

**IN THE HIGH COURT OF TELANGANA AT HYDERABAD**

**W.P.No.23812 OF 2023**

**Between:**

Osmania University

... **Petitioner**

**And**

Employees' Provident Fund Organization  
(EPFO) & others

... **Respondents**

**JUDGMENT PRONOUNCED ON: 15.04.2024**

**THE HON'BLE MRS JUSTICE SUREPALLI NANDA**

1. Whether Reporters of Local newspapers : Yes  
may be allowed to see the Judgment?
2. Whether the copies of judgment may be : Yes  
marked to Law Reporters/Journals?
3. Whether Their Lordships wish to : Yes  
see the fair copy of the Judgment?

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**SUREPALLI NANDA, J**

**THE HON'BLE MRS. JUSTICE SUREPALLI NANDA****W.P.No.23812 OF 2023****% 15.04.2024****Between:**

# Osmania University

... **Petitioner****And**\$ Employees' Provident Fund Organization  
(EPFO) & others... **Respondents**

&lt; Gist:

&gt; Head Note:

**! Counsel for the Petitioner** : Mr. G.Vidyasagar, Ld.  
Senior Designated Counsel,  
representing Mr.S.  
Lakshmikanth, Ld.counsel  
on record.**^ Counsel for Respondents** : Ms.Ande Vishala,  
Ld Counsel for R1 to R3  
Ms.T.Swetha, for R4

? Cases Referred:

(1) 2013 (16) SCC Page 1

**THE HON'BLE MRS. JUSTICE SUREPALLI NANDA****W.P. No.23812 OF 2023****ORDER:**

Heard learned Senior Designated Counsel Mr.G.Vidyasagar, representing Mr.S.Lakshmikanth, learned Standing Counsel appearing on behalf of the petitioner, Ms. Ande Vishala, learned counsel appearing on behalf of respondent Nos.1 to 3 and Ms. T.Swetha, learned counsel appearing on behalf of respondent No.4.

**2. The Petitioner approached the Court seeking prayer as under :**

"To issue a writ, order or direction more particularly one in the nature of Writ of Certioraris or any appropriate writ after calling for the records, quash the Order dated 17.07.2023 in I.A.No.2 of 2023 in EPF Appeal No.23 of 2023 on the file of the Central Government Industrial Tribunal cum Labour Court, Hyderabad in so far as prescribing the Petitioner to remit 40% of the determined amount within the six weeks and pass such other order."

**PERUSED THE RECORD.**

**3. The averments in the counter affidavit filed by the Respondent No.4, in brief are as under:**

a) The respondent is a retired employee at the Osmania University. The petitioner university was established in 1917, but even prior to 1982, except where the employees or workers are entitled to the benefit of contributory provident fund or old age pension in accordance with any scheme or rule framed by the central government or state government governing such benefits as Mentioned in Section 16 of the Employees Provident Fund and Miscellaneous Provisions Act, 1952, the same reads as under:

16. Act not to apply to certain establishment. – 3[(1) This Act shall not apply- (a) to any establishment registered under the Co-operative Societies Act, 1912 (2 of 1912), or under any other law for the time being in force in any State relating to cooperative societies employing less than fifty persons and working without the aid of power; or 4 [(b) to any other establishment belonging to or under the control of the Central Government or a State Government and whose employees are entitled to the benefit of contributory provident fund or old age pension in accordance with any Scheme or rule framed by the Central

Government or the State Government governing such benefits; or (c) To any other establishment set up under any Central, Provincial or State Act and whose employees are entitled to the benefits of contributory provident fund or old age pension in accordance with any scheme or rule framed under that Act governing such benefits;

Since the petitioner establishment never claimed that the said employees are entitled to the benefit of the contributory Provident fund or old-age pension Schemes, as mentioned above Section 16 of EPF & MP Act, 1952, stand applied to the petitioner university. Hence, petitioner's University comes under the purview of the said Act, 1952 w.e.f. the month of February, 1982.

**b) The workers working for or in connection with petitioner University come under the definition of "Employee" under provisions of EPF & MP Act, 1952 which reads as under:**

(f) "employee" means any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an establishment and who

gets his wages directly or indirectly from the employer, [and includes any person,- (i) Employed by or through a contractor in or in connection with the work of the establishment, (ii) Engaged as an apprentice, not being an apprentice engaged under the Apprentice Act, 1961 (52) of 1961 or under the standing orders of the establishment];

c) Despite aforementioned legal position, the petitioner university has been evading the application of the said law from March 1982 till date, denying the statutory benefits to hundreds of its employees. Since the petitioner failed to start the implementation of the Act, an enquiry under section 7A of the Act, 1952 was instituted, for determining the due under the provisions of the Act, 1952 and summons dated 20-09-2018 were issued to provide due opportunity of being heard by appearance either in person of the employer or through authorised representative on 18.10.2018. The EPF department heard both sides and made an assessment which was amounting to Rs.29,82,89,124/- vide order dated 28/5/2021. The respondent organisation issued a prohibitory order as the

petitioner establishment failed to comply with the said orders passed. Aggrieved by the said Prohibitory order the petitioner filed a Writ petition vide WP No. 16780 of 2021 which was disposed of by this court vide Order dated 22/7/2021 , setting aside the prohibitory order and granting liberty to the petitioner to refer review as provided under Section 7B of the Act, 1952.

d) The review application was filed by the petitioner vide application dated 09.08.2021 and the same was rejected through reasonable speaking order passed vide order dated 31.03.2023 by assessing officer i.e., respondent No.2 herein. Upon the speaking order, petitioner filed W.P.No.13389 of 2023 before this Court which was disposed vide orders dated 25.05.2023 by granting liberty to prefer appeal under Section 7-I of the Act before Central Government Industrial Tribunal-cum-Labour Court along with a petition to condone delay.

e) Thereafter, the petitioner had appealed under Section 7-I of the Act challenging the order dated 28.05.2021 passed by Assessing Officer under Section 7A of Act and subsequent orders passed under Section 7B of the Act dated 31.03.2023. The Tribunal condoned the delay and disposed of the petition for

waiver of the condition to pay 75% of the assessed amounts and ordered the petitioner to deposit 40% of the assessed amounts instead of 75% as stipulated in Section 7-O of the act. Yet, the petitioner establishment claims that Tribunal is arbitrary and violated the law. Hence, this Writ Petition is devoid of merits and is liable to be dismissed.

**4. The order dated 28.08.2023 passed by this Court in W.P.No.23812 of 2023, reads as under:**

“Notice before Admission.

Learned counsel for the petitioner is permitted to take out personal notice to the respondents through RPAD and file proof of service into the Registry.

Learned counsel for the respondents seeks time to file counter.

List on 15.09.2023.

There shall be stay of the order dated 17.07.2023 in I.A.No.2 to 2023 in E.P.F.Appeal No.23 of 2023 on the file of the Central Government Industrial Tribunal cum Labour Court, Hyderabad in so far as directing the petitioner to remit 40% of the determined amount within six weeks.”

The said order dated 28.08.2023 is in force as on date.



**5. The case of the Petitioner as per the averments made by the petitioner in the affidavit filed by the petitioner in support of the present Writ Petition in brief, are as follows:**

a) The petitioner is a Registrar at Osmania University. The employees filed a complaint dated 20-1-2017 regarding non-enrolment of employees of the university, the enforcing squad of the Employees Provident Fund Organisation (EPFO) alleged to have submitted report dated 18-6-2018. Based on the same, the EPFO allotted PF Code No. AP/Hyd/1747094 with retrospective effect from 06-03-1982.

b) The EPFO issued a notice dated 18-7-2018 to the petitioner directing to comply with the provisions of EPF and MP act, 1952 in respect of all categories of employees/workers who are eligible to become members of the fund. In the meanwhile, the EPFO alleged to have received a letter dated 20-8-18 from employees and workers union, detailing the salary drawn by the employees on daily wage time scale workers for the period from 1988 to August 2018. The assistant Provident fund commissioner issued summons to the Petitioner, alleging that the university

has not complied with the act for all employees for the period from March 1982 to July 2018.

c) Subsequently, the authority passed an order dated 28.5.2021 without furnishing the copy of the enforcement officer report dated 7-4-2021. The order dated 28-5- 2021 does not refer to the names of the beneficiaries. In the absence of the furnishing of the names of the beneficiaries, passing orders for payment of EPF contributions is contrary to the provisions of the employees provident fund and miscellaneous provisions act, 1952. The authority while issuing notice/summons dated 20-9-2018, failed to furnish the report of the squad of the enforcement officer dated 18-6-2018 and the complaint of the employees and workers union dated 20-8-2018. Thus, initiation of proceedings under section 7A of the act is in contravention of the circular instruction dated 6-9-2017.

d) Aggrieved by the orders dated 28-5-2021 and 31-3- 2023, the petitioner had filed an EPF appeal number 23 of 2023 before the Tribunal. The I.A.No 2 of 2023 was filed seeking orders for waiver of condition of pre-deposit of the amounts under Section 7-O of EPF & MP Act, 1952. The Tribunal heard the matter and

proceeded to direct for remittance of 40% of the determined amount within six weeks vide order dated 17-07-2023.

e) Aggrieved by the order dated 17-07-2023, the present writ petition is filed.

**DISCUSSION AND CONCLUSION:**

6. On perusal of the record it is evident that the petitioner has preferred an appeal under Section 7-I of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (EPF Act) challenging the order dated 28.05.2021 passed by the Assessing Officer under Section 7-A of the Act and subsequent order passed under Section 7-B of the Act dated 31.03.2023. The Tribunal condoned the delay and disposed of the petition for waiver of the condition to pay 75% of the assessed amounts and ordered petitioner to deposit 40% of the assessed amount instead of 75% as stipulated in the Act.

**Section 7-O of the Act, 1952 is extracted here under:**

**"7-O. Deposit of amount due, on filing appeal.—**No appeal by the employer shall be entertained by a Tribunal unless he has deposited with it seventy-five per cent of the

amount due from him as determined by an officer referred to in section 7A:

Provided that the Tribunal may, for reasons to be recorded in writing, waive or reduce the amount to be deposited under this section."

7. This Court is of the firm opinion that as per the Section 7-O of the Act, 1952, 75% of the amount determined should be deposited for admission of the appeal under Section 7-I of the Act. However, the Tribunal was considerate to the petitioner – establishment and ordered to pay only 40% of the assessed amount without ascribing any reason.

8. Employees Provident Fund and Miscellaneous Provisions Act, 1952 (for short 'EPM Act') is a social legislation for providing the institution for social security to the employees and workers.

**9. The Apex Court in the judgment dated 18.10.2013 in Arcot Textile Mills Ltd., vs. Regional Provident Fund, Commissioner & Others, reported in (2013) 16 SCC 1 and in particular, at paras 15, 18, and 24 observed as under :**

"15. On a perusal of the aforesaid provision it is evident that an appeal to the tribunal lies in respect of certain action of the Central Government or order passed by the Central Government or any authority on certain provisions of the Act. We have scanned the anatomy of the said provisions before. On a studied scrutiny, it is quite vivid that though an appeal lies against recovery of damages under Section 14B of the Act, no appeal is provided for against imposition of interest as stipulated under Section 7Q. It is seemly to note here that Section 14B has been enacted to penalize the defaulting employers as also to provide reparation for the amount of loss suffered by the employees. It is not only a warning to employers in general not to commit a breach of the statutory requirements but at the same time it is meant to provide compensation or redress to the beneficiaries, i.e., to recompense the employees for the loss sustained by them. The entire amount of damages awarded under Section 14B except for the amount relatable to administrative charges is to be transferred to the Employees' Provident Fund.

**18. At this stage, it is necessary to clarify the position of law which do arise in certain situations. The competent authority under the Act while determining the moneys due from the employee shall be required to conduct an inquiry and pass an order. An order under Section 7A 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 concerned establishment. 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 Section 7A and 7Q together. Such an order shall be amenable to appeal under Section 7I. The same is true of any composite order a facet of which is amenable to appeal and Section 7I of the Act. But, if for some reason when the authority chooses to pass an independent order under Section 7Q the same is not appealable.**

24..... There is no cavil for the fact that it is social welfare legislation to meet the constitutional requirement to protect the employees. That is why the legislature has provided for imposition of damages, levy of interest and penalty.....

10. In the reply affidavit filed by the petitioner it is specifically averred by the petitioner that prescribing the condition of remittance of 40% of the determined amount by the Hon'ble EPF Tribunal is misconceived and the main grievance of the writ petitioner is unfair and illegal procedure being followed in

determination of the amount for the period in question. This Court opines that the pleas put forth in the affidavit filed by the petitioner in support of the present writ petition and the reply affidavit filed by the petitioner are issues which have to be decided by the Competent Authority in the EPF Appeal No.23 of 2023 preferred by the petitioner under Section 71 of the EPF and MP Act, 1952, aggrieved by the order dated 28.05.2021 and 31.03.2023 passed under Section 7(A) and (B) of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 which had been infact admitted by the Tribunal vide its order dated 17.07.2023 on the file of Central Government Industrial Tribunal cum Labour Court at Hyderabad, in I.A.No.2 of 2023 in EPF Appeal No.23 of 2023.

11. This Court opines that Employees' Provident Funds and Miscellaneous Provisions Act, 1952 is a beneficial piece of legislation enacted by the Act of Parliament for the welfare of working class. This social security measure is a humane homage the State pays to Articles 39 and 41 of the Constitution. The viability of the fund depends on the employer duly deducting the

worker's contribution from their wages, adding his own little and promptly depositing the sum into the fund constituted by the Act. The mechanics of the system will suffer paralysis if the employer fails to perform his function. The dynamics of this beneficial statute derives its locomotive power from the funds regularly flowing into the statutory bill. The proper implementation of various Schemes under the Act is solely dependent upon the prompt compliance by the establishment. Financial ups and downs are invariably an inherent part of any business. The benefits envisaged and provided under the Act cannot be held hostage to the vagaries of profit and loss of establishments. Even if it is assumed that there was a loss as is claimed, it does not justify the delay in deposit of Provident Fund money which is an unqualified statutory obligation and cannot be allowed to be linked with the financial position of the establishment, over different points of time.

**12. Taking into consideration the aforesaid facts and circumstances of the case and duly taking into consideration the view and the law laid down by the Apex**



**Court in the Judgment reported in 2013 (16) SCC Page 1, dated 18.10.2013 in Arcot Textile Mills Ltd. V. Regional Provident Fund Commissioner and others, (referred to and extracted above), and duly considering that the Tribunal vide its order dated 17.07.2023 in I.A.No.2 of 2023 in EPF Appeal No.23 of 2023 had condoned the delay and granted the stay and passed an interim order reducing the amount of pre-deposit in favour of the petitioner, this Court opines that the petitioner is not entitled for grant of relief as prayed for herein, since there is no breach of any fundamental right of the petitioner, this Court is of the firm opinion that when the Appeal is still pending adjudication by the competent Court (Tribunal) as stipulated under Law, this Court cannot entertain a writ petition on the same subject under Article 226 of the Constitution of India, and hence, the Writ Petition is dismissed since the same is devoid of merits and the interim order granted by this Court on 28.08.2023 in favour of the petitioner stands vacated. The petitioner is granted four weeks time from the date of receipt of the**

**copy of the present order for deposit of the awarded amount as per the order dated 17.07.2023 passed in I.A.No.2 of 2023 in EPF Appeal No.23 of 2023. However there shall be no order as to costs.**

Miscellaneous petitions, if any pending, in this writ petition shall stand closed.

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**SUREPALLI NANDA, J**

Date: 15.04.2024

**Note :** L.R. Copy to be marked.  
B/o. *Yvkr*