

LAWS(CAL)-2018-1-376

**HIGH COURT OF CALCUTTA**

Coram : I.P.MUKERJI,M.Mumtaz Khan JJ.

Decided On : January 09,2018

Appeal Type : M.A.T. 2099 of 2017 and C.A.N. 11680 of 2017.

Appellants :

**Mr. Aminul Islam**

Vs.

Respondents :

**Assistant Provident Fund Commissioner And Ors**

**Advocates :**

SOUMYA MAJUMDAR,DEBOJYOTI BASU,J.Hossain,K.DAS,D.K.BHATTACHARJI,Sushanta Majumder

**Equivalent Citation :**

LAWS(CAL)-2018-1-376, LLJ-2018-2-87, FLR-2018-157-1047, CALHN-2018-2-80, LLR-2018-0-883

**Referred Judgement :**

CENTRAL BOARD,EMPLOYEES' PROVIDENT FUND ORGANISATION V. EMPLOYEES' P.F. APPELLATE TRIBUNAL, [2016 LLR 314] [REFERRED TO]

M/S. SHIV HARBAL RESEARCH LABORATORY V. ASSISTANT P.F. COMMISSIONER, [2016 LLR 55] [REFERRED TO]

ASSISTANT PROVIDENT FUND COMMISSIONER,EPFO AND ANR. VS. THE MANAGEMENT OF RSL TEXTILES INDIA PVT. LTD., [2017 3 SCC 110] [REFERRED TO]

**Referred Act :**

EMPLOYEES PROVIDENT FUNDS AND MISCELLANEOUS PROVISIONS ACT, 1952, S.14(B), S.7(O), S.7(Q), S.7A

**HeadNote :**

( 1 ) Employees Provident Funds And Miscellaneous Provisions Act, 1952 :: S.7(Q) - Modification of Scheme,S.7(O) - Modification of Scheme,S.14(B) - Penalties,S.7A - Determination of moneys due from employers

**JUDGMENT :**

***I.P. Mukerji, J.***

(1.) There is no doubt that the appellant had made payment of his provident fund dues under Section 7A of The Employees' Provident funds and Miscellaneous Provisions Act, 1952 belatedly. Under Section 14(B) thereof damages are payable by the employer for this delay. The said Act read with the Provident Fund Scheme 1952 provide the mode in which this damage is to be computed.

(2.) In relation to a particular period on 20th September, 2016 the provident fund authority proceeded to make a final assessment straightway of this damage according to the calculation made in the Act and Scheme asking the appellant to make the entire deposit. By another adjudication order passed on the same day against the appellant, in respect of another period, the said authority proceeded to make a calculation of the damages payable by the appellant based on the said principle.

(3.) The appellant, aggrieved by this decision approached this Court under Article 226 of the Constitution of India, by preferring a writ application. This Court by an interim order dated 28th November, 2017 noted that the appellant/writ petitioner had made out a prima facie case for passing of an interim order but directed him to deposit Rs. 30,000,00/- with the provident fund authority within two weeks. On deposit of the sum, the said two demands would remain stayed. For two weeks there would be unconditional stay.

(4.) The appellant is aggrieved by this order. He says before us that although there is a method of calculation provided in the said Act and Scheme for levy of damages, the authority has the power to remit a part of the damages and claim only a part. This power has not been exercised by the Assistant Commissioner while making the demand. He has mechanically claimed the entire amount according to the method provided in the Act and Scheme.

(5.) Learned counsel for the Provident Fund Authority contests the argument made by learned counsel for the appellant. He says that the appellant should be asked to deposit the amount of Rs. 30,000,00/- as ordered by the learned trial Judge. He says that there is no infirmity in the order and that the appellant is liable for this amount.

(6.) That an employer may not be asked to pay the entire amount computable as damages under the said Act and Scheme and be directed to pay a part of it damages is supported by at least two authorities *M/s. Shiv Harbal Research Laboratory v. Assistant P.F. Commissioner* reported in 2016 LLR 55 and a judgement delivered by one of us (I.P. Mukerji, J), as a Single Judge in *Central Board, Employees' Provident Fund Organisation v. Employees' P.F. Appellate Tribunal and Anr.* Reported in 2016 LLR 314 . The Supreme Court has held in its latest judgement in the case of *Assistant Provident Fund Commissioner, EPFO and Anr. v. Management of RSL Textiles India Private Ltd., Through Its Director* reported in (2017) 3 SCC 110 that mens rea is also an important ingredient of violation of Section 14(B) of the said Act.

(7.) Furthermore, Section 7(O) of the Act lays down that no appeal by the employer shall be entertained by the Tribunal unless he has deposited with it 75% of the amount due from him under Section 7A. It does not provide for any deposit of the assessed amount under Section 14(B). Therefore, the Section 14(B) amount is to be paid after its determination. The Authority has the power to reduce

or remit a part of the amount.

(8.) Unfortunately, the Assistant Provident Fund Commissioner in the said two impugned orders both dated 20th September, 2016 did not exercise this discretion properly. He was obliged to do so. We record that Mr. Majumder submits that the Section 7(A) dues have been duly paid by his client. The dispute is only with regard to Section 14(B) and penal interest under Section 7(Q). It is necessary that this determination be made as quickly as possible.

(9.) In those circumstances, we set aside the two impugned orders being annexure-P/2 and P/3 to the petition both dated 20th September 2016.

(10.) We direct the Provident Fund Authority to adjudicate the case of the appellant under Section 14(B) and 7(Q) in accordance with law with reasons after giving an opportunity of hearing to the petitioner within eight weeks of communication of this order.

(11.) The appeal (M.A.T. 2099 of 2017), the connected application (C.A.N. 11680 of 2017), and the writ application (W.P. 26813 (W) of 2017) are disposed of by this order.