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W.A(MD).No.298 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 05.03.2024

PRONOUNCED ON : 15 .04.2024

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR
and
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.A(MD).No.298 of 2024

The Regional Provident Fund Commissioner
Employees' Provident Fund Organisation

...Appellant/Petitioner

Vs

1.The President Officer
Employee's Provident Fund Appellate Tribunal

2.M/s.Fenner (India) Ltd.,
Represented by its General Manager -HRD

....Respondents/Respondents



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Prayer: Writ Appeal filed under Clause 15 of Letters Patent, to allow the writ appeal and set aside the order dated 12.02.2019 passed in WP(MD).No.2412 of 2010 on the file of this Court.

For Appellant : Mr.K.Muralisankar

J U D G M E N T

(Made by **R.VIJAYAKUMAR,J.**)

The writ petitioner is the appellant. The petitioner had challenged the order passed by the Employees Provident Fund Appellate Tribunal on 03.03.2009 in A.T.A.No.37(13)/2004.

2.The writ Court after considering the submissions made on either side, had arrived a finding that the order of the Appellate Tribunal restricting the damages up to 15 % per annum is legally correct and had proceeded to dismiss the writ petition. Challenging the same, present writ appeal has been filed.

(A).Factual Background:

3.The second respondent in the writ appeal had suffered an order under Section 14-B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 on 26.12.2003. Aggrieved over the same, the Management had filed an appeal before the Appellate Tribunal in A.T.A.No. 37/(13) of 2004. The Appellate Tribunal under the impugned order dated



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03.03.2009 had restricted the damages up to 15% per annum. This order has been confirmed by the writ Court.

4.Challenging the same, the present appeal has been filed by the Regional Provident Fund Commissioner, Madurai.

(B).Contentions of the learned counsel appearing for the appellant are as follows:

5.The Appellate Tribunal as well as the writ Court have not taken into consideration the amendment that was made to Section 14-B of the Act with effect from 26.09.2008. The Appellate Tribunal has no power whatsoever to revise the damages imposed by the Original Authority under Section 14-B read with Sections 32A and 32B of Employees' Provident Fund Scheme 1952. He had further contended that gross reduction in the levy of damages will have an adverse impact on the entire scheme itself. Unless the Provident fund is maintained intact, there is every chance that it could be defeated causing irreparable loss to the workman employed.

6.The learned counsel had further contended that as per Paragraph No. 32A of EPF Scheme, damages have to be levied at the rates furnished therein and there is no discretion whatsoever to the officials under the said Act. If the legislature had intended to fix the maximum limit, they would have mentioned so. He had further contended that the question of mensrea would



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not arise in the case of imposition of damages under Section 14-B of the Act in view of the fact that it is not a criminal liability, but only a civil liability.

7.He had further contended that the financial difficulties of the management cannot be a reason for reducing the quantum of damages. When the management had deliberately and intentionally delayed the payment of contribution, there is no ground or discretion whatsoever to the authorities to reduce the quantum of damages as prescribed under the statute.

8.We have carefully considered the submissions made on the side of the appellant and perused the material records.

(C).Discussion:

9.The primary contention of the learned counsel appearing for the appellant is that the power to reduce or waive the damages levied under Section 14-B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 is within the exclusive domain of the Central Board constituted under Section 5-A of the Act. The Provident Fund Commissioner or the Appellate Tribunal formed under Section 11-I of the Act have no power whatsoever either to reduce or waive the damages.



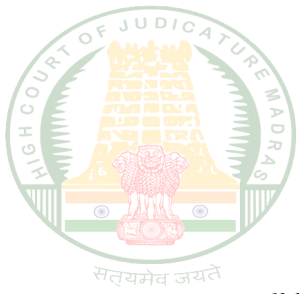
10. Section 14-B, 7-I and 7.L of the Employees' Provident Funds and

Miscellaneous Provisions Act, 1952 are extracted as follows:

“Section 14-B. Power to recovery damages. —Where an employer makes default in the payment of any contribution to the Fund the [Pension] Fund or the Insurance 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] or in the payment of any charges payable under any other provision of this Act or of [any Scheme or Insurance Scheme] or under any of the conditions specified under section 17, [the Central Provident Fund Commissioner or such other 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 such damages, not exceeding the amount of arrears, as may be specified in the Scheme:]

[Provided that before levying and recovering such damages, the employer shall be given a reasonable opportunity of being heard]:

Provided further that the Central Board may reduce or waive the damages levied under this section in relation to an establishment which is a sick industrial company and in respect of which a scheme for rehabilitation has been sanctioned by the Board for Industrial and Financial Reconstruction established under section 4 of the Sick Industrial Companies (Special Provisions) Act, 1985, subject to such terms and conditions as may be specified in the Scheme.] “



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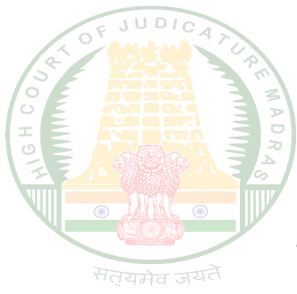
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7-I. Appeals to Tribunal.—(1) Any person aggrieved by a notification issued by the Central Government, or an order passed by the Central Government or any authority, under the proviso to sub-section (3), or sub-section (4), of section 1, or section 3, or sub-section (1) of section 7A, or section 7B [except an order rejecting an application for review referred to in sub-section (5) thereof], or section 7C, or section 14B, may prefer an appeal to a Tribunal against such notification or order.

(2) Every appeal under sub-section (1) shall be filed in such form and manner, within such time and be accompanied by such fees, as may be prescribed.

7-L. Orders of Tribunal.—(1) A Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or annulling the order appealed against or may refer the case back to the authority which passed such order with such directions as the Tribunal may think fit, for a fresh adjudication or order, as the case may be, after taking additional evidence, if necessary. (2) A Tribunal may, at any time within five years from the date of its order, with a view to rectifying any mistake apparent from the record, amend any order passed by it under sub-section (1) and shall make such amendment in the order if the mistake is brought to its notice by the parties to the appeal:

Provided that an amendment which has the effect of enhancing the amount due from, or otherwise increasing the liability of, the employer shall not be made under this sub-section, unless the Tribunal has given notice to him of its



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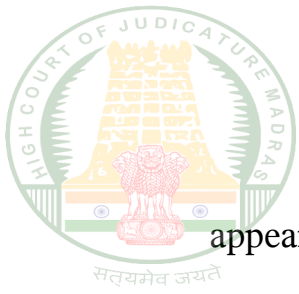
intention to do so and has allowed him a reasonable opportunity of being heard.

(3) A Tribunal shall send a copy of every order passed under this section to the parties to the appeal.

(4) Any order made by a Tribunal finally disposing of an appeal shall not be questioned in any Court of law.”

11.A perusal of the section 14-B of the Act would clearly indicate that the Provident Fund Commissioner or any other officer authorized by the Central Government may recover from the employer such damages not exceeding the amount of arrears as may be specified in the scheme contemplated under para 32-A of the Act. The first proviso to the above section makes it clear that the before levying and recovering of such damages, the employer should be given a reasonable opportunity of being heard. The second proviso confers power upon the central board to reduce or waive damages which is a sick industrial company subject to the terms and conditions as specified in the scheme in paragraph No.32-B.

12. A perusal of Section 7-I and 14-B makes it clear that all orders including the order passed by the Central Board under Section 14-B are also appealable to the Appellate Tribunal. When the order of Central Board is appealable to the Appellate Tribunal, the contentions of the learned counsel



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appearing for the appellant that the Central Board (Original Authority) would have exclusive power to reduce or waive damages, but the Appellate Tribunal (Appellate Authority) would not have any power to reduce or waive damages is not legally acceptable.

13.A close reading of Section 7-L would reveal that the Tribunal has got power either to confirm, modify or to annul the orders of the original authority or it can remit it back to the original authority for fresh adjudication. Therefore, the power of the Appellate Tribunal to modify the orders of the original authority cannot be in dispute. The original authority cannot contend that his orders cannot be modified or set aside by the Appellate Authority. It is very strange that the original authority had questioned the power of his Appellate Authority by way of filing this writ petition.

14.A comparative reading of 7-Q which relates to imposition of interests for the belated payment of their contribution amount and damages under Section 14-B of the Act clearly reveals that the imposition of interest is automatic and it is not necessary to provide any opportunity of being heard to the employer. But before imposing damages, hearing is mandatory. Therefore, it is clear that some kind of discretion is vested with the authorities to consider the mitigating circumstances before imposing the

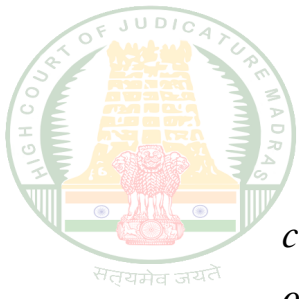


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damages. If there is no discretion whatsoever, the legislature would not have mandated granting of opportunity to the employer before imposing damages.

15.A Division Bench of Bombay High Court in a Judgement reported in **2011-III-LLJ 446 (Bombay) (Regional Provident Fund Commissioner, Sub-Regional Office, Nagpur Vs. Manoharbai Ambalal, Gondia)** has categorically held that the Appellate Tribunal under the EPF Act has got powers to reduce the damages imposed on the employer. The Division Bench of our High Court in a recent decision reported in **2023-IV-LLJ-234(Mad) (Laven Technoblend Limited, Formerly known as M/s.Coimbatore Popular Spinning Mills Ltd., Tirupur District Vs. Regional Provident Fund Commissioner, Coimbatore and others)** in paragraph No.11 is held has follows:

“11..... Now, after the formation of the Tribunal in 1996, pursuant to the introduction of Section 7-I of EPF Act, even by-passing para 32B, the aggrieved person can approach the Tribunal for relief. Firstly, it is a time saving process. In case, the matter is taken up by the Central Board of Trustees and in case of adverse order, it is open to the party to challenge the same before the Tribunal. There is no guarantee about the time by which the Central Board might dispose of the application. The Tribunal presided over by a judicial officer is empowered to decide about the grant of waiver or reduction of damages that is levied by the authority



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concerned. Hence, we are of the view that in the case on hand, the order of the learned Single Judge interfering with the order of the Tribunal is not correct and the order passed in the writ petition is set aside.”

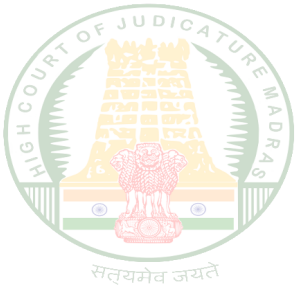
16.In view of the above said deliberations, we are of the considered opinion that the Appellate Tribunal which is an Appellate Authority not only for the authorized officer under the Act, but also for the Central Board, is empowered to reduce or waive damages as per the scheme. In the present case, in exercise of the said powers, the Appellate Tribunal has reduced the damages to 15%. Therefore, we do not find any illegality or infirmity in the order passed by the Appellate Tribunal or by the writ Court in confirming the order passed by the Appellate Tribunal. There are no merits in the writ appeal. The Writ Appeal stands dismissed. No costs.

(D.K.K.J.,)

(R.V.J.,)

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**D.KRISHNAKUMAR, J.
AND
R.VIJAYAKUMAR, J.**

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Pre-delivery Judgment made in
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