



Serial No. 01

Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 163 of 2023

Date of Decision: 30.10.2024

St John's School Whitehall, Shillong
Represented by Shri. Robert Z Street,
Employer, St John's School Whitehall,
Shillong, Meghalaya.

::: Petitioner

-Vs-

1. The Employees Provident Fund
Organization, Represented by the Regional
P.F. Commissioner – II, Employees Provident
Fund Organization, Regional Office,
Laitumkhrah Police Point, Shillong,
Meghalaya.
2. The Authorized Officer,
Employees Provident Fund Organization,
Regional Office, Laitumkhrah Police Point,
Shillong, Meghalaya.
3. The Recovery Officer,
Employees Provident Fund Organization,
Regional Office, Laitumkhrah Police Point,
Shillong, Meghalaya.
4. The Branch Manager,
State Bank of India, Rynjah Branch,
Shillong, Meghalaya.

::: Respondents

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge



For the Petitioner/Appellant(s) : Mr. S. Deb, Adv.
For the Respondent(s) : Ms. P. Bhattacharjee, Adv. (For R 1-3)
Ms. N.G. Shylla, Adv. (For R 4)

i)	Whether approved for reporting in Law journals etc.:	Yes/No
ii)	Whether approved for publication in press:	Yes/No

1. This is a petition preferred under Article 226 of the Constitution of India. On perusal of the same, it is noticed that the petitioner/school is a registered educational institution functioning in the State of Meghalaya since the year 1982. However, the school was registered with the Employees Provident Fund Organization only in the year 2000 and necessary payment/contributions was therefore made only from the year 2000.

2. Though the school was brought within the purview of the related Act, that is, the Employees' Provident Fund & Miscellaneous Provisions Act, 1952 in the year 2000 but with effect from the year 1982, the contention of the school is that it had 20 employees only from the year 1996 and as such, was liable to make deposit of the relevant contributions only from such year.



3. It is also stated that the petitioner/school received a notice from the respondent authority in respect of the delay in depositing the dues etc. for which interest and penal damages with effect from February 1996 to March 1999 was levied. On this Court (the then Shillong Bench of the Gauhati High Court) being approached, the matter was disposed of with a direction by the Court, dated 27.01.2012 in WP(C) No. (SH) 58 of 2009 to the petitioner/school to deposit 25% of the total amount of damages etc. in accordance with Clause 32-A of the Employees Provident Fund Scheme, 1952, which was done so and duly acknowledged by the respondents herein.

4. It is also the petitioner/school's case that the school was served with two orders bearing the same reference number, that is, vide Ref. No. /NESHG/4043/ENF-501/DAMAGES, both issued on 14.02.2023 with a direction to pay interest under Section 7Q of the Act amounting to ₹1,28,393/- (rupees one lakh twenty eight thousand three hundred ninety three) only and the other order was for payment of damages of ₹3,35,478/- (rupees three lakh thirty five thousand four hundred seventy eight) only with effect from February 1992 to April 2008. Such amount to be paid within 15 days of the said order failing which necessary action under Section 8 of the Act to be initiated for recovery of the same.



5. The petitioner/school not being clear on the details as to how the respondents authority have arrived at the said amount of damages and interest demanded has sought for clarification of the same, and on no satisfactory response being received has caused a legal notice dated 23.03.2023 to be issued in this regard. However, in reply to this, the respondents authority have, through their reply dated 19.04.2023 directed the petitioner/school to approach the appellate authority, if so aggrieved.

6. The respondents have then issued a certificate under Section 8 of the Act, dated 17.05.2023 issued upon the Recovery Officer to recover the total sum of ₹ 4,63,871/- (four lakh sixty three thousand eight hundred seventy one) only from the petitioner/school.

7. Being aggrieved with the action of the respondents in processing and proceeding with the said orders dated 14.02.2023(supra) and the issuance of the said certificate dated 17.05.2023, the petitioner/school has thus filed this instant petition with the prayer to set aside and quash the same.

8. Mr. S. Deb, learned counsel for the petitioner/school has submitted that as far as the due payable by the school is concerned, the period up to February 1999 has been covered by this Court's order dated



27.01.2012 passed in WP(C) No. (SH) 58 of 2009, wherein the petitioner/school was directed to deposit 25% of the total damages for the period with effect from March 1996 to February 1999. Therefore, the respondent authority could not have demanded payment of damages etc. for the period with effect from February 1992 to April 2008.

9. Then, for the cost of damages and interest due for the period from March 2000 till 2008, the petitioner/school would be liable to pay the same at the rate of 25% for which a fresh computation of the period of default is required to be calculated, further submits the learned counsel. In this regard, the case of Regional Provident Fund Commissioner v. S.D. College, Hoshiarpur & Ors., (1997) 1 SCC 241, the case of Union of India & Ors. v. Mahender Singh & Ors., (1997) 1 SCC 245, and the case of Halwasia Vidya Vihar (Sr. Sec. School) Haryana v. Regional Provident Fund Commissioner, (2006) 4 SCC 46, have been cited.

10. On the other hand, Ms. P. Bhattacharjee, learned counsel for the respondent/EPF, has at the outset submitted that the petitioner/school has misled this Court as regard the factual matrix of the case when it has stated at para 4 of the petition that the school, although was brought within the purview of the 1952 Act in the year 2000 but could effect



from 1982 however, the school had 20 employees only from the year 1996 and was therefore liable to deposit the EPF dues with effect from 1996.

11. However, the above statement is false inasmuch as records would show that the school was actually covered under the 1952 Act since March 1982 where the number of employees are 21 teaching staff and 8 non-teaching staff in all and the monthly wages of such staff came to ₹14,220/- (rupees fourteen thousand two hundred twenty) only and as such, the school is liable to deposit the necessary contribution on behalf of such staff as EPF.

12. The petitioner/school has therefore misled this Court as far as the proceedings in WP(C) No. (SH) 58 of 2009 to be able to get a favourable order from this Court for payment of damages for the period with effect from March 1996 to February 1999 is concerned, which has caused the respondent/EPF to issue a revised calculation sheet dated 16.01.2023, the revised rate of damages to be settled by the petitioner/school is found at para 5 of the same extracted as following:

“5. Resultantly this writ petition is allowed. The impugned notice dated 6-3-2009 is hereby quashed. The respondent authorities are, therefore, directed to allow the petitioner to pay 25% of the total damage for the period between March, 1996 and February, 1999 in accordance with Clause 32-A of the Employees Provident Fund Scheme, 1952. The instalments(s)



already paid by the petitioner may be adjusted against the balance payable in terms of this order. No order as to costs.”

13. It is also the submission of the learned counsel that this petition is not maintainable since the petitioner/school cannot approach this Court with an application under Article 226 of the Constitution of India seeking issuance of a writ against the alleged arbitrary and illegal action of the respondent/EPF dated 14.02.2023 (supra) when there is a specific provision under Section 7-I of the related Employees’ Provident Fund and Miscellaneous Provisions Act, 1952 which provides for an appeal to the Tribunal set up under the Act against an order inter alia, issued under Section 14B, the proceedings thereof being quasi-judicial in nature, the impugned orders being one issued under such provision, the petitioner/school ought to have preferred an appeal, if so advised, which was not done so.

14. The learned counsel has submitted that in view of the stated position of law and under the facts and circumstances of the case, this petition is liable to be dismissed and the petitioner/school be directed to pay the dues and damages as demanded. The case of PHR Invent Educational Society v. UCO Bank & Ors., (2024) 6 SCC 579, para 30 and the case of Commissioner of Income Tax & Ors v. Chhabil Dass Agarwal, (2014) 1 SCC 603, para 19 have been cited in support of the



EPF's stand.

15. This Court while considering the case of the parties and the submission made by the learned counsel for the petitioner/school who has contended that the respondent/EPF could not have raised any demand for payment of the damages and dues with effect from the year 1992 since the period has been covered by the judgment of this Court in WP(C) No. (SH) 58 of 2009 wherein in the said order dated 27.01.2012 the petitioner/school was directed to pay 25% of the total damage for the period between March 1996 and February 1999 in accordance with Clause 32-A of the Employees Provident Fund Scheme, 1952 and also the admission of the respondent/EPF of this fact inasmuch as the earlier calculation of damages due and payable by the petitioner/school was later revised to exclude such amount, is found agreeable by this Court. The allegation of the respondent/EPF that the petitioner/school was liable for contribution to the EPF with effect from the year 1982 cannot be gone into by this Court in view of the judgment aforementioned.

16. This Court would however note the submission of the learned counsel for the petitioner/school who has fairly submitted that the school has admitted that there was a default in the deposit of the contribution as far as the requirement under the 1952 Act is concerned, however the



relevant period is only with effect from March 2000. It is also the contention of the learned counsel that the total amount is not disputed, the said amount can only mean the amount demanded by the respondent/EPF which comes to ₹ 4,63,871/- (four lakh sixty-three thousand eight hundred seventy-one) only.

17. It is the further contention of the learned counsel for the petitioner/school that in view of the judgment in the case of Halwasia Vidya Vihar (supra) as well as in the case of S.D. College Hoshiarpur (supra) wherein the Apex Court taking note of the proviso found in Section 14B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 which provides for reduction or waiver of damages levied has quantified the same at 25%. Though the respondent/EPF has contested this contention to say that the damages, even if reduced, the same should be at the rate of 37%, this Court under the facts and circumstances of the case would agree that the quantum should be qualified at 25%.

18. It is also the case of the respondent/EPF that against notice issued under Section 14B of the Act, the notice receiver ought to have approached the Tribunal under Section 7-I which was not done so in this case, even while considering the authorities cited by the respondent/EPF



which essentially speaks about the power of the High Court not to entertain a petition under Article 226 of the Constitution, particularly when an alternative statutory remedy is available, the fact that this matter has travelled for quite some time before this Court to remand the same to be freshly tried by the Tribunal would be a futile exercise considering the fate of the employees of the petitioner/school who would be deprived of the benefit due to them in the meantime. Accordingly, on an overall consideration of the case in hand, this Court hereby directs the petitioner/school to ensure that 25% of the demanded amount be deposited for the purpose it is meant to be used and the said amount is to be deposited within 2(two) months from the date of receipt of this order.

19. As far as respondent No. 4/ State Bank of India, Rynjah Branch, Shillong is concerned, Ms. N.G. Shylla, learned counsel would submit that the Bank not being directly involved in the dispute between the parties but in course of these proceedings, on being directed by this Court has defreeze the account of the petitioner/school, therefore no purpose would be served in joining issues in this regard.

20. In view of the observations made herein above, this petition is accordingly disposed of with direction as aforementioned.

Judge