

IN THE HIGH COURT OF KARNATAKA
CIRCUIT BENCH AT DHARWAD

DATED THIS THE 30TH DAY OF NOVEMBER, 2012

BEFORE

THE HON'BLE MR.JUSTICE SUBHASH B. ADI

WRIT PETITION NO.64663/2012(L-PF)

BETWEEN:

THE REGIONAL PROVIDENT FUND
COMMISSIONER
SUB-REGIONAL OFFICE
4TH FLOOR, SRINATH COMPLEX
NEW COTTON MARKET, HUBLI.

...PETITIONER

(BY SRI. P.V. GUNJAL, ADV)

AND:

M/S KOTHARI OVERSEAS PVT LTD.,
S-1, 2ND FLOOR, ASHWAMEDHA
TRADE CENTRE DAJIBAN PET
HUBLI 580 029
BY ITS MANAGING DIRECTOR
SHRI SUNIL, S/O DEVI SINGH
KOTHARI.

...RESPONDENT

THIS PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO CALL FOR RECORDS ON THE FILE OF EPF APPELLAE TRIBUNAL IN APPEAL NO.ATA 731(6) /2009 AND ISSUE A WRIT OF CERTIORARI AND SET ASIDE THE ORDER DATED 21/09/2011 ANNEXURE D AND ETC.

THIS PETITION COMING ON FOR ORDERS, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

Though the matter is listed for non-compliance of office objection, however, it is considered on merit.

2. By impugned order, the Provident Fund Appellate Tribunal had remanded the matter with a specific direction to assess the damage at 22%.

3. The provision of Section 14-B of the Employees' Provident Fund and Miscellaneous Provisions At, 1952(for short "Act") read with Para 32-A of the scheme was interpreted by the Apex Court and also by this Court. This Court in Writ Petition No.65113/2012 has held that if there are mitigating circumstances to reduce the damage less than what is prescribed in Para 32-A of the scheme, Regional Commissioner or Assistant Regional Commissioner, as the case may be, can exercise discretion and fix the lesser damage. The Appellate Tribunal instead directing the Provident Fund Organisation to assess the damage at 22%

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could have left it to the discretion of the Provident Fund Organisation.

3. Only to this extent, it is clarified that the Provident Fund Organisation is at liberty to consider the mitigating circumstances for reducing the damages and accordingly fix the damages. Insofar as the interest is concerned, interest is fixed under the provision of Section 7Q of the Act as such both aspect can be reconsidered by the organisation.

Accordingly, writ petition stands disposed of.

(Sd/-)
JUDGE

kmv