Supreme Court of India
Regional Provident Fund ... vs S.D. College, Hoshiarpur G Ors on 28 October, 1996
Bench: K. Ramaswamy, G.B. Pattanaik

PETITIONER:
REGIONAL PROVIDENT FUND COMMISSIONER

Vs.

RESPONDENT:
S.D. COLLEGE, HOSHIARPUR G ORS.

DATE OF JUDGMENT: 28/10/1996

BENCH:
K. RAMASWAMY, G.B. PATTANAIK

ACT:

HEADNOTE:

JUDGMENT:

O R D E R Delay condoned.

Leave granted.

we have heard learned counsel on both sides. These appeals by special leave arise from the judgment of the Division Bench of the Punjab & Haryana High Court made on December 6, 1995 in CWP Nos.637 and 692 of 1995.

The admitted position is that the appellant had applied the provisions of Employees Provident Fund and Miscellaneous Provisions Act, 1952 (for short, the 'Act') to the respondent Institution by notification dated March 6, 1982. Calling the notification in question the respondent, had filed writ petition in this Court. This court by judgment dated January 29, 1988 had held that the Act would apply to the educational institutions and, therefore, they are required to comply with the notification issued under the Act. This Court had directed thus:

> "shri S.k. Bagga, learned counsel appears for the petitioners. We do not find any substance in the contention of the petitioners in these cases that the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as "the Act") has no application to the educational institutions, who are petitioners in

these cases. We, therefore, dismiss all these cases.

> we direct that the petitioners shall comply with the Act and the schemes framed thereunder regularly with effect from 1.2.1988. Whatever arrears they have to pay under the Act and the schemes in respect of the period between 1.3.1982 and 1.2.1988 shall paid by each of the petitioners within such time as may be granted by the Regional Provident Fund Commissioner if the petitioners pay all the arrears payable from 1st March, 1982 upto 1st February 1988 in accordance with the directions of the Regional Provident Fund Commissioner he shall not levy any damages for the delay in payment of the arrears. Having regard to the special facts of these cases the subscribers(the employees) shall not be entitled to any interest on the arrears. The writ petitions are disposed of accordingly. No costs."

In spite of the directions issued by this Court instead of complying with the orders of this Court, the respondents continued to deposit amounts with the University. The respondents thus, have not with the law. Consequently, the appellant exercising the Power under Section 14-B of act levied damages @ 25% of the amount Payable by the respondents The respondents filed writ petitions against the appellant in the High Court. The High court in the impugned order has held that the appellant is not liable to levy damages on the respondents.

Thus these appeals by special leave.

Section 14-B of Act reads as under:

"14-B. Power to recover damages.-

Where an employer makes default in the payment of any contribution to the Fund (the family Fund or the Insurance fund) or in to be transferred by him under sub-

section (2) of Section 17) or in the 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 notification in the Official Gazette in this behalf may recover 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."

Shri Randhir Jain, learned counsel for the respondent, contends the after the judgment by this Court, the respondents have applied for permission to the University for withdrawal of the amount. After the receipt of the direction issued by the University on June 7, 1990, they had redeposited the amount to the tune of Rs.6,40,122.70 together with other charges in a sum of Rs.58,736.70. There was no intentional delay on the part of the respondents in not depositing the amount and therefore the High Court was right in directing to recover the damages under Section 14-B of the Act. This Court on July 10, 1996 issued notice stating as to why the respondents are not liable to pay the interest for the failure to pay the G.P.F. from February 1988 to May 1990 in the light of the admission made by them in paragraph 6 of their reply letter dated October 26,1994.

Now, an affidavit has been filed on behalf of the respondents stating that they have deposited the amount in the University and the amounts was kept in fixed depoits earning interests @ 11% since a direction was issued to comply with the direction to redeposit the amount, after premature encashment, they returned it with 9% interest and the same was deposited and, therefore, they are not liable to pay the damages that are determined by the Regional Provident Fund Commissioner under the impugned order as assailed in the writ petition. Having regard to the contention, the question that arises for consideration is: whether the appellant is entitled to recover damages?

A reading Section 14-B of the Act would indicate that the employer is under an obligation under the statute to comply with the payment of the amount, In the event of his committing default in the payment of the contribution to the fund or in the payment of any charges payable under any other provisions of the Act or any scheme or insurance scheme or any of the conditions specified in Section 17, the Central Provident Fund Commissioner or such other officer as may be authorised by the Central Government may, by notification in the official Gazette in this behalf, recover from the employer by way of penalty, such damages, not exceeding the amount of arrears, as may be specified in the scheme. The second proviso only lifts the embargo in the event of the industry becoming sick and it was reconstructed under the provisions of Section 4 of the Sick Industrial Companies (Special Provisions) Act, 1985 subject to such terms and conditions as may be specified in the scheme of rehabilitation. In other words, the Act envisages the imposition of damages for delayed payments. The Act is a beneficial welfare legislation to ensure health and other benefits to the employees. The employer under the Act is under a statutory obligation to deduct the specified percentage or the contribution from the employee's salary and matching contribution, the entire amount is required to be deposited in the fund within 15 days after the date of the collection, every month.

Thereby the employer is under a statutory obligation to deposit the amount to the credit of the Fund every month. In the event of any default committed in that behalf, Section 14-B steps in and calls upon the employer to pay damages by way of penalty the maximum of which is the accumulated arrears. The Regional Provident Fund Commissioner is given discretion only to reduce a percentage of damages and he has no power to waive penalty altogether. In this case, admittedly, after the judgment, there was no reason for the respondent to deposit the amount with the University. We can understand that , since there was a scheme framed by the University and the respondent was under an obligation to comply with the scheme. they can have a feeling of doubt as to whether they should abide by the scheme framed by the University or under the Act. Since they had filed the writ petition in this Court, this Court gave direction on January 29,1988 directing the respondents to

deposit the contribution with the appellant. Thereby the respondents have a statutory obligation to deposit the amount from February 1988 onwards. Therefore, there is no justification whatsoever to deposit and keep depositing the amount in the University account after the judgment of this Court. The mere fact that the University has given permission to redeposit the amount with the appellant does not enable the respondents to take shelter thereunder for non-deposit of the amount in the Fund.

Under these circumstances, we do not think that there is any justification in the contention for waiver of the penalty imposed by the Regional Provident Fund Commissioner . As held earlier, there is no discretion left to the Commissioner to totally waive the penalty. What was left to his discretion is the rate at which it is to be computed by way of penalty. In this case, admittedly, 25% of the damages was computed as penalty. Since the respondent had deposited the amount in fixed deposit and it earned 9% interest thereon, the balance amount is required to be deposited and the respondent is directed to deposit the balance amount within six weeks from today.

The appeals are accordingly allowed. The writ petition stands dismissed. No costs.