

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

BEFORE:

THE HON'BLE JUSTICE SHAMPA DUTT (PAUL)

WPA 24604 of 2024

Assistant Provident Fund Commissioner

Vs.

M/s. St. Michael's School & Ors.

For the Petitioner : Mr. Anil Kumar Gupta, Adv.

For the Respondent No. 1 : Mr. Suvadip Bhattacharjee, Adv.
Mr. Balaram Patra, Adv.

Judgment reserved on : 16.09.2026

Judgment delivered on : 09.10.2026

SHAMPA DUTT (PAUL), J.:-

1. The present writ application has been preferred by the petitioner/provident fund authority challenging an order dated 22.12.2023 passed by the Ld. Central Govt. Industrial Tribunal-cum-Labour Court, Asansol in EPF No. 06 of 2015 (Old ATA 1126(15) of 2015) [St. Michael's School, Durgapur vs. Assistant Provident Fund Commissioner, Durgapur].
2. The Respondent No. 1 is an English Medium School (hereinafter referred to as "the said establishment") covered under the Employees' Provident Fund & Miscellaneous Provisions Act, 1952 and the Schemes framed thereunder (hereinafter referred to as the said Act, the said Act, 1952) having establishment ID No. WBDGP0025946000.

3. Vide the impugned order, the learned Central Government Industrial Tribunal-cum-Labour Court, Asansol held as follows:-

*“On considering the gamut of facts and the legal provisions involved, I hold that the respondent in the impugned order has travelled beyond the notice period for assessing damages and interest against the appellant without granting any opportunity to the appellant establishment to meet their claim. It is also explicit that the interest applied for the period from 02/1999 to 25.09.2008 is not in accordance with the 'Sliding Table' under paragraph 32A(1) of EPFS applicable w.e.f. 26.09.2008. Therefore, the impugned order is not sustainable under the law and is liable to be set aside. **Since the quantum of damages is required to be re-assessed it is appropriate to remand back the case to the respondent with a direction that the matter may be heard afresh after providing opportunity to the appellant to submit their necessary documents and pass a fresh order preferably within a period of three (3) months from the date of communication of this Order to the parties.***

Hence,

ORDERED

*that the appeal under Section 7-1 of the EPF Act is allowed in part on contest against the respondent. The impugned order dated 15.09 2015 is set aside. **The proceeding under Section 14-B of the EPF Act is remanded back to the respondent authority with a direction to re-hear the matter** preferably within a period of three (3) months from the date of communication of the Order after giving opportunity to the appellant and pass a fresh order in light of the above observations. The appellant herein shall participate in the proceeding before the Provident Fund Authority on all dates fixed without fail. Let copies of the Order be communicated to the parties under Rule 20 of the Tribunal (Procedure) Rules, 1997.”*

4. Being aggrieved by this order the present writ application has been filed by the EPF authority, on the ground that the impugned order passed by

the learned Central Government Industrial Tribunal is not in accordance with law and cannot be sustained, considering that the order challenged before the Central Government Industrial Tribunal was in accordance with law and had not called for any interference.

5. The petitioner has relied upon the following judgments:-

- i) *Hindustan Times Ltd. v. Union of India & Ors. (1998) 2 SCC 242.***
- ii) *Dalgaon Agro Industries Ltd. v. Union of India & Ors. (2005) 3 CHN 428.***
- iii) *Calicut Modern Spinning & Weaving Mills Ltd. v. Regional Provident Fund Commissioner & Ors. (1982) 1 LLJ 440.***
- iv) *Organo Chemical Industries v. Union of India (1979) II LLJ 416.***
- v) *N.K. Industries Pvt. Ltd. v. Regional Provident Fund Commissioner; AIR 1958 I LLJ 613.***
- vi) *Solanki Workshop v. The Regional Provident Fund Commissioner.***
- vii) *Amin Chand v. State of Punjab; AIR Punjab 441.***

6. The respondent no.1 contesting the said writ application, has stated that the respondent had raised the issue before the tribunal that the damages has been assessed at a higher rate than the rate prevalent at the time of initiation of the proceeding.

7. In order to appreciate the argument, it is necessary to consider the contents of Notification G.S.R. 69-(E) dated 26.09.2008 which has amended paragraph 32A of EPF Act as laid down:-

“32A. [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 other 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 officer as may be authorised by the Central Government by notification in the Official Gazette, may recover from the employer by way of penalty, damages at the rates given in the table below:-

TABLE

SI. No.	Period of default	Rate of damages(percentage of arrears per annum)
(1)	(2)	(3)
(a)	Less than 2 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.]

(2)[The damages shall be calculated to the nearest rupees, 50 paise or more to be counted as the nearest higher rupee and fraction of a rupee less than 50 paise to be ignored.”

8. It is further stated that the learned Tribunal has rightly remanded the case back to the authorities for fresh hearing, in view of the fact that there has been violation of principle of natural Justice, as no intimation nor notice nor a hearing was given to the respondent no.1.

9. The respondent has relied upon the judgment of the Hon'ble Supreme Court in ***Zon Hotels Pvt. Ltd. v. Goa Coastal Zone Management Authority and Ors. reported in 2025 SCC Online SC 771***, on the point of right of hearing.
10. On hearing of the learned Counsel for the parties and on perusal of the materials on record and the judgment relied upon, this Court finds that the argument of the writ petitioner herein is that the learned Tribunal has relied upon an overruled judgment of the Hon'ble Supreme Court in ***Central Board of Trustees, EPFO v. Roma Henny Security Services Pvt. Ltd. (Civil Appeal No. 6592 of 2014)*** and on relying upon the said judgment, the learned Tribunal has wrongly decided the issue and remanded the case back to the authorities concerned.
11. It is thus submitted that the findings being based on overruled position of law, cannot be sustained.
12. On perusal of the impugned order it appears that:-
 - a) The irregularities found by the tribunal are that:-
 - i) The authority has travelled beyond the notice period.
 - ii) No opportunity of hearing was given while deciding the claim against the petitioner.
 - iii) 'Sliding Table' not properly applied.

If such errors are permitted to remain, it shall amount to an abuse of the process of law.

13. Thus from the materials on record, and the impugned order, this Court finds that the learned tribunal rightly considered the materials on record and remanded the case keeping in mind the principles of natural justice, and as such the said order does not call for any interference.
14. **WPA 24604 of 2024 is dismissed.**
15. Applications, if any, connected thereto stand disposed of consequently.
16. Photostat certified copy of this Judgment, if applied for, be given to the parties on priority basis upon compliance of all formalities.

(Shampa Dutt (Paul), J.)