated 13.04.2010 a sum of Rs. 4,04,204 was levied as damages as per Annexure-A. An order under section 7Q also came to be passed imposing interest of Rs. 1,82,392 on the amount of damages quantified. On account of non-payment of said amounts proceedings for attachment under section 8F of the Act came to be initiated by the authorities and an order came to be passed on 12.05.2010.

2. Being aggrieved by these two orders, an appeal came to be filed by respondent before Employees'' Provident Funds Appellate Tribunal. Appellate authority after issuing notice to the Provident Fund authorities and after considering rival contentions by order dated 8.11.2013 Annexure-E set aside the order passed under section 7Q and 14B of the Act and restricted the contribution of damages to 5% of the actual damages levied under the impugned order. Being

aggrieved by this order Provident Fund authorities are before this court.

3. It is the contention of Sri M.B. Kanavi, when the Act prescribes levy of penalty under EPF scheme 1995 namely Scheme No. 5 prescribes the quantum of damages to be levied by appropriate authority and same having been prescribed, the authority has no option but to levy said penalty and after quantifying such damages if there is non-payment, said authority would be entitled to levy interest under section 7Q of the Act and this exercise having been undertaken by the authorities, appellate authority could not have set aside the same on the ground there is no willful default on the part of covered establishment/ respondent.

4. Perusal of the impugned order would indicate that tribunal which is first appellate authority has examined the material available on record and has applied its mind to the facts of the present case in the background of law laid down by Apex Court and particularly the Judgment rendered by Hon''ble Apex Court in the case of Regional Provident Fund Commissioner Vs. S.D. College, Hoshiarpur and others, (1996) 9 AD 275 : AIR 1997 SC 3645 : (1997) 75 FLR 530 : (1997) 10 JT 638 : (1997) 2 LLJ 55 : (1996) 8 SCALE 438 : (1997) 1 SCC 241 : (1997) SCC(L&S) 449 : (1996) 8 SCR 27 Supp : (1997) 1 UJ 304 : (1997) AIRSCW 842 : (1997) 1 Supreme 54 where under it has been observed by Apex Court as under:

"The Regional Provident Fund Commissioner is given discretion only to reduce a percentage of damages and he has no power to waive penalty altogether".

5. In the background of the law laid down by Apex Court the appellate authority has found from the facts of the case that statue does not indicate that a penalty has to be levied only in the manner prescribed. In other words it has found that authority is not left with any discretion. In this background on facts it has come to following conclusion:

"15. In the above impugned order the respondent has failed in establishing that the appellant has committed willful default, Secondly the no reasons are recorded under the Order for imposing the maximum damages permissible under law against the appellant establishment. This clearly depicts that, the respondent has not applied his mind to the facts recorded by him in the impugned order quoted at supra. Whereas the recording of the respondent upon the conduct of the appellant establishes reveals positive attitude in remitting the P.P. dues as decided under Section 7A of the Act within the time mentioned".

After having considered the material evidence available on record and the import of the word ''damages'' as found in section 14B of the Act appellate authority has reduced the damages and levied damages of 5% of the actual amount of damages levied under the order dated 13.04.2010 Annexure-A which is in consonance with the law laid down by Hon''ble Apex Court and this court.

Hence, I do not find any met it in this writ petition and it stands dismissed.

