सत्यमेव जयते

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

Present: Shri.V.Vijaya Kumar, B.Sc., LLM, Presiding Officer.

(Monday, 9th day of September 2021)

APPEAL No.137/2019
(Old ATA No. 1363 (7) 2014)

Appellant	Mar Baselios Medical Mission Hospital, Kothamangalam Pin – 686 691
	By Adv. K K Prema lal Adv. Vishnu Jyothis Lal
Respondent	The Regional PF Commissioner EPFO, Sub Regional Office Kaloor, Kochi – 682 017
	By Adv. Sajeev Kumar K Gopal

This case coming up for final hearing on 08/04/2021and this Tribunal-cum-Labour Court on 09/09/2021 passed the following:

ORDER

Present appeal is filed from order No.KR/KCH/ 5250/Enf. 1(6)/2014 dt. 28/11/2014 assessing dues in respect of non-enrolled employees for the period from 01/2008 to 12/2012 under Section 7A of EPF and MP Act (hereinafter

referred to as 'the Act'). Total dues assessed is 68,01,997/- (Rupees Sixty eight lakh One thousand nine hundred and ninety seven)

2. The appellant is a multi specialty hospital. The appellant is regular in compliance. An Enforcement Officer who conducted inspection of appellant establishment on 25/01/2013 furnished an inspection report directing the appellant to enroll 364 nursing students and 102 employees who are list to be eligible for membership under EPF scheme. A true copy of the inspectional report dated 25/01/2013 is produced and marked as **Annexure 1**. Subsequent to above report, the Enforcement officer forwarded another report dated 28/05/2013 showing the provident fund dues in respect of those employees for a period from 01/2008 to 12/2012. A copy of the said report is produced and marked as **Annexure 2**. Thereafter the respondent authority issued a notice dt. 12/07/2013 under Section 7A of the Act directing the appellant to appear before the respondent. A true copy of the said summons is produced and marked as **Annexure 3**. A representative of the appellant attended the hearing and

submitted a detailed explanation dt. 24/03/2014. A copy of the said explanation is produced and marked as **Annexure A4**. 364 trainees referred to in the Annexure A1 report are inclusive of nursing students who have undergone internship as per the guideline dated 30/08/2007 of the Mahatma Gandhi University. A copy of the said circular is produced and marked as **Annexure A5**. The remaining persons are apprentices undergoing apprenticeship and practical training in multi-specialty and super specialty departments of the hospitals on the basis of their written requests. These apprentices on completion of their training leave the establishment. Out of the 102 persons alleged to be non enrolled 63 are staff nurses drawing monthly salary of Rs. 6500/- on the date of appointment and therefore are excluded employees. The statement showing the date of appointment of these 63 staff nurses and their salary as on the date of appointment are produced and marked as **Annexure 6**. 25 persons shown in Annexure 1 are actually enrolled. The list showing the date of enrolment and the employee's, code number of these 25 persons is produced and marked as **Annexure 7**. The remaining 4 employees are excluded

employees drawing monthly salary above Rs. 6500/- and 7 were apprentices in various other departments who have relievedafter one year period of their apprenticeship. The three remaining employees are not enrolled and are required to be enrolled by the appellant. Without considering any of the above contentions, the respondent issued the impugned order. The finding of the respondent authority is not based on the materials or evidence produced by the appellant. The nursing students are required to undergo internship for a period of one year as per Annexure 5 issued by the university. Some of the nursing trainees are undergoing training in super specialty departments. And after completion of their training, they leave the appellant establishment. They were only being paid stipend and no wages are paid to these trainees. The Honourable Supreme Court of India in **Employees State Insurance Corporation Vs Tata Engineering and Locomotive Co. Ltd. (AIR 1976 SC66)** held that dominant object of apprenticeship is to impart on the part of the employer and to accept on the part of the other person learning under certain agreed terms. The mere fact that certain payments are paid to these apprentices and they are under

certain code of discipline which will not convert the apprentice into a regular employee. **In Bharat Hotel V Regional Director, ESI Corporation and another (2014 Lab IC 3862)** the Honourable High Court of Kerala held that imparting some practical works as part of curriculum, the status of apprenticeship will never assume the proposition of a normal employee. The finding of the respondent authority that Industrial Employment (Standing Orders)Act 1946 has no application to the Hospital is absolutely wrong. When Kerala Shops and Commercial Establishment Act was made applicable to hospitals, the provisions of payment of Wages Act 1936 will automatically apply to the hospitals. In view of the settled legal position, in **Regional Provident Fund Commissioner V Central Arecanut and Coca Marketting and Processing Corporation Ltd. (2006 (2) SCC 381)** the trainees/apprentices will not come under the definition of employee under Section 2(f) of the EPF & MP Act. The appellant has specifically disputed the liability of payment of contribution in respect of 102 regular employees. The details were provided to the respondent vide Annexure 4 written statement. Complete wage records in respect of all persons

were also produced during the enquiry in digital format. The said wage register would prove the contentions raised by the appellant. The respondent not even bothered to read the contentions or go through wages records produced by the appellant. There is no finding in the impugned order as to whether these persons are required to be enrolled under the Act.

3. The respondent filed counter denying the above allegations. The appellant is a hospital covered under the provisions of the act w.e.f. 30/09/1981. During the course of inspection, one of the Enforcement Officers of the respondent organisation noticed that 466 employees were not enrolled to the fund from 2008 to 2012. 364 employees are trainees and 102 are regular employees. The enforcement officer also submitted a list of non-enrolled employees showing their designations, date of joining and total emoluments paidto them. The list of employees with their wages was certified by authorised representative. A copy of the inspection report was given to the appellant establishment by the Enforcement Officer himself. Since the appellant failed to comply with the

directions of the EnforcementOfficer, an enquiry under Section 7A of the Act was initiated fixing the date of enquiry on 26/07/2013. Thereafter the enquiry was adjourned on various dates on the request of the appellant establishment. An authorised representative of the appellant attended the hearing and produced the documents called for. The appellant also filed a written statement explaining that 364 non enrolled persons are trainees and were being given training on the basis of Annexure 5 order of the Government. It was also contended that 63 trainees were absorbed as staff nurses and were drawing more than Rs. 6500/- as salary and therefore they are excluded employees. It was also stated that 25 of the employees are enrolled to thefund and they are enrolling 3 employees who are eligible and not enrolled to the fund. As per the definition of employee in Section 2(f), only apprentice engaged under ApprenticeshipAct 1961(52 of 1962) or under the Standing Orders of the establishment are excluded from the provisions of the Act. All other trainees are required to be enrolled to the fund as they are employees as per Section 2(f) of the Act. As per the decision of the division bench of the Honourable High Court of Madras in **NEPC Textile Mills**

Limited Vs Regional Provident Fund Commissioner, 2007 LLR 535 even trainees / apprentices engaged by an establishment under the Standing Orders who are required to do the work of regular employees, are deemed to be "employees" of the establishment and the employer is liable under the statue to enrol them as Provident Fund members from their date of eligibility. In **Shri Rajesh Krishnan, Secretary Vs Assistant Provident Fund Commissioner, [2009 (4) LLJ 720]**the Honourable High Court of Kerala held that for excluding an apprentice from the purview of the term "employee" as defined under Section 2(f) of the Act, they should have been engaged under Apprenticeship Act 1961 or under the Standing Orders as provided in the Industrial Employment (Standing Orders) Act. It is cleared from the balance sheet of the appellant establishment that the appellant establishment is not accounting any payment as stipend and the entire amounts paid to the employee are booked under the head salaries and wages.

4. The main issue involved in this appeal is with regard to non enrolment of 466 persons by the appellant

establishment. According to the learned Counsel for the appellant, out of 466 non enrolled persons 364 persons are trainees. The trainees also include twocategories of persons. The first category of trainees are the interns engaged as per Annexure 5 dt. 30/09/2007. Annexure 5 is a notification issued by the AssistantRegistrar on behalf of Vice Chancellor of Mahatma Ghandi University. According to the above circular, the students after completion of basic BSc Nursing programme shall undergo one year compulsory internship after successful completion of their course. The case of the appellant hospital is that some of the trainees are taken as per the above discussed Annexure 5 circular issued by the university. Another category of trainee nurses are taken on their request for training in specialty departments such as Cardiology. The learned Counsel for the appellant pointed out that hospitals will come under Standing Orders Act and therefore Model Standing Orders are applicable to the appellant establishment and these trainees are to be taken as apprentice under the Standing Orders Act. The learned Counsel for the appellant pointed out that the appellant during the course of hearing under Section 7A of the Act has given a

detailed explanation as per Annexure 4 as to why 102 registered employees are not enrolled to the fund. According to him the impugned order is completely silent on above issue.

5. The contention of the learned Counsel for the respondent is that the definition of employee under Section 2(f) of the Act recognises only two exclusions from the category of employees.

1) The apprentices appointed under Apprentice Act 1961 and

2) The trainees appointed under the Standing Order of appellant establishment.

The interns are therefore employees under the definition of employees. He further pointed out that Standing Orders Actis not applicable to hospitals and therefore the second category of trainees are also required to be enrolled to the fund.

6. Going by strict interpretation of Section 2(f) of the Act, it can be argued that the interns engaged by the appellant establishment are required to enrolled to the fund because they will come within the definition of employees under the

Act. However when there is a notification issued by the university thatthere is a compulsory internship for all the BSc nursing students, after successful completion of their basic BSc nursing course, it becomes part of their curriculum and it is difficult to accept the proposition of the learned Counsel for the respondent that the interns should be treated as employee for the purpose of Provident Fund membership. It is relevant to know that the Government Order regarding compulsory internship was withdrawn wide GO(Rt)2455/2007/H&WD dated 20/10/2011 and correspondingly all these universities also issued circularsw.e.f. 2012. Kerala Nurses and Midwifes Council also withdrew the instructions wide circularNo.G7822/11/NC dt. 29/11/2011 stating that there is no requirement for the nurses who completed BSc nursing to undergo training in any hospital. The instruction dt.20/10/2011 issued by the Government withdrawing the internship and also circularissued by Kerala Nursing and Midwifes Council were challenged before the Honourable High Court of Kerala. The Honourable High Court of Kerala wide its judgement dt. 14/03/2019 in **Kerala Private Hospital Association V The state of Kerala and others,** WPC No 2878

of 2012 upheld the decision taken by the Government of Kerala to withdraw the internship program of those persons who completed BSc Nursing Course. Hence upto 2012 the internshipprogram of government was in existence and therefore it is not correct on the part of the respondent to treat those interns as employees for the purpose of Provident Fund membership.

7. The learned Counsel for the appellant raised the issue regarding trainee nurses in specialty departments, on the ground that Industrial Employment (Standing Orders) Act is applicable to hospitals and therefore they can invoke Model Standing Orders for the purpose of engaging trainees and therefore they are excluded. The question whether the Standing Orders Act is applicable to the hospitals was elaborately considered by the Honourable High Court of Kerala in **Sivagiri Sreenarayana Medical Mission Hospital Vs Regional Provident Fund Commissioner, 2018 KHC542** and the Honourable High Court of Kerala held that the Standing Orders Act is applicable to hospitals for the reasons given therein. The learned Counsel for the respondent

submitted that the said order is under challenge and appeals are pending before the Division Bench. However, the issue whether the Standing Orders Act is applicable to hospital is not relevant in this particular case. The appellant is invoking Model Standing Orders under Section 12A of the Standing Orders Act. However section 12A of StandingOrders Act can be invoked only after a draftStanding Order is submitted to the certifying authority under Section 3 of Standing Orders Act. **In Bharath Petroleum Corporation Ltd. Vs Maharashtra Kamgar Union and other, 1999 1LJ 352 (SE)** Honourable Supreme Court observed that Model Standing Orders will be applicable during the period commencing on the date on which the Act becomes applicable to that establishment and the date of which Standing Orders as finally certified under the Act comes into operation. In a recent decision, in **Cheslind Textiles Ltd V Presiding officer EPF Appellate Tribunal, 2020 2 LLJ 326 (Mad)** the Honourable High Court of Madras held that the employers can invoke section 12A of the Standing Orders Act only after the draft Standing Orders are submitted to the certifying authority. In this case, the appellant has no case that they

submitted their draft Standing Order for certification and therefore they cannot invoke Section 12A and Model Standing Ordersfor excluding the trainees engaged in Specialty Departments. The benevolent provisions of a welfare statute cannot be misused for denying social security benefits to employees.

8. It is seen that the appellant has taken a specific stand before the respondent authority under Section 7B as to why 102 regular employees are not enrolled to Provident Fund. In Annexure A4, the appellant has furnished the details of all the 102 non enrolled employees and the reasons there of. According to the learned Counsel for the appellant 24 of these employees were enrolled to the fund from the date of eligibility, 63 are excluded employees since they were drawing a salary of more than 6500/- and some of the employees left after training and only 3 eligible employees were left to be enrolled to the fund. Inspite of such a specific stand taken by the appellant and all the documents called for by the appellant were provided to the respondent authority in soft copies, there is no finding on the issue by the respondent

authority. However he has included the contribution in respect of all these employees without even discussing in the impugned order whether they are eligible to be enrolled to the fund.

9. Hence to sum up the findings,

1. The interns engaged by the appellant establishment upto 2012 cannot be treated as employees and the appellant is not liable to pay any contribution on the stipend paid to the interns.
2. The trainee nurses engaged by the appellant in specialty departments will be treated as employees under Section 2(f) of the Act and they are liable to be enrolled to the fund.
3. The respondent will have to decide the eligibility of 102 regular employees before assessing the contribution payable under the act.

10. Considering the facts, pleadings and evidence in this appeal, I am not inclined to accept the finding of the respondent authority.

Hence the appeal is allowed the impugned order is set aside and the matter is remanded 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 cooperate or produce records called for, the respondent is at liberty to decide the matter according to law. The pre-deposit made by the appellant as per the direction of the Honourable High Court in WPC 34732 of 2014 shall be adjusted or refunded after finalisation of the enquiry.

Sd/-
(V. Vijaya Kumar)
Presiding Officer