SUPREME COURT OF INDIA

Halwasia Vidya Vihar (Sr.Sec.School), Haryana

Vs

Regional Provident Fund Commissioner

Appeal (Civil) 3848 of 2000

(Arijit Pasayat and Tarun Chatterjee, JJ)

27.03.2006

JUDGMENT

ARIJIT PASAYAT, J.

Challenge in this appeal is to the judgment rendered by a Division Bench of the Punjab and Haryana High Court holding that the appellant was required to pay damages in terms of Section 14(B) of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (in short the 'Act') amounting to Rs.14, 50, 172/-.

Brief reference to the factual aspects would suffice:-

The appellant, an educational institution was affiliated to the Education Department to the Haryana Government. A scheme of contributory provident fund was in operation which was under the control and guidance of the Haryana Government and same was being applied to the appellant-institution. Under the said scheme of contributory provident fund it was mandated that an account shall be opened in the name of each subscriber in a Cooperative Bank approved by the Registrar, Co-operative Societies, Haryana. Appellant transferred its affiliation to Central Board of Secondary Education (in short 'CBSE') in April, 1984 after obtaining no objection certificate from the State

Government. As per C.B.S.E. bye-laws, appellant was required to follow the State Government Rules regarding salary and service conditions of its staff members. Accordingly, the scheme of contributory provident fund which was earlier being followed by the appellant, continued to be operative. On being asked by the Regional Provident Fund Authorities the scheme under the Act was adopted by the appellant w.e.f. 1.7.1993; but the same was made operative retrospectively w.e.f. August 1982 by the authority. Thereafter in respect of each employee the provident fund contributions were deposited with the Regional Provident Fund Commissioner. The accumulated balance in the contributory provident fund accounts of the various employees was transferred by the Department of Education, Haryana to the Employees Provident Fund Scheme under the Act in May and June, 1995 and an amount of Rs.17, 33, 914.60 was transferred by the Haryana Government. On 5.2.1996, proceedings under Section 7(A) of the Act were initiated. Taking into account the amount payable on assessment and giving credit to the aforesaid amount, it was held that there was extra deposit of Rs.44, 031.85. Therefore, the proceedings were dropped and no recovery was effected. On 14.2.1997 notice under Section 14(B) of the Act was issued covering the period August, 1982 to June 1993. Reply was furnished by the appellant taking the stand that since the deposit had been made with the Government Authorities in terms of the applicable scheme, there was no scope of levy of any damage. However, the Commissioner imposed damages of Rs.14, 50, 172/- which was about 100% of the alleged amount of default. For the purpose of levy reference was made to the table contained in Section 32A. An appeal was filed before the Statutory Tribunal, i.e. Employees Provident Fund Appellate Tribunal, New Delhi (in short the 'Appellate Tribunal'). In appeal it was held that there was no default in view of the circumstances noted above. A writ petition was filed challenging the order before the High Court taking the stand that there was no power to waive/reduce the damages except in terms of the circumstances indicated in Section 14(B) (proviso). The High Court placed reliance on a decision of this Court in Regional Provident Fund Commissioner v. S.D. College, Hoshiarpur and Ors. and held that the penalty as levied by the Commissioner were to be maintained.

In support of the appeal learned counsel for the appellant submitted that there was absolutely no remiss on the part of the appellant which had scrupulously followed the scheme of the State Government. There was a transfer of the amount which would show that by no stretch of imagination it can be conceived that there was any default, muchless intentional. It was pointed that S.D. College's case (supra) has no application to the facts of the present case. In that case the college in question continued to deposit the amount with the university in spite of the directions of this Court, and there the quantum of damages was reduced to 25%

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Learned counsel for the respondent-Commissioner submitted that the appellant was aware of its liability and had filled up the form to make the deposits with the provident fund authorities but continued to make the deposit with the State Government. That being so, the High Court was justified in its conclusions.

Section 14-B reads as follows:-

"14-B. Power to recover damages. - Where an employer makes default in the payment of any contribution to the Fund (the Family Pension Fund of 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 recover from the employer by way of penalty such damages, not exceeding the amount of areas, 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 stick 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 (1 of 1986), subject to such terms and conditions as may be specified in the Scheme."

Therefore, reduction or waiver can be done in the indicated circumstances. In S.D. College's case (supra) this Court took note of the fact that by order dated 29th January, 1988 the respondent-college authorities were directed to deposit the contribution with the appellant-Commissioner thereby there could be compliance of statutory obligation to deposit the amount in the manner as directed, from February 1988 onwards. But the college authorities continued to deposit the amount with the University. It is to be noted that the factual background in that case was somewhat different. In the instant case there was no allegation that there was any delay in making the deposit with the Government under the scheme which was being followed by the appellant. Even otherwise in S.D. College's case (supra) also this Court did not maintain the levy of damages at 100% and reduced it to 25%. Taking into account the special features involved, we direct that the damage imposed shall be restricted to 25% of the amount levied by the respondent-Commissioner.

Appeal is allowed to the aforesaid extent without any order as to costs.