

IN THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM:NAGALAND:MEGHALAYA:MANIPUR:
TRIPURA:MIZORAM & ARUNACHAL PRADESH)
SHILLONG BENCH

WP(C) No(SH) 58 of 2009

St John's School,
Represented by its Principal,
Mr RZ Street,
White Halls, Nongthymmai,
Shillong, East Khasi Hills District,
Shillong.

: Petitioner

versus

1. Union of India,
Represented by Secretary,
Ministry of Labour,
Central Secretariat, New Delhi.

2. Regional Provident Fund Commissioner,
Employee Provident Fund Organisation,
(Ministry of Labour Government of India),
Regional Office, North Eastern Region,
GS Road, Bhangagarh,
Guwahati, Assam.

3. Assistant Provident Fund Commissioner,
Employee Provident Fund Organisation,
Sub-Regional Office,
Laitumkhrach, Shillong-793003
East Khasi Hills District,
Meghalaya, Shillong.

4. Enforcement Officer,
Employee Provident Fund Organisation,
Sub-Regional Office,
Ministry of Labour,
Government of India, Shillong-793003
East Khasi Hills District, Meghalaya.

: Respondents

B E F O R E
THE HON'BLE MR JUSTICE T VAIPHEI

For the petitioner : Mrs. PDB Baruah
Mr S Sen,
Advocates

For the respondents : Mr R Deb Nath, CGC
Mr R Choudhury,
Mr LD Choudhury,
Mr DL Nonglait,
Ms A Shangpliang
Advocates

Date of hearing : 13.12.2011

Date of judgment and order : 27.01.2012

JUDGMENT AND ORDER

This writ petition is directed against the notice dated 6-3-2009 (Annexure-XII) issued by the Enforcement Officer, Employees' Provident Fund Organization, Sub-Regional Office, Shillong (respondent 4) for payment of dues under Section 14-B of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 ("the Act" for short) together with interest and damages, cost and expenses of the recovery process.

2. The case of the petitioner is that his school was arbitrarily brought within the purview of the Act in the year 2000 but with effect from 1983. He then informed the respondents that the School had only 20 employees from 1996 and, therefore, contended that the School should have accordingly been asked to deposit the EPF dues only with effect from 1996 and not with effect from 1983, when the School did not have twenty employees or more. His representation to that effect was, however, not

accepted by the respondent authorities and the School was thus asked to deposit the EPF dues with effect from 1983. The School accordingly paid all the dues as directed. However, to the consternation of the petitioner-school, the respondents in their final order dated 25-5-2004 levied interest and penal damages upon them with effect from February, 1996 to March, 1999 for the alleged delay in depositing the dues. This prompted the petitioner to approach the respondent authorities on 1-11-2004 to waive the interest and damages on the ground that there was no delay inasmuch as the School came under the purview of the Act only from 2000, while School had started to have twenty or more employees only in 1996. The representation was rejected by the respondent authorities on the ground that there was no provision under the Act for waiving damages. The petitioner contends that the respondents completely overlooked the provisions of Section 32-B(c) of the Employees Provident Fund Scheme, 1952, which allows reduction of damages to the extent of 50%. Anyhow, to avoid future complications, the petitioner prayed for allowing the School to pay the damages in twenty-four equal instalments of `29,140/-, yet the respondents issued the notice demanding payment of the unpaid amount at once. The petitioner thereupon instituted a civil suit but the same was dismissed as the suit was barred by the Act. Thereafter, the respondents issued the impugned demand notice for payment of `1,45,780/- by way of damages.

3. In my judgment and order dated 1-7-2008 passed in connection with ***WP(C) No. 58(SH) of 2004*** followed by another judgment passed by me

on 12-8-2008 in *WP(C) No 160(SH) of 2005*, in cases somewhat similar to the facts of the instant case, I reduced payment of the damages to the extent of 25%. These orders have not been challenged in an appeal. Needless to say, those judgments were rendered in terms of the decision of the Apex Court in **Halwasia Vidya Vihar v. Regional Provident Fund Commission, AIR 2006 SC 1767**, which is binding upon this Court. However, the law on this point has now been changed by amendment of the Employees Provident Fund Scheme, 1952 in 2008, which came into force with effect from 26-9-2008. The amended provision is found at Clause 32-A in the following terms:

“32-A. Recovery of damages for default in payment of any contribution.— (1) Where an employer makes default in the payment of any contribution to the Fund, or in the transfer of accumulations required to be transferred by him under sub-section (2) of section 15 or sub-section (15) of section 17 of the Act or in the payment of any charges payable under any provisions of the Act or the Scheme or under any of the conditions specified under section 17 of the Act, 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, damages at the rates given in the table below:-

Sl. No.	Period of default	th Rates of damages (percentage of arrears per annum)
(1)	(2)	(3)
(a)	Less that two months	Five
(b)	Two months and above but less than four months	Ten
(c)	Four months and above but less than six months	Fifteen
(d)	Six months and above	Twenty Five.”

4. Even a cursory look at the foregoing table will make it plain that for the default of default exceeding six months and above, the damages recoverable is fixed at 25% of the arrears per annum. The amendment is in accordance with the judgment of the Apex Court in ***Halwasia Vidya Vihar case (supra)***. There can be no two opinions in this behalf. The respondent authorities cannot recover damages exceeding twenty five per centum of the arrears per annum even if the period of default is six month and above. In the view that I have taken, the impugned notice issued by the respondent No. 4 is liable to be interfered.

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

JUDGE

daphira of damages started issuing the demand notice directing payment of the unpaid amount yet