



CWP-3985-2017 and other connected cases :1:

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

252

**CWP-3985-2017 (O&M)
Date of decision : 17.03.2025**

EMPLOYEES PROVIDENT FUND ORGANISATION & ANR

..... Petitioner

VERSUS

**PUNJAB STATE CO-OPERATIVE SUPPLY AND MARKETING
FEDERATION LTD AND ANOTHER**

..... Respondents

2.

CWP-4194-2017 (O&M)

EMPLOYEES PROVIDENT FUND ORGANISATION & ANR

..... Petitioner

VERSUS

**PUNJAB STATE CO-OPERATIVE SUPPLY AND MARKETING
FEDERATION LTD AND ANOTHER**

..... Respondents

3.

CWP-4355-2017 (O&M)

EMPLOYEES PROVIDENT FUND ORGANISATION & ANR

..... Petitioner

VERSUS

**PUNJAB STATE CO-OPERATIVE SUPPLY AND MARKETING
FEDERATION LTD AND ANOTHER**

..... Respondents

4.

CWP-9240-2017 (O&M)

EMPLOYEES PROVIDENT FUND ORGANISATION & ANR

..... Petitioner

VERSUS

**PUNJAB STATE CO-OPERATIVE SUPPLY AND MARKETING
FEDERATION LTD AND ANOTHER**

..... Respondents



CWP-3985-2017 and other connected cases :2:

5. CWP-10300-2017 (O&M)

EMPLOYEES PROVIDENT FUND ORGANISATION & ANR

..... Petitioner

VERSUS

**PUNJAB STATE CO-OPERATIVE SUPPLY AND MARKETING
FEDERATION LTD AND ANOTHER**

..... Respondents

6. CWP-10166-2017 (O&M)

EMPLOYEES PROVIDENT FUND ORGANISATION & ANR

..... Petitioner

VERSUS

**PUNJAB STATE CO-OPERATIVE SUPPLY AND MARKETING
FEDERATION LTD AND ANOTHER**

..... Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present :- Mr. Sanjay Tangri, Advocate
for the petitioners.

Mr. K. K. Gupta, Advocate
for the respondent (in CWP-10166-2017).

None for the respondents in
remaining cases.

Harsimran Singh Sethi, J. (Oral)

1. By this common order, six writ petitions, the details of which have been given in the heading, are being decided as all these petitions involve the same question of law on similar facts.

2. The challenge in all these petitions is to the order passed by the

**CWP-3985-2017 and other connected cases :3:**

Employees Provident Fund Appellate Tribunal, New Delhi by which, the liability of the respondents qua the payment of the provident fund has been reduced to a certain extent of the total assessed damages. For sake of convenience, order dated 05.09.2016 (Annexure P-5), which is the order impugned under CWP-3985 of 2017 is taken up for consideration. A reduction to 40% of the total assessed damages, which is challenged in CWP-3985, CWP-4194, CWP-4355, CWP-10166 of 2017 and a reduction of 50% and 25% also, which reduction is challenged in CWP-10300 of 2017 and CWP-9240 of 2017 respectively.

3. Learned counsel appearing on behalf of the petitioners argues that the issue whether, the penalty which is to be imposed as per the provisions of the Employees' Provident Fund & Misc. Provisions Act, 1952 (hereinafter referred to as the "1952 Act"), can be diluted by the Appellate Tribunal merely on the ground that the non-deposit of the liability imposed upon and by the respondents needs sympathetic consideration and the same has been reduced to 40% of the total liability assessed. Learned counsel for the petitioner submits that as per the judgment of the Hon'ble the Supreme Court of India in *Writ Petition No.4319 of 1978 titled 'Organo Chemical Industries and another Vs. Union of India and others', decided on 23.07.1979*, the discretion exercised by the Appellate Tribunal so as to reduce the liability imposed upon the respondents was held to be beyond jurisdiction of the Tribunal.

4. Learned counsel for the petitioners further submits that a similar issue has been adjudicated upon by the Co-ordinate Bench of this



CWP-3985-2017 and other connected cases :4:

Court while passing order in *CWP No.22297 of 2012 titled 'Regional Provident Fund Commissioner Vs. M/s Shivon International and another' decided on 30.07.2015* and it has been categorically mentioned therein that even the financial crisis cannot be a ground to absolve the liability of the establishment under Section 7Q and 14B of 1952 Act.

5. Learned counsel for the petitioner further argues that the judgment relied upon by the Appellate Tribunal while passing the order so as to reduce the liability of the respondent i.e. *Roma Henny Security Services Pvt. Ltd. Vs. Central Board of Trustees, EPF Organisation through Assistant PF Commissioner, Delhi (North) (2013) 1 LLJ 29 Del,* has already been set aside by the Hon'ble Supreme Court of India while passing order in *Civil Appeal No.6592 of 2014 titled 'Central Board of Trustees Vs. Roma Henny Security Services Pvt. Ltd.' decided on 27.02.2019* and therefore, even otherwise, the order impugned dated 05.09.2016 (Annexure P-5) is liable to be set aside.

6. Learned counsel appearing on behalf the respondents-FCI submits that the discretion exercised by the Appellate Tribunal to reduce the assessed damages is perfectly valid and legal and further submits that the imposition of even 40% of total liability imposed on respondents has been challenged by the petitioners before the Delhi High Court and there has been an interim order with regard to the deposit of the same and therefore, the present petition may kindly be dismissed.

7. I have heard learned counsel for the parties and have gone through the record with their able assistance.



CWP-3985-2017 and other connected cases :5:

8. It may be noticed that as per the settled principle of law settled by Hon'ble the Supreme Court of India in *Organo Chemical Industries and another (supra)*, the power to reduce the liability imposed upon an institution under 1952 Act on the ground of financial distress is not permissible. Further, as per the judgment of the Hon'ble Supreme Court of India in *Hindustan Times Limited Vs. Union of India and others, 1998 (2) S.C.T.256*, financial problems being faced by the institution so as to absolve them for the payment of liability under 1952 Act has also been categorically rejected. Once, this aspect becomes crystal clear that the financial distress is not a ground to set aside the liability, no valid reason has been given for reducing the liability imposed upon the respondent in the impugned order passed by the Appellate Tribunal in the present case. The same order has been passed by the Tribunal on discretion, which is not permissible.

9. Further, while passing order by the Co-ordinate Bench in *CWP No.22297 of 2012 titled 'The Regional Provident Fund Commissioner Vs. M/s Shivon International and another' decided on 30.07.2015*, by considering all the relevant law, the Court has held that financial crisis cannot be a ground to set aside the liability under Section 7Q and 14 B of 1952 Act. The relevant paragraph 10 is as under:-

“There is no dispute that the contributions have to be made by the respondent-establishment by the 15th of next month in which the employee has been enrolled and the dues become payable to him. The petitioner has attached the statement showing the due date of the amount payable and the actual date of its deposit. Admittedly, the deposit is delayed. The only issue in this case is as to whether the financial crisis can

**CWP-3985-2017 and other connected cases****:6:**

be a ground to absolve the respondent-establishment from its liability under Section 7Q and 14-B of the Act. In this regard, the Supreme Court in Hindustan Times Ltd.'s case (supra), while referring to the decision in the case of **Organo Chemical Industries vs. Union of India and others, 1980(1) SCR 61**, has held that “from the aforesaid decisions, the following principles can be summarized: The authority under Section 14-B has to apply his mind to the facts of the case and the reply to the show cause notice and pass a reasoned order after following principles of natural justice and giving a reasonable opportunity of being heard; the Regional Provident Fund Commissioner usually takes into consideration the number of defaults, the period of delay, the frequency of default and the amounts involved; default on the part of the employer based on plea of power cut, financial problems relating to other indebtedness or the delay in realization of amounts paid by the cheques or drafts, cannot be justifiable ground for the employer to escape liability..... ”

10. Learned counsel for the respondents has not been able to rebut the settled principle of law mentioned hereinbefore according to which impugned order cannot be sustained hence, keeping in view the above reproduction, the impugned order passed by the Appellate Tribunal is without jurisdiction.

11. Further, the Appellate Tribunal had exercised its jurisdiction on the basis of the judgment in **Roma Henny Security Services Pvt. Ltd. (supra)**, which judgment has already been set aside by the Hon'ble Supreme Court of India in **Roma Henny Security Services Pvt. Ltd** (supra). Learned counsel for the respondents has not been able to dispute the said assertion.

12. With regard to the assertion of the learned counsel for the respondents that they have challenged the impugned order passed by the Appellate Authority under 1952 Act before the Delhi High Court, it may be

**CWP-3985-2017 and other connected cases :7:**

noticed that the said petition is only pending and has not been decided yet. Mere pendency of a petition against the same order with an interim order is no ground for this Court to not pass an order on merits being on a question of law raised by the petitioner in these petitions.

13. Keeping in view the above, the impugned order dated 05.09.2016 (Annexure P-5) passed by the Appellate Tribunal is set aside, the cases are remanded back to the Appellate Tribunal for its fresh adjudication in terms of the settled principle of law on the issue whether an order passed by the authorities under 1952 Act, impugned liability upon an institution can be reduced or not. Parties are directed to appear before the Tribunal on 14.04.2025.

14. This petition is disposed of alongwith all the connected petitions in above stated terms.

15. Pending applications, if any, also stand disposed of accordingly.

16. Photocopy of this order be placed on the connected case files.

(HARSIMRAN SINGH SETHI)
JUDGE

17.03.2025

Rimpal

Whether speaking/reasoned Yes

Whether Reportable : No