THE HIGH COURT OF MADHYA PRADESH
Writ Petition No.28789/2019
M/s Sumedha Vehicles Pvt. Ltd. Vs. Central Government Industrial Tribunal and others

Gwalior, Dated :13/01/2020

Shri D.K. Agrawal, Counsel for the petitioner.

Shri R.K. Goyal, Counsel for the respondents.

Heard on the question of admission.

2. This petition under Article 227 of the Constitution of India has been filed against the order dated 20-12-2019 passed by Central Government Industrial Tribunal-cum-Labour Court, Lucknow in Appeal No. 53/2019 by which the appeal filed the petitioner against the order dated 10-10-2019 passed under Section 7-Q of The Employees' Provident Funds and Miscellaneous Provisions Act, 1952, has been dismissed on the ground that it is not maintainable.

3. According to the petitioner, the necessary facts for disposal of the present petition in short are that the petitioner is a Private Limited Company and is working as an authorized dealers for Vehicles/Cars. The petitioner's establishment is situated at Gwalior, and the office of respondents no. 2 and 3 are also situated in Gwalior and the order dated 10-10-2019 was also passed at Gwalior. Thus it is claimed that, a part of Cause of Action has arisen within the territorial jurisdiction of this Court, therefore, this Court has a jurisdiction to entertain the writ petition against the order dated 20-12-2019 passed by CGIT-cum-Labour Court, Lucknow. It is not

disputed by the Petitioner, that Petitioner firm is covered by the provisions of The Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (In short EPF Act). It is claimed that although the petitioner had deposited its Provident Fund Contribution after payment of wages to its employees, and there was no default in deposit of contribution, however, for the pre-discovery period between July 2009 to April 2014, by order dated 14-12-2016, the petitioner was saddled with the liability of Rs. 48,76,050 without there being any identification of the beneficiaries. It is admitted by the Petitioner, that the said amount was deposited by it with the responent no. 3 on 21-3-2017,24-8-2013,14-9-2017 and 9-10-2017 and the order dated 14-12-2016 was never challenged by the petitioner and thus, the order dated 14-12-2016 has attained finality.

4. It is the case of the petitioner, that after the deposit of amount of Rs. 48,76,050, the petitioner was issued a composite show cause notice on 26-9-2019 indicating that an amount of Rs. 48,76,050 is due under Section 14-B and an amount of Rs. 31,13,873 is due under Section 7-Q of EPF Act, and thus in all an amount of Rs. 79,89,923 was shown to be outstanding against the petitioner under Section 14B and 7-Q of EPF Act. Along with the show cause notice, a calculation sheet was also supplied to the petitioner. The petitioner

filed his response to the show cause notice.

5. The Assistant Provident Fund Commissioner (C-II), (Damages), Regional Office, Gwalior by order dated 10-10-2019 passed in PF/RO/GWL/MP/15995/C-II/1327 imposed the damages of Rs. 48,76, 050 under Section 14-B of EPF Act, and by order dated 10-10-2019 passed in PF/RO/GWL/MP/15995/C-II/1328, levied the interest of Rs. 31,13,973 under Section 7-Q of EPF Act.

6. Since a composite Show Cause Notice was issued, and a joint inquiry was conducted, therefore, the petitioner filed a composite appeal under Section 7-I of EPF Act against the aforementioned two orders dated 10-10-2019.

7. It is submitted that by the impugned order dated 20-12-2019, the CGIT-cum-Labour Court, Lucknow passed in Appeal No. 53/2019 held that although the appeal filed against the order dated 10-10-2019 passed under Section 14-B of EPF Act is maintainable, however, the appeal filed against the order dated 10-10-2019 passed under Section 7-Q of EPF Act has been dismissed as non-maintainable by observing as under :

> "…. and held not maintainable as regards to
>
> the order passed u/s 7-Q of the Act."

8. It is submitted that the present petition has been filed

challenging the dismissal of the appeal filed against the order dated 10-10-2019 passed under Section 7-Q of the EPF Act.

9. Challenging the impugned order dated 20-12-2019, it is submitted that different benches of CGIT have held that the appeal filed against the order passed under Section 7-Q of EPF Act is maintainable, and the orders passed by different benches of CGIT are binding on each of them. Further, it is submitted that as per the provisions of Section 7-A of EPF Act, it is clear that all determinations of moneys due from employers are determined under this Section, and any order passed under Section 7-A is appealable under Section 7-I of EPF Act. It is submitted that how much was the delay in making payment of "amount due" by the employer would require determination, therefore, in view of the provisions of Section 7-A of EPF Act, the order determining the interest payable by the employer is also appealable, and thus, the impugned order passed by CGIT-cum-Labour Court, Lucknow is liable to be quashed, and the Tribunal below may be directed to admit the appeal filed against the order passed under Section 7-Q of EPF Act. It is submitted that since, a composite show cause notice was issued, therefore, merely because two different orders have been passed under Section 14B and 7-Q of EPF Act, therefore, the appeal against the order passed

under Section 7-Q of EPF Act would not become non-maintainable. It is further submitted that the provisions of appeal should be construed liberally, and merely because Section 7-Q has not been mentioned in Section 7-I of EPF Act, therefore, it would not mean, that no appeal lies against the order passed under Section 7-Q of EPF Act. To buttress his contentions, the Counsel for the petitioner has relied upon the judgments passed by the Supreme Court in the case of **V.C. Shukla v. State through CBI** reported in **1980 Supp SCC 92**, **Super Cassettes Industries Ltd. v. State of U.P.** reported in **(2009) 10 SCC 531**, **P.S. Sathappan v. Andhra Bank Ltd.** reported in **(2004) 11 SCC 672** and by Kerala High Court in the case of **K.V. Balan and another Vs. Sivagiri Sree Narayana Dharma Sanghom Trust and others** reported in **AIR 2006 Ker 58** and **K. Premavalli Vs. State of Kerala** reported in **AIR 1998 Kerala 231**. It is further submitted that the words " any amount due from an employer" occurring in Section 11(2) should not be confined to amount determined under Section 7-A but it should also include interest payable under Section 7-Q of EPF Act. To buttress his contentions, the Counsel for the petitioner has relied upon the judgment passed by the Supreme Court in the case of **Maharashtra State Co-operative Bank Limited Vs. Assistant Provident Fund Commissioner and**

others reported in **(2009) 10 SCC 123.**

10. Per contra, the Counsel for the respondent has supported the impugned order and submitted that an appeal against the order passed under Section 7-Q of EPF Act is not maintainable and to buttress his contentions, he has relied upon the judgment passed by the Supreme Court in the case of **Arcot Textile Mills Limited Vs. Regional Provident Fund Commissioner and others** reported in **(2013) 16 SCC 1.**

11. Heard the learned Counsel for the parties.

12. The EPF Act, is a beneficial legislation promulgated for the protection of the rights of the employees.

13. The Supreme Court in the case of **Shree Vishal Printers Ltd. v. Provident Fund Commr.,** reported in **(2019) 9 SCC 508** has held as under :

> **1.** Welfare economics, enlightened self-interest and the pressure of trade unions led larger factories and establishments to introduce schemes that would benefit their employees, including schemes like that of the provident fund.[1] However, with an increasing number of small factories and establishments coming into the market, the employees of such fledgling units remained deprived of these benefits. In order to diffuse such benefits in establishments across the market, the legislature promulgated the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter

> referred to as "the said Act"). The said Act was enacted with the avowed object of providing for the security of workers in organised industries, in the absence of any social security scheme prevalent in our country.

14. Further, while interpreting the Provisions of EPF Act, the Court is required to keep the objects and reasons of the Act in the mind, so that the basic object of the EPF Act is not frustrated. The Supreme Court in the case of **Srikanta Datta Narasimharaja Wodiyar v. Enforcement Officer, Mysore,** reported in **(1993) 3 SCC 217** has held as under :

> **13.** That depends, obviously, on the scheme of the Act, the liability it fastens on the Director of the Company and applicability of the penal provisions to the statutory violation or breach of the Scheme framed under it. But before doing so it may not be out of place to mention that the Act is a welfare legislation enacted for the benefit of the employees engaged in the factories and establishments. The entire Act is directed towards achieving this objective by enacting provisions requiring the employer to contribute towards Provident Fund, Family Pension and Insurance and keep the Commissioner informed of it by filing regular returns and submitting details in forms prescribed for that purpose. Paragraph 36-A of the Provident Funds Scheme framed by Central Government under Section 5 of the Act requires the employer in relation to a factory or other establishment to furnish Form 5-A mentioning details of its branches and departments, owners, occupiers, Directors, partners, Managers or any other person or persons who have ultimate control over the

affairs of the factory or establishment. The purpose of giving details of the owners, occupiers and Directors etc. is not an empty formality but a deliberate intent to widen the net of responsibility on any and every one for any act or omission. It is necessary as well as in absence of such responsibility the entire benevolent scheme may stand frustrated. The anxiety of the legislature to ensure that the employees are not put to any hardship in respect of Provident Fund is manifest from Sections 10 and 11 of the Act. The former grants immunity to provident fund from being attached for any debt outstanding against the employee. And the latter provides for priority of provident fund contribution over other debts if the employer is adjudged insolvent or the Company is winded up. Such being the nature of provident fund any violation or breach in this regard has to be construed strictly and against the employer.

15. Section 7-A, 7-I, 7-Q and 14-B of EPF Act reads as under :

7-A. Determination of moneys due from employers.—(1) The Central Provident Fund Commissioner, any Additional Central Provident Fund Commissioner, any Deputy Provident Fund Commissioner, any Regional Provident Fund Commissioner or any Assistant Provident Fund Commissioner may, by order,—

(*a*) in a case where a dispute arises regarding the applicability of this Act to an establishment, decide such dispute; and

(*b*) determine the amount due from any employer under any provision of this Act, the Scheme or the Pension Scheme or the Insurance Scheme, as the case may be,

and for any of the aforesaid purposes may conduct such inquiry as he may deem necessary.

(2) The officer conducting the inquiry under sub-

section (1) shall, for the purposes of such inquiry, have the same powers as are vested in a court under the Code of Civil Procedure, 1908, for trying a suit in respect of the following matters, namely:—

(*a*) enforcing the attendance of any person or examining him on oath;

(*b*) requiring the discovery and production of documents;

(*c*) receiving evidence on affidavit;

(*d*) issuing commissions for the examination of witnesses;

and any such inquiry shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228, and for the purpose of Section 196 of the Indian Penal Code.

(3) No order shall be made under sub-section (1), unless the employer concerned is given a reasonable opportunity of representing his case.

(3-A) Where the employer, employee or any other person required to attend the inquiry under sub-section (1) fails to attend such inquiry without assigning any valid reason or fails to produce any document or to file any report or return when called upon to do so, the officer conducting the inquiry may decide the applicability of the Act or determine the amount due from any employer, as the case may be, on the basis of the evidence adduced during such inquiry and other documents available on record.

(4) Where an order under sub-section (1) is passed against an employer *ex parte*, he may, within three months from the date of communication of such order, apply to the officer for setting aside such order and if he satisfies the officer that the show-cause notice was not duly served or that he was prevented by any sufficient cause from appearing when the inquiry was held, the officer shall make an order setting aside his earlier order and shall appoint a date for

proceeding with the inquiry:

Provided that no such order shall be set aside merely on the ground that there has been irregularity in the service of the show-cause notice if the officer is satisfied that the employer had notice of the date of hearing and had sufficient time to appear before the officer.

Explanation.—Where an appeal has been preferred under this Act against an order passed *ex parte* and such appeal has been disposed of otherwise than on the ground that the appellant has withdrawn the appeal, no application shall lie under this sub-section for setting aside the *ex parte* order.

(5) No order passed under this section shall be set aside on any application under sub-section (4) unless notice thereof has been served on the opposite party.

7-I. Appeals to Tribunal.— (1) Any person aggrieved by a notification issued by the Central Government, or an order passed by the Central Government or any authority, under the proviso to sub-section (3), or sub-section (4), of Section 1, or Section 3, or sub-section (1) of Section 7-A, or Section 7-B [except an order rejecting an application for review referred to in sub-section (5) thereof, or Section 7-C, or Section 14-B, may prefer an appeal to a Tribunal against such notification or order.

(2) Every appeal under sub-section (1) shall be filed in such form and manner, within such time and be accompanied by such fees, as may be prescribed.

7-Q. Interest payable by the employer.—The employer shall be liable to pay simple interest at the rate of twelve per cent per annum or at such higher rate as may be specified in the Scheme on

any amount due from him under this Act from the date on which the amount has become so due till the date of its actual payment:

Provided that higher rate of interest specified in the Scheme shall not exceed the lending rate of interest charged by any scheduled bank.

14-B. Power to recover damages.—Where an employer makes default in the payment of any contribution to the Fund , the Pension Fund or 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 may recover from the employer by way of penalty 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 (1 of 1986), subject to such terms and conditions as may be specified in the Scheme.

16. From the plain reading of Section 7-Q of EPF Act, it is clear

that nothing is required to be determined for levying the interest on late payment by the employer. The rate of interest is already provided in the Section and no discretionary power has been conferred on the authority. Thus, the only question which is required to be decided under Section 7-Q of EPF Act is that whether there was any delay on the part of the employer in depositing the amount due under this Act or not? If the employer succeeds in establishing that nothing was due from him under this Act, then there will not be any question of levying the interest and if it is found that certain amount was due from the employer on a particular date, and the same was not deposited, then the authority shall be under obligation to find out the date on which the amount so due from the employer was deposited and then to levy the interest on the delayed payment. Nothing is required to be adjudicated by the Authority while passing an order under Section 7-Q of the EPF Act.

17. From the plain reading of Section 7-I of EPF Act, it is clear that no appeal has been provided against the order passed under Section 7-Q of EPF Act. However, it is submitted by the Counsel for the petitioner, that while interpreting the statutory provisions of Law, this Court must give a liberal meaning to the statutory provisions, and therefore, it should be held that when the order of Damages

passed under Section 14-B of EPF Act has been made appealable, then the order passed under Section 7-Q of EPF Act is also appealable.

18. The Petitioner has relied upon the judgment passed by the Supreme Court in the case of **P.S. Sathappan v. Andhra Bank Ltd. (Supra)** in which it has been held as under :

> **68.** For proper construction of Section 104 of the Code, vis-à-vis clause 15 of the Letters Patent, it is necessary to ascertain the intention of Parliament. If a right of appeal, it is trite, is a creature of statute, it must be governed thereby. Sub-section (2) of Section 104 clearly states that no appeal from an order passed under sub-section (1) thereof would be maintainable. Proviso appended to Section 104 of the Code provides for a limited right of appeal in respect of clause (*ff*) of sub-section (1) of Section 104 of the Code which is an indicia of the fact that such a right may be circumscribed. The statute has used the language in the negative and, thus must be construed as mandatory. In view of the fact that an appeal from an order specified in Section 104 of the Code is maintainable only thereunder and from no other it leads to incongruity that in the event the forum is the High Court the appellate judgment would be governed by clause 15 of the Letters Patent, but in the event the forum is the District Judge, the judgment would be governed by sub-section (2) of Section 104 of the Code. If such a contention is accepted, the same would not only give rise to an anomalous situation which may be culled out from a plain reading of the said provision but also would give rise to different treatment to different classes of litigants, although a right of appeal is available to both the

> classes from orders of similar nature which possibility should, as far as possible, be avoided. The wordings of Section 104(2) of the Code, in our opinion, do not call for more than one interpretation. Liberal interpretation, as is well known, is the rule.
>
> **69.** Furthermore, it is now well settled that when two interpretations of a statute are possible, the court may prefer and adopt the purposive interpretation having regard to object and intent thereof. (See *Swedish Match AB* v. *Securities & Exchange of Board of India*.)

19. The Petitioner has relied upon the judgment passed by the Supreme Court in **Super Cassettes Industries Ltd. (Supra)** in which it has been held as under :

> **21.** In *D.N. Taneja* v. *Bhajan Lal* a three-Judge Bench of this Court observed that: (SCC p. 32, para 12)
>
> "*12*. … the question whether there is a right of appeal or not will have to be considered on an interpretation of the provision of the statute and not on the ground of propriety or any other consideration."
>
> **22.** In *V.C. Shukla* v. *State* this Court while dealing with the submission that right of appeal should be liberally construed referred (at SCC p. 128, para 42) to the observations of Crawford: *The Construction of Statutes*,
>
> "[m]oreover, statutes pertaining to the right of appeal should be given a liberal construction in favour of the right, since they are remedial. Accordingly, the right will not be restricted or denied unless such a construction is unavoidable".
>
> and held: (SCC p. 128, para 43)

> "*43*. There can be no dispute regarding the correctness of the proposition mentioned in the statement extracted above, but here as the right of appeal is expressly excluded by providing that no appeal shall lie against an interlocutory order, it is not possible for us to stretch the language of the section to give a right of appeal when no such right has been conferred. Even the statement extracted above clearly says that 'the right will not be restricted unless such a construction is unavoidable'. In the instant case, in view of the non obstante clause, Section 11(1) of the Act cannot be construed to contain a right of appeal even against an interlocutory order and, therefore, the present clause falls within the last part of the statement of Crawford, extracted above."

20. The Petitioner has relied upon the judgment passed by the Supreme Court in the case of **V.C. Shukla v. State through CBI (Supra)** in which it has been held as under :

> **42.** The learned counsel for the appellant then finally submitted that the present statute which gives a right of appeal, should be liberally construed in favour of the accused so as not to deprive him of the right of appeal. The counts counsel relied on the observations of Crawford: *THE CONSTRUCTION OF STATUTES* (pp. 692-93) which may be extracted thus:
>
> "S. 336. *Appeals*.—.... Moreover, statutes pertaining to the right of appeal should be given a liberal construction in favour of the right, since they are remedial. Accordingly, the right will not be restricted or denied unless such a construction is unavoidable."
>
> **43.** There can be no dispute regarding the correctness of the proposition mentioned in the statement extracted above, but here as the right

> of appeal is expressly excluded by providing that no appeal shall lie against an interlocutory order, it is not possible for us to stretch the language of the section to give a right of appeal when no such right has been conferred. Even the statement extracted above clearly says that "the right will not be restricted unless such a construction is unavoidable". In the instant case, in view of the non obstante clause Section 11(1) of the Act cannot be construed to contain a right of appeal even against an interlocutory order and, therefore, the present clause falls within the last part of the statement of Crawford, extracted above. Thus, this argument of the learned counsel also is wholly devoid of any substance.

21. The Kerala High Court in the case of **K.V. Balan (Supra)** has held as under :

> **13**. Crawford on 'Construction of Statutes' states as follows :
> ".....Statutes pertaining to the right of appeal should be given a liberal construction in favour of the right, since they are remedial. Accordingly, the right will not be restricted or denied unless such a construction is unavoidable. In a few States, however, where the statute pertains to appeals from interlocutory orders the rule of strict construction has been applied. But, there seems to be no real justification for this departure from the general rule in accord with which a liberal construction would be given by the Court."
>
> (Emphasis supplied)
> In Sutherland's Statutory Construction (3rd Edn., Vol. 3, para 6807) it is said in relation to 'statutes allowing appeals' :
> "Statutes giving the right of appeal are liberally

construed in furtherance of justice, and an interpretation which will work a forfeiture of that right is not favoured. Thus provisions limiting the time for bringing an appeal are liberally interpreted so that the party pursuing the remedy of appeal will not be defeated on mere technicalities. Likewise, an interpretation limiting the cases from which an appeal may be brought or the persons who may bring an appeal is not preferred."

(Emphasis supplied)

In Premavalli v. State of Kerala (1998) 1 Ker LT 822 : (AIR 1998 Kerala 231) (FB), a Full Bench of this Court held that even though right of appeal is not automatic, but, statutory, it is an equally well settled proposition of law that if there is a power conferring right of appeal, it should be read in a reasonable practical and liberal manner. In that case, Full Bench held that an appeal will lie against judgement of a single Judge rendered under Section 54 of the Land Acquisition Act in view of the Section 5(ii) of the Kerala High Court Act. The intention of the legislature is primarily to be gathered from the language used in the Statute itself as held by the Apex Court in Gwalior Rayons Co. Ltd. v. Custodian of Vested Forests, AIR 1990 SC 1747 at page 1752. Merely because the modern trend is to reduce appeals, we cannot ignore the clear provision under Section 5(i) of the Kerala High Court Act. If appeal is to be transferred as a policy decision specific provision like Section 100-A can be incorporated in CPC or suitable amendment can be made to the Kerala High Court Act. The Supreme Court in Commissioner of Sales Tax, Madhya Pradesh v. M/s. Popular Trading Company, AIR 2000 SC 1578 and in State of Jharkhand v. Govind Singh 2004 AIR SCW 6799 : AIR 2005 SC 294 held that while interpreting a provision, the Court only interprets

> the law. It is for the legislature to amend, modify or repeal it. By judicial interpretative process, Courts cannot usurp legislative powers. Courts cannot legislate, either creating or taking away substantial rights by stretching or straining piece of legislation as held by the Apex Court in Sri Ram Saha v. State of West Bengal, 2004 AIR SCW 5807 : AIR 2004 SC 5080, para 18. As observed by Gejendra Gadkar, J. in Kanai Lal Sur v. Paramnidhi Sadhukhan, AIR 1957 SC 907 'he words used in the material provisions of the Statute must be interpreted in their plain grammatical meaning and it is only when such words are capable of two constructions that the question of giving effect to the policy or object of the Act can legitimately arise'. When Section 5(i) clearly provides for appeal from orders, it cannot be stated that no appeal will lie from the adjudicated 'order' under Section 24, CPC, of the single Judge to the Division Bench. Merely because no appeal is provided from the order of District Court under Section 24, CPC, it cannot be stated that right of appeal given under Section 5(i) should be denied despite the clear wordings used in that section, if the District Court passes an illegal order, parties can approach the High Court under Article 227 of the Constitution of India.

22. The Kerala High Court in the case of **K.Premavalli (Supra)** has held as under :

> **21**. The principle that is deducible from the above mentioned decisions is that unless there is express or implied bar curtailing the right of appeal, the Court should always uphold the right of appeal. As held by the Supreme Court in C. I. T., A. P. v. Ashoka Engg. Co., 1993 Supp (1) SCC 754 : (AIR 1993 SC 858), it is an equally

> well-settled proposition of law that, if there is a provision, conferring a right of appeal, it should be read in a reasonable, practical and liberal manner. In Salimuddin Ahammed v. Rahim Sheik, AIR 1926 Cal 1113, it was pointed out that in a matter which relates to the curtailment of the right of appeal, if there is slightest doubt in one's mind, the benefit of that doubt should go to the party who seeks to appeal.

23. Thus, by relying upon the aforementioned judgments, the Counsel for the petitioner has submitted that unless there is an express bar curtailing the right of appeal, the Court should always uphold the right of appeal. Since, in Section 7-I of EPF Act, there is no specific bar curtailing the right of appeal against the order passed under Section 7-Q of EPF Act, therefore, it should be held that the order under Section 7-Q of EPF is appealable.

24. Considered the submissions made by the Counsel for the Petitioner.

25. In the case of **K. Premavalli (Supra)** it has been held by Kerala High Court, that unless and until there is express or implied bar cutrailing the right of appeal, the Court should always uphold the right of appeal.

26. In the case of **Super Cassettes Industries Ltd. (Supra)** it has been held by the Supreme Court as under :

> **23.** It is well known that the right of

> appeal is not a natural or inherent right. It cannot be assumed to exist unless expressly provided for by statute. Being a creature of statute, remedy of appeal must be legitimately traceable to the statutory provisions. It is true that mere omission or error in quoting the provisions would not affect the maintainability of appeal, if otherwise, the order impugned is amenable to appeal.

27. As already pointed out, Order passed under Section 7-Q of EPF Act, has not been made appealable under Section 7-I of EPF Act. However, it is the contention of the Counsel for the petitioner, that non-mentioning of Section 7-Q in Section 7-I would not make the order under Section 7-Q non-appealable and considering the stakes and rights of the employer, specifically when the determination is done under Section 7-A of EPF Act, and since, the order under Section 7-A of EPF Act is appealable, therefore, the appeal would lie against the order passed under Section 7-Q of EPF Act.

28. As already held in the previous paragraph, that while levying interest on the delayed payment made by the employer, the authority is not required to determine any disputed fact, because, the rate of interest is already provided under Section 7-Q of EPF Act, and no discretion has been given to the Authority. Once, the liability is assessed by the Authority, then for levying the interest, only period

of delay committed by the employer is to be seen. The date on which the amount became due is already determined while determining the liability of the employer and therefore, only the date on which the amount is deposited is to be ascertained. Thus, for levying the interest, the authority is not required to determine any disputed question of fact, but is merely required to consider two dates i.e., when the amount became due and the date on which the amount was deposited. Therefore, it cannot be said that the order under Section 7-Q of EPF Act, is passed after determining the money due from employer.

29. The Supreme Court in the case of **Arcot (Supra)** has held as under :

> **34.** Regard being had to the discussions made and the law stated in the field, we are of the considered opinion that natural justice has many facets. Sometimes, the said doctrine applied in a broad way, sometimes in a limited or narrow manner. Therefore, there has to be a limited enquiry only to the realm of computation which is statutorily provided regard being had to the range of delay. Beyond that nothing is permissible. We are disposed to think so, for when an independent order is passed making a demand, the employer cannot be totally remediless and would have no right even to file an objection pertaining to computation. Hence, we hold that an objection can be filed challenging the computation in a limited spectrum which shall be dealt with in a summary

manner by the competent authority.

30. So far as the order under Section 14-B of EPF Act is concerned, the nature of the said order is different. Section 14-B speaks about "Damages".

31. The Supreme Court in the case of **Karnataka Rare Earth v. Deptt. of Mines & Geology,** reported in **(2004) 2 SCC 783** has held as under :

> 13. A penal statute or penal law is a law that defines an offence and prescribes its corresponding fine, penalty or punishment. (*Black's Law Dictionary*, 7th Edn., p. 1421.) Penalty is a liability composed (*sic* imposed) as a punishment on the party committing the breach. The very use of the term "penal" is suggestive of punishment and may also include any extraordinary liability to which the law subjects a wrongdoer in favour of the person wronged, not limited to the damages suffered. (See Aiyar, P. Ramanatha: *The Law Lexicon*, 2nd Edn., p. 1431.)
>
> * * * *
>
> 18. .....An order imposing penalty for failure to carry out the statutory obligation is the result of a quasi-criminal proceeding and penalty will not ordinarily be imposed unless the party obliged has either acted deliberately in defiance of law or was guilty of contumacious or dishonest conduct or acted in conscious disregard of its obligation. Penalty will also not be imposed merely because it is lawful to do so. In spite of a minimum penalty prescribed, the authority competent to impose the penalty may refuse to impose penalty if the breach complained of was a technical or venial breach

> or flew from a bona fide though mistaken belief. ....."

32. The Supreme Court in the case of **Srikanta Datta Narasimharaja Wodiyar v. Enforcement Officer, Mysore,** reported in **(1993) 3 SCC 217** has held as under :

> 13. That depends, obviously, on the scheme of the Act, the liability it fastens on the Director of the Company and applicability of the penal provisions to the statutory violation or breach of the Scheme framed under it. But before doing so it may not be out of place to mention that the Act is a welfare legislation enacted for the benefit of the employees engaged in the factories and establishments. The entire Act is directed towards achieving this objective by enacting provisions requiring the employer to contribute towards Provident Fund, Family Pension and Insurance and keep the Commissioner informed of it by filing regular returns and submitting details in forms prescribed for that purpose. Paragraph 36-A of the Provident Funds Scheme framed by Central Government under Section 5 of the Act requires the employer in relation to a factory or other establishment to furnish Form 5-A mentioning details of its branches and departments, owners, occupiers, Directors, partners, Managers or any other person or persons who have ultimate control over the affairs of the factory or establishment. The purpose of giving details of the owners, occupiers and Directors etc. is not an empty formality but a deliberate intent to widen the net of responsibility on any and every one for any act or omission. It is necessary as well as in absence of such responsibility the entire benevolent scheme may stand frustrated. The

> anxiety of the legislature to ensure that the employees are not put to any hardship in respect of Provident Fund is manifest from Sections 10 and 11 of the Act. The former grants immunity to provident fund from being attached for any debt outstanding against the employee. And the latter provides for priority of provident fund contribution over other debts if the employer is adjudged insolvent or the Company is winded up. Such being the nature of provident fund any violation or breach in this regard has to be construed strictly and against the employer.

33. The Supreme Court in the case of **Organo Chemical Industries v. Union of India,** reported in **(1979) 4 SCC 573** has explained "Damages" as under :

> **13.** The contention that Section 14-B confers unguided and uncontrolled discretion upon the Regional Provident Fund Commissioner to impose such damages "as he may think fit" is, therefore, violative of Article 14 of the Constitution, cannot be accepted. Nor can it be accepted that there are no guidelines provided for fixing the quantum of damages. The power of the Regional Provident Fund Commissioner to impose damages under Section 14-B is a quasi-judicial function. It must be exercised after notice to the defaulter and after giving him a reasonable opportunity of being heard. The discretion to award damages could be exercised within the limits fixed by the statute. Having regard to the punitive nature of the power exercisable under Section 14-B and the consequences that ensue therefrom, an order under Section 14-B must be a "speaking order" containing the reasons in support of it. The guidelines are provided in the Act and its various

provisions, particularly in the word "damages" the liability for which in Section 14-B arises, on the "making of default". While fixing the amount of damages, the Regional Provident Fund Commissioner usually takes into consideration, as he has done here, various factors viz. the number of defaults, the period of delay, the frequency of defaults and the amounts involved. The word "damages" in Section 14-B lays down sufficient guidelines for him to levy damages.

14. Learned counsel for the petitioners, however, contends that in the instant case, the period of arrears varies from less than one month to more than 12 months and, therefore, the imposition of damages at the flat rate of hundred per cent for all the defaults irrespective of their duration, is not only capricious but arbitrary. The submission is that if the intention of the legislature was to make good the loss caused by default of an employer, there could be no rational basis to quantify the damages at hundred per cent in case of default for a period less than one month and those for a period more than 12 months. It is urged that the fixation of upper limit at hundred per cent is no guideline. If the object of the legislation is to be achieved, the guidelines must specify a uniform method to quantify damages after considering all essentials like loss or injury sustained, the circumstances under which the default occurred, negligence, if any, etc. It is said that the damages under Section 14-B, which is the pecuniary reparation due, must be corelated to all these factors. In support of his contention, he drew our attention to Section 10-F of the Coal Mines Provident Fund and Bonus Schemes Act, 1958, which uses the words "damages not exceeding twenty-five per cent" like Section 14-B of the. Act, and also to a tabular chart provided under that Act itself showing that the amount of damages was corelated to the period of arrears. We regret, we cannot appreciate this line of

reasoning. Section 10-F of the Act of 1958 came up for consideration before this Court in *Commissioner of Coal Mines Provident Fund, Dhanbad* v. *J.P. Lalta*. This Court observed, firstly, that the determination of damages is not 'an inflexible application of a rigid formula: and secondly, the words "as it may think fit to impose" show that the authority is required to apply its mind to the facts and circumstances of the case. The contention that in the absence of any guidelines for the quantification of damages, Section 14-B is violative of Article 14 of the Constitution, must, therefore, fail.

* * * * *

38. What do we mean by "damages"? The expression "damages" is neither vague nor over-wide. It has more than one signification but the precise import in a given context is not difficult to discern. A plurality of variants stemming out of a core concept is seen in such words as actual damages, civil damages, compensatory damages, consequential damages, contingent damages, continuing damages, double damages, excessive damages, exemplary damages, general damages, irreparable damages, pecuniary damages, prospective damages, special damages, speculative damages, substantial damages, unliquidated damages. But the essentials are (*a*) detriment to one by the wrongdoing of another, (*b*) reparation awarded to the injured through legal remedies, and (*c*) its quantum being determined by the dual components of pecuniary compensation for the loss suffered and often, not always, a punitive addition as a deterrent-cum-denunciation by the law. For instance, "exemplary damages" are damages on an increased scale, awarded to the plaintiff ever and above what will barely compensate him for his property loss, where the wrong done to him was aggravated by circumstances of violence,

oppression, malice, fraud, or wanton and wicked conduct on the part of the defendant, and are intended to solace the plaintiff for mental anguish, laceration of his feelings, shame, degradation, or other aggravations of the original wrong, or else to punish the defendant for his evil behavior or to make an example of him, for which reason they are also called "punitive" or "punitory" damages or "vindictive" damages, and (vulgarly) "smart-money". It is sufficient for our present purpose to state that the power conferred to award damages is delimited by the content and contour of the concept itself and if the Court finds the Commissioner travelling beyond, the blow will fall. Section 14-B is good for these reasons.

* * * * *

40. The measure was enacted for the support of a weaker sector viz. the working class during the superannuated winter of their life. The financial reservoir for the distribution of benefits is filled by the employer collecting, by deducting from the workers' wages, completing it with his own equal share and duly making over the gross sums to the Fund. If the employer neglects to remit or diverts the moneys for alien purposes the Fund gets dry and the retirees are denied the meagre support when they most need it. This prospect of destitution demoralises the working class and frustrates the hopes of the community itself. The whole project gets stultified if employers thwart contributory responsibility and this wider fall-out must colour, the concept of "damages" when the court seeks to define its content in the special setting of the Act. For, judicial interpretation must further the purpose of a statute. In a different context and considering a fundamental treaty, the European Court of Human Rights, in the Sunday Times Case, observed:

"The Court must interpret them in a way that reconciles them as far as possible and is most

> appropriate in order to realise the aim and achieve the object of the treaty."
>
> **41.** A policy-oriented interpretation, when a welfare legislation falls for determination, especially in the context of a developing country, is sanctioned by principle and precedent and is implicit in Article 37 of the Constitution since the judicial branch is, in a sense, part of the State. So it is reasonable to assign to "damages" a larger, fulfilling meaning.

34. Thus, it is clear that EPF Act is a beneficial Act for the protection of the employees. The "Interest" and "Damages" are two different provisions. "Interest" is payable on delayed payment without any further adjudication, whereas the recovery of "Damages" is not automatic due to delayed payment of amount due, but the authority **may** recover damages.

35. Since, the EPF Act is a beneficial Legislation for the employees and damages have been provided under Section 14-B of EPF Act, then the question for consideration is that whether the Legislation has deliberately omitted the Section 7-Q from the provision of appeal as provided under Section 7-I of EPF Act or this Court can hold that although the Section 7-Q of EPF Act has been omitted in Section 7-I of EPF Act, but still an appeal would lie against the order passed under Section 7-Q of EPF Act?

36. The Supreme Court in the case of **Vemareddy**

Kumaraswamy Reddy v. State of A.P., reported in **(2006) 2 SCC 670** has held as under :

> **16.** Words and phrases are symbols that stimulate mental references to referents. The object of interpreting a statute is to ascertain the intention of the legislature enacting it. (See *Institute of Chartered Accountants of India* v. *Price Waterhouse*.) The intention of the legislature is primarily to be gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said. As a consequence, a construction which requires for its support, addition or substitution of words or which results in rejection of words as meaningless has to be avoided. As observed in *Crawford* v. *Spoone*, courts cannot aid the legislatures' defective phrasing of an Act, we cannot add or mend, and by construction make up deficiencies which are left there. (See *State of Gujarat* v. *Dilipbhai Nathjibhai Patel*.) It is contrary to all rules of construction to read words into an Act unless it is absolutely necessary to do so. [See *Stock* v. *Frank Jones (Tipton) Ltd.*] Rules of interpretation do not permit courts to do so, unless the provision as it stands is meaningless or of doubtful meaning. Courts are not entitled to read words into an Act of Parliament unless clear reason for it is to be found within the four corners of the Act itself. (Per Lord Loreburn, L.C. in *Vickers Sons and Maxim Ltd.* v. *Evans* quoted in *Jumma Masjid* v. *Kodimaniandra Deviah*.)
>
> **17.** The question is not what may be supposed and has been intended but what has been said. "Statutes should be construed not as theorems of Euclid", Judge Learned Hand said, "but words must be construed with some imagination of the purposes which lie behind them". (See *Lenigh Valley Coal Co.* v. *Yensavage*.) The view was

> reiterated in *Union of India* v. *Filip Tiago De Gama of Vedem Vasco De Gama* (SCC p. 284, para 16).
>
> **18.** In *D.R. Venkatachalam* v. *Dy. Transport Commr.* it was observed that courts must avoid the danger of a priori determination of the meaning of a provision based on their own preconceived notions of ideological structure or scheme into which the provision to be interpreted is somewhat fitted. They are not entitled to usurp legislative function under the disguise of interpretation.
>
> **19.** While interpreting a provision the court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary. (See *CST* v. *Popular Trading Co.*) The legislative casus omissus cannot be supplied by judicial interpretative process. (See *Maulavi Hussein Haji Abraham Umarji* v. *State of Gujarat* and *State of Jharkhand* v. *Govind Singh*.)

37. The Supreme Court in the case of **Smita Subhash Sawant v. Jagdeeshwari Jagdish Amin,** reported in **(2015) 12 SCC 169** has held as under :

> **31.** It is a settled principle of rule of interpretation that the court cannot read any words which are not mentioned in the section nor can substitute any words in place of those mentioned in the section and at the same time cannot ignore the words mentioned in the section. Equally well-settled rule of interpretation is that if the language of a statute is plain, simple, clear and unambiguous then the words of a statute have to be interpreted by giving them their

natural meaning. (See *Principles of Statutory Interpretation* by G.P. Singh, 9th Edn., pp. 44-45.) Our interpretation of Section 33(1) read with Section 28(*k*) is in the light of this principle.

38. The Supreme Court in the case of **Mohd. Shahabuddin v. State of Bihar,** reported in **(2010) 4 SCC 653** has held as under :

179. Even otherwise, it is a well-settled principle in law that the court cannot read anything into a statutory provision which is plain and unambiguous. The language employed in a statute is a determinative factor of the legislative intent. If the language of the enactment is clear and unambiguous, it would not be proper for the courts to add any words thereto and evolve some legislative intent, not found in the statute. Reference in this regard may be made to a recent decision of this Court in *Ansal Properties & Industries Ltd.* v. *State of Haryana*.

180. Further, it is a well-established principle of statutory interpretation that the legislature is specially precise and careful in its choice of language. Thus, if a statutory provision is enacted by the legislature, which prescribes a condition at one place but not at some other place in the same provision, the only reasonable interpretation which can be resorted to by the courts is that such was the intention of the legislature and that the provision was consciously enacted in that manner. In such cases, it will be wrong to presume that such omission was inadvertent or that by incorporating the condition at one place in the provision the legislature also intended the condition to be applied at some other place in that provision.

39. The Supreme Court in the case of **Union of India v. Kartick Chandra Mondal,** reported in **(2010) 2 SCC 422** has held as under :

> **15.** Even otherwise, it is a well-settled principle in law that the court cannot read anything into a statutory provision which is plain and unambiguous. The language employed in a statute is the determinative factor of the legislative intent. If the language of the enactment is clear and unambiguous, it would not be proper for the courts to add any words thereto and evolve some legislative intent not found in the statute. Reference in this regard may be made to the recent decision of this Court in *Ansal Properties and Industries Ltd.* v. *State of Haryana*.

40. Thus, it is clear that while interpreting a statute, the Court cannot read anything into a statutory provision, which is plain and unambigous. In order to ascertain the intention of the legislation, the Court must pay attention to what has been said and what has not been said. Therefore, the primary test is the language used in the Act, and if the same is plain and unambigous, then the Court is bound to accept the express intention of the Legislature. Further, the Act should be read in a manner so as to do justice to the parties.

41. Considering the nature of orders to be passed under Section 7-Q and Section 14-B of EPF Act, as well as considering the fact that no discretion has been given to the Authority under Section 7-Q of

EPF Act, whereas the Damages under Section 14-B of EPF Act, **may** be recovered, this Court is of the considered opinion, that the Legislature after considering the reasons and object of the EPF Act, as well as after considering the Beneficial nature of the Act, has deliberately omitted the Section 7-Q from Section 7-I of EPF Act. Therefore, this Court by giving a liberal interpretation, cannot hold that the order passed under Section 7-Q of EPF Act, is also appealable. Further the Supreme Court in the case of **Arcot (Supra)** has held as under :

> **21.** At this stage, it is necessary to clarify the position of law which does arise in certain situations. The competent authority under the Act while determining the monies due from the employee shall be required to conduct an inquiry and pass an order. An order under Section 7-A is an order that determines the liability of the employer under the provisions of the Act and while determining the liability the competent authority offers an opportunity of hearing to the establishment concerned. At that stage, the delay in payment of the dues and component of interest are determined. It is a composite order. To elaborate, it is an order passed under Sections 7-A and 7-Q together. Such an order shall be amenable to appeal under Section 7-I. The same is true of any composite order a facet of which is amenable to appeal and Section 7-I of the Act. But, if for some reason when the authority chooses to pass an independent order under Section 7-Q the same is not appealable.
>
> (Underline supplied)

42. Thus, this Court is of the considered opinion, that the order passed under Section 7-Q of EPF Act is not appealable, and no appeal under Section 7-I of EPF Act, would be maintainable.

43. There is another aspect of the matter. According to the petitioner himself, an order under Section 7-A of EPF Act was passed on 14-12-1996 and the petitioner was saddled with the liability of Rs. 48,76,050/- for the period between July 2009 to April 2014. According to the petitioner himself, the said amount was deposited by the petitioner in installments on 21-3-2017, 24-8-2013,14-9-2017 and 9-10-2017. Thus, the petitioner himself has admitted that there was delay in deposit of "money due from the employer/petitioner". Under these circumstances, nothing was left for the competent authority to determine for recovery of interest from the employer under Section 7-Q of EPF Act. Further more, the order dated 14-12-1996 passed by the competent authority under Section 7-A of EPF Act was never challenged and it has attained finality.

44. It is further submitted by the Counsel for the petitioner, that since, different benches of CGIT-cum-Labour Court have entertained the appeal against the order passed under Section 7-Q of EPF Act, therefore, the impugned order dated 10-10-1996 is bad. Considered the submissions made by the Counsel for the petitioner. The Counsel

could not point out any provision which makes the orders passed by CGIT binding on all the benches of CGIT. Further, any order passed by different benches of CGIT are not binding on this Court. Even otherwise, this Court after considering various provisions of Statute, has already come to a conclusion that no appeal lies against the order passed by the authority under Section 7Q of EPF Act.

45. Merely because a composite show cause notice under Section 14-B and 7-Q of EPF Act was issued to the petitioner, would not make any difference, because no prejudice has been claimed by the petitioner. A separate order dated 10-10-1996 (Page 88) has been passed under Section 7-Q of EPF Act.

46. Accordingly, it is held that no appeal lies against the order passed under Section 7-Q of EPF Act. Therefore, the appeal filed by the petitioner against the order dated 10-10-2019 passed by Asstt. Provident Fund Commissioner (C-II) (Damages), Regional Office, Gwalior under Section 7-Q of EPF Act was not maintainable, and the Central Govt. Industrial Tribunal-cum-Labour Court, Lucknow by its order dated 20-12-2019 passed in Appeal No. 53/2019 has rightly held that the appeal filed against the order passed under Section 7-Q of EPF Act is not maintainable.

47. The Counsel for the petitioner has tried to assail the impugned

order on merits. However, the petitioner has not challenged the correctness of the order dated 20-12-2019 passed by CGIT-cum-Labour Court, Lucknow on merits. It is well established principle of law, that this Court cannot travel beyond the relief prayed by the Petitioner.

48. **Accordingly, this petition fails and is hereby Dismissed** without any order as to costs.

(G.S. Ahluwalia)
Judge

Arun*