(2016) 07 BOM CK 0045

In the Bombay High Court

Case No : Writ Petition No. 5754 of 2015

The Central Board of Trustees	APPELLANT
Vs	
Maharashtra State Handloom Corporation Ltd	RESPONDENT

Date of Decision : 11-07-2016

Acts Referred:

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

Citation : (2017) 1 CLR 906 : (2016) 150 FLR 1010 : (2016) LabLR 1230

Hon'ble Judges : A.S. Chandurkar, J.

Bench : Single Bench

Advocate : Shri H.N. Verma, Advocate, for the Appellant; Shri A.J. Pathak, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

A.S. Chandurkar, J.(Oral)—Rule. Heard finally with the consent of the learned Counsel for the parties.

2. The petitioners are aggrieved by the order passed by the Employees Provident Fund Appellate Tribunal, New Delhi dated 22-10-2014 thereby reducing the amount of damages and interest payable on provident fund dues to 7%.

3. In proceedings initiated under Section 14B of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (for short, the said Act) the Assistant Provident Fund Commissioner by order dated 17-12-2013 passed an order imposing penal damages under Section 14B of the said Act as well as interest on delayed payment under Section 7-Q of the said Act.

4. Being aggrieved, this order was challenged by the Respondents by filing an appeal under Section 7-I of the said Act. By the impugned order, the Tribunal has reduced the amount of penal damages and interest to 7% on the amounts due.

5. Shri H.N. Verma, the learned Counsel for the petitioners submitted that the

Tribunal had no jurisdiction whatsoever to reduce the amount of interest that was levied under Section 7-Q of the said Act. He submitted that there was no such power conferred on the Tribunal by the provisions of the aforesaid Act. He then submitted that there was no case made out to reduce the amount of damages to 7%. He referred to clause 32A and 32B of the Employees Provident Fund Scheme, 1952 (for short, the Scheme of 1952) in that regard. According to him, the Tribunal without taking into consideration any of the relevant circumstances proceeded to reduce the amount of damages. He referred to the judgment dated 15.4.2015 in Writ Petition No.5565 of 2010, The Central Board of Trustees and another v. M/s. Veekay Cotsyn Ltd.)and submitted that in somewhat similar circumstances, the proceeding has been remanded for deciding these aspects afresh.

6. Shri A.J. Pathak, the learned Counsel for the respondent no.1 supported the impugned order. He, however, fairly stated that the impugned order in so far as it reduces the amount of penal interest is concerned is contrary to the judgment of the Hon''ble Supreme Court in M/s. Goetze (India) Limited v. Employees State Insurance Corporation, AIR 2008 Supreme Court 3122. He, however, submits that the amount of damages under Section 14B have been rightly reduced to 7% by the Tribunal. He referred to the averments made in paras 6-B and 6-C of the memorandum of the appeal and submitted that the said circumstances were sufficient to permit reduction in the amount of damages. He submitted that there was no case made out to interfere with the impugned order on that count.

7. I have heard the respective counsel for the parties and I have perused the documents filed on record. The impugned order of the Tribunal in so far as it reduces the amount of interest adjudicated by the Assistant Provident Fund Commissioner is liable to be set aside on the ground that there is no such jurisdiction with the Tribunal to reduce the amount of interest. The law in this regard stands settled in view of the decision of the Hon''ble Supreme Court in M/s. Goetze (India) Limited (supra).

8. In so far as the reduction in the amount of damages is concerned, the power to reduce the same has to be exercised in terms of Clause 32B of the Scheme of 1952. Said Clause permits waiver of reduction of damages in certain contingencies. In so far as the reduction of damages is concerned, the same is restricted to 50% of the damages adjudicated under Section 14B of the said Act. In the present case, the damages have been reduced to 7% by the Tribunal. The impugned order does not reflect the basis on which the Tribunal found it necessary to reduce the amount of damages. It has merely observed that the case for such reduction has been made out. The judgment of learned Single Judge in Writ Petition No.5565 of 2010, The Central Board of Trustees Employees Provident Fund and another v. M/s. Veekay Cotsyn Ltd. supports the submissions made on behalf of the petitioners that such decision to reduce damages has to be supported by reasons. On this count, the impugned order is liable to be set aside.

9. In view of aforesaid, the order passed by the Tribunal dated 22-10-2014 is set aside. The proceedings in the appeal preferred by the respondent no.1 are restored to file and the Tribunal shall decide the appeal in the light of the observations made in the aforesaid order. The respective contentions of the parties on the aspect of reduction of damages are kept open. Rule is made absolute in aforesaid terms with no order as to costs.

