

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE AMIT RAWAL

FRIDAY, THE 2ND DAY OF DECEMBER 2022 / 11TH AGRAHAYANA, 1944

WP(C) NO. 38282 OF 2022

PETITIONER:

MALAPPURAM DISTRICT CO-OPERATIVE BANK LTD
REPRESENTED BY ITS GENERAL MANAGER
MALAPPURAM DISTRICT CO-OPERATIVE BANK LTD-4329
HEAD OFFICE, PB NO.8
MALAPPURAM, PIN - 676501

BY ADV ESM.KABEER

RESPONDENTS:

THE REGIONAL PROVIDENT FUND COMMISSIONER
EPFO, SUB REGIONAL OFFICE,
ERNAHIPALAM, KOZHIKODE, PIN - 673006

BY ADV ABRAHAM P.MEACHINKARA
SRI.SUNIL KURIAKOSE - GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
02.12.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Petitioner, a Co-operative Bank, has assailed the order of the Tribunal dated 13.04.2022 under the Employees Provident Fund and Miscellaneous Provisions Act, 1952, whereby the order dated 09.12.2016 of the assessing authority assessing the damages under Section 14B has been partly modified by reducing to 70%. The Bank having more than 20 employees was allotted a code by the EPF for depositing of the EPF contribution. There was a default in deposit of the contributions despite the fact that the salary was paid on time resulting into initiation of proceedings under Section 7A of the EPF & MP Act for the period July 2009 to June 2015. As a consequential effect, the penal provisions under Sections 7Q and 14B were initiated. Assessing Authority after affording opportunity of hearing to the petitioner assessed the damages to the tune of Rs.5,92,000/-. In the appeal preferred by the petitioner, it was reduced to 70%.

2. Learned counsel appearing on behalf of the petitioner submitted that there was no delay and laches on the part of the

petitioner bank in remitting the contribution till 2009 as the State Government had issued notification dated 01.04.2005 excluding the District Co-operative Banks from the purview of the Employees Provident Fund Act. On 29.04.2005, petitioner bank became the member of the Pension Board and the contribution of the employees was being remitted to the said Board. Some of the employees of the petitioner bank along with the Co-operative Banks filed separate writ petitions which were disposed of by setting aside the order of the exclusion vide judgment dated 31.01.2012 Ext.P2. Matter was taken in Writ Appeal, Division Bench confirmed the judgment and gave the options to the employees either to choose payment of contribution to the EPF or to the State Pension Board. Matter also reached the Supreme Court which is stated to be pending. It is in that aspect, petitioner cannot be saddled with the negligence of not depositing the EPF contributions of the employees. Later on, petitioner had deposited the EPF contributions and therefore the proceedings under Section 14B were initiated. It was not intentional, but there was some confusion. Learned Tribunal did not examine the aforementioned

contentions and therefore the order is liable to be set aside without fastening any liability of damages.

3. On the other hand, learned counsel appearing on behalf of the respondent opposed the aforementioned prayer. Petitioner, without taking any legal opinion intentionally stopped making the contributions and started making the remittances with the Pension Board but the notification only pertained to the pension and not with regard to the payment of the EPF contribution. Misinterpretation of the notification cannot be a ground of claiming exemption from payment of damages as petitioner had, at later point of time, deposited the contributions after the culmination of the proceedings under Section 7A of the Act.

4. I have heard the learned counsel for the parties and appraised the paper book.

5. It is a matter of record that the Government came out with a notification excluding the District Co-operative Banks from the purview of the EPF, but the tenor and mode of the notification was only with regard to the pension but not to the payment of the contribution. Petitioners were not diligent in reading the contents

of the notification and there was series of litigations by the different employees. It is also matter of record that petitioners were put to notice by the Assessing Officer with regard to the non-payment of contribution and in a proceeding under Section 7A, contribution was later on deposited. The penal provisions of Sections 7Q and 14B are *sine qua non* on account of not depositing of the contribution in time. The language of Section 14B do not prescribe any mandatory provisions of payment of damages, the expression 'may' cannot be said to be read to be 'shall'. In other words, the discretion is vested with the Assessing Officer to assess the damages after taking into consideration the attenuating circumstances explained by the parties. The reasoning given by the petitioner in not depositing the EPF contribution owing to the promulgation of notification appears to be justiciable. The Appellate Tribunal, noticing all these facts, in my view, ought to have been reduced the damages to the extent of only 25% instead of 70%.

Accordingly, the order of the Appellate Tribunal is modified. The liability of the petitioner towards damages under Section is

assessed to 25%. Writ petition is partly allowed with the aforementioned modification. Petitioners are directed to deposit the amount of Rs.1,25,000/- in three equal monthly instalment commencing from 15.12.2022. In case of default of one instalment respondent will be at liberty to take action. Till such time, no coercive action shall be taken against the petitioner.

**Sd/-
AMIT RAWAL
JUDGE**

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APPENDIX OF WP(C) 38282/2022

PETITIONER EXHIBITS

Exhibit P1	TRUE COPY OF THE NOTIFICATION DATED 26.05.2009
Exhibit2	TRUE COPY OF THE JUDGMENT DATED 31.01.2012 IN WPC NO.1992/2010 WITH TYPED COPY
Exhibit P3	TRUE COPY OF THE JUDGMENT IN WA NO.36/2014 DATED 10.03.2014
Exhibit P4	TRUE COPY OF THE JUDGMENT DATED 23.10.2013 IN WPC NO.17617/2012
Exhibit5	TRUE COPY OF THE ORDER IMPOSING DAMAGES TO THE PETITIONER DATED 09.12.2016 WITH TYPED COPY
Exhibit6	TRUE COPY OF THE ORDER OF HON'BLE TRIBUNAL DATED 13.04.2022 IN APPEAL NO.219/2018