



**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL  
TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM**

Present: Shri.V.Vijaya Kumar, B.Sc., LLM, Presiding Officer.  
(Monday the 10<sup>th</sup> day of September 2021)

**APPEAL No.129/2018**

Appellant M/s. West Fort Hi-Tech Hospital Ltd.,  
Punkunnam P.O,  
Thrissur – 680 002

By Adv. C Anil Kumar

Respondent The Assistant PF Commissioner  
EPFO, Sub Regional Office  
Kaloor, Kochi – 682 017

By M/s. Thomas Mathew Nellimoottil

This case coming up for final hearing on 30/03/21 and this Tribunal-cum-Labour Court on 10/09/21 passed the following:

**ORDER**

Present appeal is filed from order No.KR/KC/19879/ENF-IV(4)/2017/14719 dated 08/03/2018 assessing dues under Section 7A of EPF and MP Act, 1952 (hereinafter referred to as 'the Act') against non enrolled employees for the

period 04/2013 to 06/2016. Total dues assessed is Rs. 32,01,625/- (Rupees Thirty two Lakhs, One Thousand six hundred and twenty five only)

2. The appellant is a Multi-Specialty Hospital. All the employees working in the hospital are enrolled to the fund. An Enforcement Officer attached to the office of the respondent had conducted an inspection on the appellant establishment. According to the report of the Enforcement Officer, 72 employees were not enrolled from date of eligibility and out of these 72, 55 persons are trainees/apprentices. Most of them are student's undergoing training as part of their curriculum. Eight persons were employed in managerial position and were drawing more than the statutory limit of Rs.15000/ month. Three were canteen employees. Canteen was run by a contractor. Six employees were employed in medical investigation department. The appellant appeared in the enquiry and submitted a detailed written statement, a copy of which is produced and marked as **Annexure - 1**. The

appellant also produced all the relevant documents. The appellant established before the respondent that none of the 72 employees are eligible to be enrolled. Without taking into account any of the submissions made by the appellant, the respondent issued the impugned order. A true copy of the inspection report dated 01/08/2016 with the list of employees to be enrolled are produced and marked as **Annexure A3**. As per the impugned order, trainees/interns and canteen employees have been excluded from assessment. As per the Annexure 3 inspection report, 55 persons out of 72 non enrolled employees are trainees and three are canteen employees. The respondent authority herself has excluded 58 employees out of 72 as per the impugned order. The Enforcement officer has evaluated the dues as Rs. 31,68,269/- for 72 employees as per Annexure A3. However the amount assessed as per impugned order has gone up after excluding 58 employees. There is an error apparent on the face of record that most of the trainees in the list were students doing trainee as part of their curriculum. Hence they cannot be treated as employees as

per Sec 2(f) of the Act. Four employees working in the investigation department were included in Annexure - 2 order. They were actually employees of M/s West Fort Hospital and that is reported in **Annexure - 3** investigation report itself. All these employees are covered under the provisions of the Act by M/s West Fort Hospital. Eight employees who were working in the managerial carder were drawing more than 15,000/- as monthly salary and therefore they are excluded. All relevant records were produced by the respondent authority. The allowances such as House Rent allowance, overtime allowance etc. paid to employees are also taken into account for the purpose of assessment.

3. The respondent filed counter denying the above allegations. An Enforcement Officer of the respondent organisations conducted an inspection of the appellant establishment on 17/11/2016 and found that 72 employees were not enrolled to the fund from the date of eligibility. The respondent authority received a complaint from one of the

employees alleging non enrolment and therefore an Enforcement Officer was again deputed to investigate into the complaint. The Enforcement Officer visited the appellant establishment on 31/07/2017 and found that 57 employees were not enrolled to the fund for the period from 09/2012 to 09/2014 and there were 88 cases of belated enrolment for the period from 04/2013 to 06/2016. On the basis of these two reports, the respondent authority initiated an enquiry under Section 7A of the Act. Notice was issued to the appellant to appear and produce the relevant records. A representative of the appellant attended the hearing and produced the records called for. The appellant was given 9 opportunities to adduce evidence and clarify the issues raised in the enquiry. The appellant provided a list of trainees who were undergoing training as part of the curriculum and therefore they were excluded from the list of non-enrolled employees. The appellant is liable to enrol all employees employed in connection with the work of the establishment other than the excluded employees. As per Section 2(f) of the Act, employee means any person who is employed for wages in or in

connection with the work of establishment and who gets his wages directly or indirectly from the employer and includes any person employed by or through a contractor. However trainees engaged under Apprentice's Act 1961 or under the Standing Order of the establishment are excluded. An excluded employee means an employee who has withdrawn his Provident Fund accumulation as per Para 69 of EPF Scheme. An employee who is paid, at the time he is otherwise entitled to become a member of the fund, exceeds Rs. 6500/- or 15000/- per month are also treated as excluded employee. Hence all the employee who do not satisfy the above requirements are treated as employees and their contribution from the due date of eligibility is assessed.

4. The issue involve in this appeal is with regard to the non enrolment of certain employees who were identified by the Enforcement Officer to be eligible to be enrolled to the fund. According to the first report of inspection, 72 such employees were identified. Subsequently there was a complaint by an employee and another Enforcement Officer

was deputed and he reported non enrolment of 57 employees for the period 09/2002 to 09/2004. Since the present enquiry under Section 7A was initiated for assessing dues for a period from 04/2013 to 06/2016, the respondent authority clubbed the two reports and assessed the dues for the period from 04/2013 to 06/2016. The second report of the enforcement officer also reported belated enrolment of 88 employees from 04/2013 to 06/2016. The relevance of the second report to this enquiry is not clear as the copy of the report is not produced either by the appellant or by the respondent.

5. The respondent authority in the impugned order found that the trainees who were engaged as interns as part of their curriculum are not employees as per section 2(f) of the Act and therefore they were excluded from assessment. On the basis of the documents produced by the appellant during the course of enquiry, the respondent authority found that the canteen employees were also drawing a salary of more than Rs.15000/- and therefore they are excluded.

According to the learned Counsel for the appellant, these two categories of exclusion takes out 58 employees from 72 non – enrolled employees reported by the Enforcement Officer in his first report. Further it was also argued by the learned Counsel of the appellant, that the employees working in the investigation department are employees of M/s West Fort Hospital and they are already enrolled to the fund. The learned Counsel for the appellant also took this tribunal elaborately through the Annexure A1 written statement filed by the appellant before the respondent authority. As per this written statement, out of 72 persons reported non enrolled, 43 persons were already enrolled to the fund. The representative also furnishes the employee number allotted to these 43 employees. It is not clear from Annexure A1 whether these employees are enrolled from due date of eligibility. According to the learned Counsel for the appellant, there are two categories of trainees working in the appellant hospital. One category belongs to the interns who are deployed for training as part of their curriculum as per the orders of the university. There is another category of trainees



who are deployed in speciality departments for training. According to the learned Counsel for the appellant, they are entitled for exclusion as Model Standing Orders are applicable to the appellant establishment. The respondent authority has not examined whether the second category of trainees can claim any exclusions on the ground of extension of Model Standing Orders to the appellant establishment. As per Annexure A1, there are 20 such trainees working in the appellant establishment during the relevant point of time. It was also contended in Annexure A1, that 7 persons were not enrolled as they joined the appellant establishment after retirement from various organisations. However according to the appellant all these non enrolled employees were enrolled to the fund during Employees Enrolment Campaign Scheme and they have also provided the Provident Fund numbers of these 7 employees. The learned Counsel of the appellant also pointed out that the 7 employees working in the investigation department were employees of West Fort Hospital, Trissur and they were already enrolled to the fund by the West Fort Hospital. The appellant also furnished the Provident fund

numbers of those employees in Annexure - 1. On verification of the impugned order, it is seen that the respondent authority has not considered any of the contentions in Annexure A1 written statement filed by the appellant. It is also not clear against which employees the assessment as per the impugned order is made. The impugned order absolutely non – speaking to that extend. The issue becomes particularly relevant in view of the fact that the appellant had produced all the records called for by the respondent authority. Hence there is absolutely no justification for such an order. The appellant ought to have specifically identified those employees who were non enrolled and are eligible to Provident Fund membership. As rightly pointed out by the learned Counsel for the appellant though the respondent authority excluded majority of the persons from assessment, the amount quantified has gone beyond the provisional assessment given by the Enforcement Officer in his first report. Though the respondent cannot fill up this infirmity, the written statement filed by the respondent is also

completely silent on these issues raised by the appellant before the respondent authority.

6. Considering the facts, circumstances and pleadings in this appeal, I am not inclined to sustain the impugned order.

Hence the appeal is allowed, the impugned order is set aside and the matter is remitted back to the respondent to re-decide the matter, on the basis of the directions issued in this appeal, within a period of six months, after issuing notice to the appellant. If the appellant fails to produce required documents or failed to cooperate with the authority in identifying and quantifying the dues, he may finalise the matter in accordance with law. The pre deposit made by the appellant as per the direction of this tribunal under Section 70 of the Act shall be adjusted/refunded after finalisation of the enquiry.

Sd/-  
**(V. Vijaya Kumar)**  
Presiding Officer