

HALWASIA VIDYA VIHAR (SR. SEC. SCHOOL), HARYANA

v.

THE REGIONAL PROVIDENT FUND COMMISSIONER

MARCH 27, 2006

[ARIJIT PASAYAT AND TARUN CHATTERJEE, JJ.]

*Employees Provident Funds and Miscellaneous Provisions Act, 1952; Section 14(B):*

*Educational Institution/School affiliated to Education Department of State Government—Contributory Provident Fund Accounts maintained as per instructions of the State Government—Transferring of affiliation to Central Board of Secondary Education—Provident Fund Scheme under 1952 Act became applicable—Default in making payment of contributions—Levy of damage—Waiver—Held: Reduction or waiver can be done in terms of Section 14-B of the Act—Since there was no delay on the part of the school in question in making the deposit of the Fund with the State Government in terms of Scheme and also taking into account the special features involved, the damage imposed shall be restricted to 25% of the amount as levied by the Provident Fund Commissioner—Directions issued.*

The appellant-school was affiliated to the Education Department of the State Government of Haryana and making contribution in a Contributory Provident Fund Scheme of the State Government. Appellant transferred its affiliation to Central Board of Secondary Education (CBSE). As per CBSE bye-laws, appellant-Institution was required to follow the State Government rules regarding salary and service conditions of its staff members. Accordingly, the appellant continued the existing scheme of contributory provident fund. Later, as per the instructions of the Regional Provident Fund Authorities a scheme under the Employees Provident Funds and Miscellaneous Provisions Act was required to be adopted by the appellant. But the authorities directed the scheme to be made operative retrospectively. The appellant started depositing the provident fund contributions in respect of each employee with the Regional Provident Fund Commissioner and got transferred the accumulated

**A** balance with the State Government to the Employees Provident Fund Scheme account in terms of the Act. However, a notice under Section 14(B) of the Act was issued by the Commissioner demanding contribution under the scheme retrospectively, for the entire period. The appellant took the stand that since the deposit had been made with the State Government Authorities in terms of the then applicable scheme of Contributory Provident Fund of the State Government, there was no scope of levy of any damage. The Provident Fund Commissioner imposed damages of Rs. 14,50,172/-. Aggrieved, the appellant preferred an appeal, which was allowed by the Tribunal. The order was challenged by the authorities before the High Court. The High Court relying on a decision of this Court in *Regional Provident Fund Commissioner v. S.D. College, Hoshiarpur & Ors.* held that the penalty as levied by the Commissioner was to be maintained. Hence the present appeal.

**D** The appellant contended that there was absolutely no remiss on their part as the scheme had been followed by them scrupulously; that there was transfer of the amount which would show that by no stretch of imagination it can be conceived that there was any default, much less intentional.

**E** 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. Thus, the High Court was justified in its conclusion allowing the damage.

Partly allowing the appeal, the Court

**F** HELD:1.1. In terms of Section 14-B of the Employees Provident Funds and Miscellaneous Provisions Act, reduction or waiver can be done in the indicated circumstances. [459-G]

**G** 1.2. 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 the case of *Regional Provident Fund Commissioner v. S.D. College, Hoshiarpur & Ors.*, this Court did not maintain the levy of damages at 100% and reduced it to 25%. Taking into account the special features involved, the damage imposed shall be restricted to 25% of the amount levied by the respondent-Commissioner. [460-A-B]

**H**

*Regional Provident Fund Commissioner v. S.D. College, Hoshiarpur & Ors.*, [1997] 1 SCC 241, referred to. A

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3848/2000.

From the Final Judgment/Order dated 8.10.1999 of the High Court of Punjab and Haryana at Chandigarh in C.W.P. No. 5343 of 1999. B

Pranab Kumar Mullick, Afzal Ahmmed and Rajesh Gogna for the Appellant.

T.S. Doabia, Manish Sharma and Shail Kumar Dwivedi for the Respondent. C

The Judgment of the Court was delivered by

**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. D

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 E  
F  
G  
H

- A 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.*, [1997] 1 SCC 241 and held that the penalty as levied by the Commissioner were to be maintained.

- F 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%.

- H 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. A

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 : B C D

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 (1 of 1986), subject to such terms and conditions as may be specified in the Scheme.” E F

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 H

**A** 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.

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

S.K.S.

Appeal partly allowed.