

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE V.CHITAMBARESH

WEDNESDAY, THE 27TH DAY OF MARCH 2013/6TH CHAITHRA 1935

WP(C).No. 14480 of 2011 (H)

PETITIONER :

EMPLOYEES PROVIDENT FUND ORGANISATION,
CHALAKUZH Building, C.M.S.COLLEGE ROAD
KOTTAYAM-686 001, REP.BY THE ASST.P.F.COMMISSIONER
K.B.LALITHA.

BY ADVS.SRI.JOY THATTIL ITTOOP
SRI.A.G.ADITYA SHENOY

RESPONDENTS :

1. M/S.VAGHAMON TEA ESTATE,
MANARKATTU BUILDINGS, PALA-686 575
REPRESENTED BY ITS MANAGING PARTNER.
2. THE EMPLOYEES PROVIDENT FUND APPELLATE
TRIBUNAL, SCOPE MINAR, 4TH FLOOR
CORE-II, LAXMI NAGAR DISTRICT CENTRE, NEW DELHI-110001.

R1 BY ADVS. SRI.E.K.NANDAKUMAR
SRI.A.K.JAYASANKAR NAMBIAR
SRI.K.JOHN MATHAI
SRI.P.BENNY THOMAS
SRI.P.GOPINATH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 27-03-2013, ALONG WITH WPC. 14481/2011, WPC. 16069/2011, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

AV

WP(C).No. 14480 of 2011

APPENDIX

PETITIONER'S EXHIBITS :

EXT.P1 : COPY OF THE ORDER NO.KR/KTM/446/PD/ENF.I.(7)/2007/20609 DATED 15.02.2007

EXT.P2 : COPY OF ORDER NO.KR/KTM/446/ENF.I(7)/7Q/2006 DATED 13/02/2007

EXT.P3 : COPY OF THE APPEAL NO.149(7)/07 FILED BY THE 1ST RESPONDENT BEFORE THE 2ND RESPONDENT WIHTOUT ANNEXURES

EXT.P4 : COPY OF THE COUNTER AFFIDAVIT FILED IN THE APPEAL BEFORE THE 2ND RESPONDENT

EXT.P5 : COPY OF THE ORDER DATED 19.01.2011 ISSUED BY THE 2ND RESPONDENT IN ATA NO.149(7)/07

RESPONDENTS' EXHIBITS : NIL

/TRUE COPY/

P.A TO JUDGE

AV

V.CHITAMBARESH,J

**W.P.(C).Nos.14480 of 2011, 14481 of 2011
& 16069 of 2011**

Dated this, the 27th day of March, 2013

JUDGMENT

The orders of remand in appeal by the Employees Provident Fund Appellate Tribunal are impugned in all these writ petitions by the Employees Provident Fund Organisation. The Appellate Tribunal has come to a finding of fact that there was no contumacious conduct on the part of the establishments. The fact that the establishments were making contribution periodically though belatedly till it sustained heavy loss has been taken note of.

2. The tribunal has also opined that the quantum of damages to be levied should be compensatory than penal in nature under the circumstances. There is also paucity of evidence to hold that the establishments deliberately defaulted in the payment of contribution even after having sufficient funds with them. The orders of remand by the Appellate Tribunal is well justified under the circumstances.

3. The orders of remand are affirmed clarifying that it is

open to the Assistant Provident Fund Commissioner to levy the quantum of damages under Section 14 B of the Act in the light of the observations made therein by the tribunal. The direction that the liability shall be assessed at '22% inclusive of interest' in the appellate orders is set aside for this limited purpose and the question left open.

The Writ Petitions are disposed of.

V.CHITAMBARESH, Judge