



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

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

(Monday the, 17th day of January 2022)

APPEAL No. 308/2019

(Old No.ATA.1041(7)2015)

Appellant : M/s. Kerala State Ex-Services League
District Committee
Vimuktha Bhada Bhavanam
Burnacherry,
Kannur – 670 013

By Adv.(Dr.) K.P.Pradeep

Respondent : The Regional PF Commissioner
EPFO, Sub Regional Office,
V.K.Complex, Fort Road,
Kannur – 670 013

By Adv. K.C.Santhosh Kumar

This case coming up for final hearing on 12.10.2021 and this Tribunal-cum-Labour Court on 17.01.2022 passed the following:

ORDER

Present Appeal is filed from order No. KR/KNR/Enf1(2)/ Damages/18837/2015-16/1782 dated 23.07.2015 assessing damages under Section 14B of EPF and MP Act (hereinafter

referred to as 'the Act') for belated remittance of contribution from 04/2007 and 04/2014. The total damages assessed is Rs. 4,05,997/-. Rupees four lakh five thousand nine hundred and ninety seven only). The interest demanded under Sec 7Q of the Act for the same period is also being challenged in this appeal.

2. The appellant is a charitable society registered under the Travancore Cochin Societies Registration Act of 1955 and is affiliated to the Indian Ex-Services League, New Delhi. The primary aim of the league is to look after the socio-economic and welfare matters of Ex-Service men and their families. The respondent authority initiated an enquiry under Sec 7A of the Act to assess dues in respect of the Security guards deployed at Malabar Cancer Centre (KR/KNR/18113) and also to Government Hospital, Thalassery. During the enquiry, the representative of Malabar Cancer Centre informed that employees' share with respect to the Security staff who worked with them were remitted from 01/10/2007 onwards in their code number. However Government Hospital, Thalassery did not remit the contribution. Hence the respondent authority assessed the dues and issued an order dated 18.11.2014

demanding an amount of Rs.10,78,220/-. The request of the appellant to waive the employees' share of contribution for the period from 04/2007 – 12/2012 was rejected by the respondent. The appellant preferred appeal before this Tribunal and the recovery is stayed by the Hon'ble High Court of Kerala in W.P.(C) No.17964/2015. The responsibility of the appellant is to deploy security guards as required by different central and state Government departments and undertakings. On request from Government departments and public Sector undertakings, the appellant submits a panel of Ex-Servicemen and the concerned departments select the Ex-Servicemen subject to their satisfaction. Subsequently an agreement will be executed between the employer and the appellant with regard to the wage and code of conduct of the employees. The employer will handover the total contract wages along with individual statements to the appellant on a monthly basis. The appellant disbursed the full amount paid by the employer to the Ex-Servicemen based on the statement provided. The appellant is not engaged in any commercial activities and do not charge any service charges from the establishments where Security guards are deployed. The income of the appellant are from membership

registration fees, subscriptions, donations from members and grants from Governmental and other agencies. Hence the appellant will not come within the definition of an employer under Sec 2(e) of the Act. The demand in respect of Malabar Cancer Centre between April 2007 – October 2007 is time barred. Hence the orders issued under Sec 7A is against legal provisions. The demand raised against Ex-Service man deployed at Government Hospital, Thalassery is highly inflated and the duty to pay the employees' share is with General Hospital only. The above said order issued under Sec 7A is under challenge, in appeal, before this Tribunal. In continuation of the order under Sec 7A, the respondent has issued the impugned orders under Sec 14B and 7Q of the Act. As already pointed out, the appellant is not an employer under Sec 2(e) of the Act and the employment strength of the appellant never reached 20 and therefore is not coverable under the provisions of the Act.

3. The respondent filed counter denying the above allegations. The appellant establishment is covered under the provisions of the Act w.e.f. 01.04.2007 as the employment strength of the appellant crossed 20. Since the appellant failed to remit the contribution, the respondent initiated an enquiry

under Sec 7A of the Act. After affording adequate opportunity, the respondent issued Exhibit A1 order directing the appellant to remit the assessed dues. The appellant started compliance from 01.01.2013 instead of 01.04.2007. The appellant vide letter dated 14.11.2014 has requested for waiver of employees share but the same was rejected and communicated to the appellant. A copy of the letter dated 14.11.2014 is produced and marked as Exhibit R(a). The contentions of the appellant that the Ex-Servicemen deployed at Malabar Cancer Centre and General Hospital, Thalassery are not employees but are members of the appellant is not correct. As per Sec 2(f) of the Act, employee means any persons who are employed for wages in any kind of work in or in connection with the work of an establishment who gets his wages directly or indirectly from the employer. The Security guards are deployed by the appellant establishment and the wages are being disbursed by the appellant only. As per clause 5(b) of Memorandum of Association, the appellant can open school, College, Laboratory, Industrial Training Centre etc and as per clause 5(f) it is stated that they can open Co-operative Institutions, Limited companies and Trusts. These activities are not merely welfare but are commercial activities as

well. The Security guards are deployed by the appellant and the wages are disbursed by the appellant and therefore the appellant is an employer within the meaning of Sec 2(e) of the Act. The claim of the appellant that they never engaged 20 Ex-Servicemen is not correct. If 20 or more persons are employed even if for one day in a year, it will be sufficient to attract the provisions of the Act. There is no period of limitation as far as proceedings under Sec 7A are concerned. The legislature has not prescribed any limitation for proceedings under Sec 7A as well as 14B. Consequent on receipt of Rs. 3,98,728/- and on crediting the amount in the members account on due basis along with interest, the respondent issued a show cause notice to the appellant along with statement in AnnexureA1 on 02.06.2015. The appellant was also provided an opportunity for personnel hearing on 30.06.2015. The Secretary of the appellant attended the hearing on 21.07.2015 and admitted the delay. Consequently the impugned orders are issued. The appellant voluntarily remitted a part of the amount. Copies of letters addressed to the respondent and Malabar Cancer Centre is produced and marked as Annex R(b) and R(c). The said amount has to be accounted in the members account with due interest

and the appellant is liable to pay interest and damages. The respondent issued an order dated 20.11.2014 under Sec 7A of the Act. The appellant is required to file appeal before the Tribunal within 60 days of the Order. The appellant can also file a review under Sec 7B of the Act. The appellant submitted an application for waiver of employees' share of provident fund contribution on 14.11.2014 before the issue of proceedings determining the dues under Sec 7A of the Act on 20.11.2014. The appellant did not file application in Form 9 as provided in Para 79 A of the EPF Scheme for review of the order. The period of limitation for the purpose of filing appeal before the Appellate Tribunal commences on the date of issue of Annexure A1 order and not from Annexure A2 order as stated by the appellant. The appeal is preferred after 5.5 months. As per Rule 7(2) of EPF Appellate Tribunal (Procedure) Rules 1997 the appellant has to prefer the appeal within 120 days. Hence the appeal from the 7A order is not maintainable as barred by limitation. In ***N.K.Industries Pvt. Ltd Vs R.P.F.C***, AIR 1958 ALL 474, the Hon'ble High Court held that the employers are required to start compliance the moment the statutory requirements are met and not required to wait till a notice or demand is received from the

Provident Fund Commissioner. The respondent has no notice that the appellant challenged the 7A order before the EPF Appellate Tribunal. The appellant establishment has complied as per the 7A order through part remittance. The question whether a particular establishment is engaged in commercial activities or not is not relevant while deciding the applicability of the Act, as pointed out by the Hon'ble High Court in ***Cosmopolitan Club Vs RPFC***, 1967 (1) LLJ 797. The appellant as an employer is duty bound to remit the employers share of contribution towards the fund. Appellant had themselves admitted their liability to make the payments towards PF as evidenced from the terms of agreement entered into between the appellant and the establishment. A copy of an agreement is enclosed and marked as Annexure R(d). The appellant themselves admitted that they are engaging more than 20 persons as on 01.04.2007. In the letter dated 10.08.2007 addressed to the respondent, the appellant informed that 12 Security personnel's are working in Malabar Cancer Centre. In the letter dated 17.02.2013 addressed to the Superintendent, General Hospital, Thalasserry, the appellant informed that 13

Security personnel's are posted there. The dues were assessed on the basis of the wage registers maintained by the appellant.

4. The appeal against 7Q order is not maintainable as there is no provision to maintain the appeal under Sec 7(I) of the Act.

5. The impugned order is issued under Sec 14B of the Act read with Para 32A of EPF Scheme assessing damages for belated remittance of contribution for the period from 04/2007 – 04/2013. According to the learned Counsel for the appellant, the appellant establishment has challenged an order issued by the respondent authority under Sec 7A of the Act in Appeal No. 183/2019. According to him, a finding in the appeal will have a direct impact on the assessment of damages and interests challenged in this appeal. According to the learned Counsel for the respondent, the impugned orders under Sec 14B and 7Q are issued on the basis of the voluntary remittance made by the appellant and it will not impact the assessment of damages as per the impugned order. The order impugned in Appeal 183/2019 is set aside for the reasons stated therein and the respondent authority is directed to examine the waiver of

employees' share of contribution for the period from 04/2007 – 12/2012. It will have a direct impact on assessment of damages and interests against the appellant establishment. It is appropriate that the respondent authority comply with the directions in Appeal No. 183/2019, adjust/recover the amounts as per the revised 7A order and thereafter initiate the proceedings to quantify the damages and interests as provided under Sec 14B and 7Q of the Act.

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

7. Hence the appeal is allowed, the impugned order is set aside and the matter is remitted back to the respondent to re-assess the damages and interests after complying with the direction in Appeal No. 183/2019. The respondent shall issue notice to the appellant before quantifying the damages and interests as directed above.

Sd/-
(V.Vijaya Kumar)
Presiding Officer