



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

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

(Monday the, 7th day of March 2022)

APPEAL No. 147/2018

Appellant : M/s. Dr. G.R.Public School
Ooruttukala,
Neyyattinkara
Trivandrum – 695 121

By Adv. Ajith S Nair

Respondent : The Assistant PF Commissioner
EPFO, Regional Office,
Pattom,
Trivandrum – 695 004

By Adv. Ajoy P.B

This case coming up for final hearing on 01.12.2021 and this Tribunal-cum-Labour Court on 07.03.2022 passed the following:

ORDER

Present Appeal is filed from order No. KR/TVM/12674/ENF II(1)/2017/8736 dated 22.01.2018 assessing dues under Section 7A of EPF and MP Act 1952 (hereinafter referred to as 'the Act')

on non-enrolled employees for the period from 06/2017 – 07/2017 and on evaded wages for the period from 09/2014 – 01/2016. The total dues assessed is Rs. 7,89,338/- (Rupees Seven lakh eighty nine thousand three hundred and thirty eight only)

2. The appellant is an educational institution. The school is run by Madhavi Mandiram Lok Seva School, a charitable society registered under the provisions of Travancore Cochin Charitable Societies Act, 1955. The appellant school is covered under the provisions of the Act. The appellant establishment is regular in compliance. The EPF contributions were paid on Basic salary and Dearness Allowance. An Enforcement Officer of the respondent organisation conducted an inspection at the appellant school. The Enforcement Officer, in his report, informed that there are short remittances and 12 employees who joined in June 2017 were not enrolled to the fund. It was also reported that there is evasion of wages. A copy of the report of the Enforcement Officer is produced and marked as Annexure A2. The respondent initiated an enquiry under Sec 7A vide notice dated 21.08.2017. A copy of the notice is

produced and marked as Annexure A3. On receipt of the notice, the appellant contacted the Enforcement Officer and informed her that the appellant establishment is not liable to remit contribution on allowances. The appellant could not attend the enquiry. However the respondent issued an order assessing dues on 12 non-enrolled employees and also on evaded wages. On a perusal of the records collected by the Enforcement Officer, it is clear that the appellant establishment was remitting contribution on Basic and Dearness Allowance. There is no finding by the respondent that the allowance formed part of wages. The employees who were not enrolled are persons taken on part time basis during academic session 2016-17 and they are not employees coming within the purview of EPF Act. If at all there is a dispute regarding eligibility to be enrolled, it ought to have been resolved under Para 26B of EPF Scheme. The respondent relied on the report of the Enforcement Officer. The appellant school is remitting contribution without any salary ceiling which would prove the fact that the school has no intention to evade payment in any manner. Sec 6 of EPF Act stipulates that contribution is payable on Basic and Dearness Allowance. The definition of Basic wages excludes allowances.

3. The respondent filed counter denying the above allegations. The Enforcement Officer of the respondent organisation during his inspection noticed that 12 eligible employees are not enrolled to the fund and also that there is evasion of wages in remitting contribution on Dearness Allowance and Dearness pay. The respondent authority initiated an enquiry under Sec 7A of the Act. Notice was issued to the appellant to appear and produce records on 22.11.2017. None attended the enquiry inspite of the fact that the notice was acknowledged. The enquiry was adjourned to 28.12.2017. The same was also acknowledged by the appellant. However the appellant failed to attend the enquiry and produce the records called for. The respondent therefore issued the impugned order on the basis of the report of the Enforcement Officer.

4. In this appeal the appellant has taken a stand that the appellant establishment is remitting contribution on Basic and Dearness Allowance and contribution is not paid on allowances. According to the learned Counsel for the respondent, the appellant establishment failed to remit contribution on Dearness Allowance and Dearness pay and as per the impugned order, the

contribution is assessed on those payments as the provisions of the Act under Sec 6 and 2B attract Provident fund deduction on Dearness Allowance as well as Dearness pay. According to the learned Counsel for the appellant, the appellant establishment is not restricting contribution on the statutory limit which would clearly establish the fact that the appellant is not splitting up wages to evade Provident fund contribution. It is not clear from the impugned order as to what elements are considered as evaded wages and why the appellant is liable to remit contribution on the same. It is true that the appellant failed to respond to the summons issued by the respondent authority. However the impugned order shall specify the basis of the assessment failing which it is liable to challenge as in the present case. There is no document in this file to establish either way whether the assessment on evaded wages is correct or not, particularly in view of the contradictory position taken by the appellant and the respondent with regard to remittance of Provident fund contribution on Dearness Allowance.

5. Another ground on which the impugned order is challenged is with regard to assessment of dues on non-enrolled

employees. According to the learned Counsel for the appellant, these 12 employees are part time employees taken for the academic year 2016-17 and they will not come within the definition of employee. As per Sec 2(f) of the Act, employee means, any person who is employed for wages in any kind of work manual or otherwise in or in connection with the establishment and who gets his wages directly or indirectly from the employer and includes any person employed by or through a contractor. It is clear from the definition that all employees regular, part-time or on contract will have to be enrolled to the fund from the date of their enrolment.

6. Considering the facts, circumstances, pleadings and evidences in this appeal, I am inclined to hold that all the non-enrolled employees are eligible to be enrolled to the fund from the date of eligibility and the quantification of dues in this regard is upheld. The quantification of dues in respect of evaded wages cannot be sustained in view of the reasons given in the above Paras.

Hence the appeal is partially allowed. The impugned order assessing dues in respect of 12 non-enrolled employees is

upheld. The assessment of dues in respect of evaded wages is set aside and the matter is remitted back to the respondent to re-assess the dues within a period of six months after issuing notice to the appellant. If the appellant fails to appear or produce the records called for, the respondent is at liberty to assess the dues according to law. The pre-deposit made by the appellant under Sec 70 of the Act as per the direction of this Tribunal shall be adjusted or refunded after finalisation of the appeal.

Sd/-
(V.Vijaya Kumar)
Presiding Officer