



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

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

(Monday the, 23<sup>rd</sup> day of May 2022)

**APPEAL No. 318/2018**

Appellant : M/s. Mangalam Publications  
(India) Pvt. Ltd.  
S.H.Mount.P.O.,  
Kottayam – 686 006

By M/s.Menon & Menon

Respondents : 1. The Assistant PF Commissioner  
EPFO, Sub Regional Office,  
Kottayam – 686 001.  
2. The Regional PF Commissioner  
EPFO, Sub Regional Office,  
Kottayam – 686 001.

By Adv. Joy Thattil Ittoop

3. Mr. Cherian Zachariah (Late)  
Karunalayil Ashish Villa  
Mariapally.P.O.,  
Kottayam – 686 013.

By Adv.

Additional impleaded Respondents

4. Mr. Ashish Cherian Zachariah  
S/o Late Cherian Zachariah  
Karunalayil Asish Villa  
Mariapally.P.O., Nattakom Village  
Kottayam – 686 013.

5. Mrs. Anju Elizabeth Zachariah  
D/o. Late Cherian Zachariah  
W/o. Prince Varghese  
House No. 6/J, Risali Sector  
Near State Bank of India, Bhilai  
Civic Centre Bhilai, Durg,  
Chhattisgarh – 490 006

6. Mrs. Aleyamma Zachariah  
W/o. Late Cherian Zachariah  
Karunalayil Asish Villa  
Mariapally.P.O., Nattakom Village  
Kottayam – 686 013.

By Adv. R.B.Rajesh

This case coming up for final hearing on 13.01.2022 and this Tribunal-cum-Labour Court on 23.05.2022 passed the following:

### **ORDER**

Present Appeal is filed from order No. KR/KTM/5975/Enf. I(1)/2018 dated 20.07.2018 under Sec 7B of EPF and MP Act 1952 (hereinafter referred to as 'the Act') assessing dues in respect of one Sri.Cherian Zakariah for the period from 09.08.1995 to 13.02.2012. The original order issued under Sec

7A of the Act is also being challenged in this appeal. The total dues assessed is Rs.4,52,710/- (Rupees Four lakh fifty two thousand seven hundred and ten only)

2. The appellant is a newspaper establishment covered under the provisions of the Act. The 3<sup>rd</sup> respondent was appointed as bureau chief of the appellant on 12.12.1988 and he was drawing a salary of Rs.4,471.67 per month. The service of the 3<sup>rd</sup> respondent was terminated by the appellant vide letter dated 05.08.1995. The 3<sup>rd</sup> respondent raised an Industrial Dispute which was referred to adjudication before the Labour Court, Ernakulam as ID No. 27/1996. Labour Court as per award dated 20.08.2008 held that the termination of the service of the 3<sup>rd</sup> respondent is unjustified and the appellant was directed to reinstate him in service with 50% back wages. The appellant challenged the award in W.P.(C).No 19327 of 2008. As per the direction of the Hon'ble High Court, the appellant has paid a last drawn salary of Rs.4,471.67/- per month to the 3<sup>rd</sup> respondent under Sec 17B of the Industrial Disputes Act. A copy of the order dated 10.11.2008 is produced and marked as Annexure A1. The 3<sup>rd</sup> respondent filed a claim petition as

C.P.No.37/2009 before the Labour Court for realization of Rs.7,30,842.50/- as 50% of the back wages for the period from 01.04.2000–20.08.2008. The Labour Court ordered that the 3<sup>rd</sup> respondent is entitled to realise an amount of Rs.7,30,843/-. The Labour Court further directed that the amount should be paid within two months failing which the 3<sup>rd</sup> respondent can recover the amount with interest at the rate of 9% per annum from the date of the petition. The appellant challenged the order in O.P.(LC) No.3269/2012 before the Hon'ble High Court. The Hon'ble High Court directed the appellant to pay a lumpsum amount of Rs.3 lakhs to the 3<sup>rd</sup> respondent. A copy of the order dated 29.01.2013 is produced and marked as Annexure A2. The appellant paid Rs.3 lakhs to the 3<sup>rd</sup> respondent. W.P.(C).No. 19327/2008, O.P.(LC) No 3269/2012 and another case O.P.(LC)No. 3/2014 were dismissed by the Hon'ble High Court as per common judgement dated 11.03.2015. The appellant preferred appeal before the Division Bench. When the appeals were pending before the Division Bench of the Hon'ble High Court, the appellant received a notice from the 1st respondent under Sec 7A of the Act. A copy of the notice is produced and

marked as Annexure A3. The appellant appeared before the 1<sup>st</sup> respondent and informed that the Writ Appeals are pending before the Hon'ble High Court. A copy of the objection filed before the 1<sup>st</sup> respondent is produced and marked as Annexure A4. Additional objections were also filed stating that the lumpsum payment made under Sec 17B of Industrial Dispute Act will not come within the definition of basic wage. A copy of the additional objection is produced and marked as Annexure A5. An Enforcement Officer attached to the office of the respondent vide notice dated 17.08.2016 informed that she is proposing an inspection of the appellant establishment. A copy of the notice is produced and marked as Annexure A6. The appellant informed the factual position to the Enforcement Officer. A copy of the letter dated 09.09.2016 is produced and marked as Annexure A7. The Enforcement Officer conducted an inspection and submitted her report dated 21.09.2016 which is produced and marked as Annexure A8. After receipt of the report, the appellant filed a detailed objection dated 29.09.2016 to the Enforcement Officer. A copy of the objection is produced and marked as Annexure A9. The 1<sup>st</sup> respondent, on the basis of

the report of the Enforcement Officer directed the appellant to remit the contribution. A copy of the notice dated 03.10.2016 is produced and marked as Annexure A10. The appellant send a reply dated 21.10.2016, a copy of the letter is produced and marked as Annexure A11. The appellant received another notice dated 17.11.2016 from the 1<sup>st</sup> respondent. A copy of the said notice is produced and marked as Annexure A12. The appellant filed an objection to the notice, a copy of which is produced and marked as Annexure A13. The appellant filed a detailed argument note dated 03.02.2017, a copy of argument note is produced and marked as Annexure A14. Ignoring the contentions of the respondent, the 1<sup>st</sup> respondent send an order dated 02.03.2017 directing the appellant to remit an amount of Rs.2,27,217 as dues to be paid to the 3<sup>rd</sup> respondent. A copy of the order of the 1<sup>st</sup> respondent is produced and marked as Annexure A15. The appellant filed a review application under Sec 7B of the Act, a copy of the Sec 7B review application is produced and marked as Annexure A16. The 1<sup>st</sup> respondent issued a notice to the appellant and the 3<sup>rd</sup> respondent, scheduling the hearing on 17.05.2017. The appellant submitted

a preliminary statement dated 19.06.2017, copy of the preliminary statement is produced and marked as Annexure A17. The appellant also filed a correction petition dated 10.07.2017 as well as an additional statement dated 16.08.2017, the copies are produced as Annexure A18 and Annexure A19 respectively. The 2<sup>nd</sup> respondent thereafter started hearing the review application. A copy of the proceedings of the 2<sup>nd</sup> respondent dated 28.08.2017 is produced and marked as Annexure A20. A copy of the proceedings of 2<sup>nd</sup> respondent dated 06.09.2017 is produced and marked as Annexure 21. The 2<sup>nd</sup> respondent directed an Enforcement Officer to conduct a fresh inspection. The Enforcement Officer issued a fresh notice dated 12.09.2017 which is produced and marked as Annexure A22. The appellant informed the Enforcement Officer that the records demanded by him were over 22 years and the appellant was unable to produce the documents. A copy of the letter dated 15.09.2017 is produced and marked as Annexure A23. After conducting the inspection, the Enforcement Officer served copy of the inspection report dated 21.09.2017. A copy of the inspection report is produced and marked as Annexure A24.

The appellant submitted a detailed objection dated 26.09.2017 to the 2<sup>nd</sup> resp. A copy of the objection is produced and marked as Annexure A25. The appellant submitted another objection dated 11.10.2017 wherein the 2<sup>nd</sup> respondent was requested to confine to what have been sought in the 7B review application. A copy of the objection is produced and marked as Annexure A26. The appellant also brought to the notice of the 2<sup>nd</sup> respondent the decision of the Hon'ble High Court of Gujarat in Special Civil Application No 4336 of 1999 which was exactly similar to the facts of the present case, a copy of the statement is produced and marked as Annexure A27. The appellant filed another statement dated 12.12.2017, a copy of which is produced and marked as Annexure A28. The appellant further filed a detailed argument note dated 04.07.2018, a copy of which is produced and marked as Annexure A29. The 2<sup>nd</sup> respondent without properly appreciating the contentions raised by the appellant exceeded his jurisdiction under Sec 7B and revised the Annexure A15 order and passed a fresh order, according to which the appellant was directed to remit a contribution of Rs.4,52,710, a copy of the order of the 2<sup>nd</sup> respondent is



produced and marked as Annexure A30. The 2<sup>nd</sup> respondent has no jurisdiction to consider the review petition filed by the appellant under Sec 7B of the Act. As Annexure A15 order has been issued by the 1<sup>st</sup> respondent, Sec 7B review application ought to have been conducted by the 1<sup>st</sup> respondent only. Hence the Annexure A30 order is liable to be set aside on that ground. The 2<sup>nd</sup> respondent ought to have confined his decision on the Sec 7B review application filed before him. It is not correct to say that once an application under Sec 7B has been filed, the entire issue that have been considered under Sec 7A would stand reopened. As per Sec 7B(1) an officer could exercise this power only in such circumstances as mentioned therein. In Annexure A15, Sec 7A order, the issue was whether contribution towards provident fund dues was liable to be paid from 09.08.1995 to 13.02.2012 and the amount paid to the 3<sup>rd</sup> respondent as per Annexure A1 order under Sec 17B of the Industrial Disputes Act as also on the lumpsum amount of Rs.3 lakhs paid to the 3<sup>rd</sup> respondent was pursuant to Annexure A2 order. The amount determined by the Labour Court in C.P.No.43/2012 and the quantum of contribution

payable on the said amount was never a matter of consideration in the enquiry under Sec 7A of the Act. The order in C.P.No.43/2012 was known to the 1<sup>st</sup> respondent while issuing the order under Sec 7A. During the pendency of the W.P.(C). No 19327/2018 before the Hon'ble High Court what was paid to the 3<sup>rd</sup> respondent is an amount under Sec 17B of the ID Act. There is no stipulation that the amount under Sec 17B shall be paid after paying the provident fund contribution. Hence the appellant effected payment under Sec 17B of the Industrial Disputes Act till the date of the retirement of the 3<sup>rd</sup> respondent without effecting any deductions. Even assuming that the appellant is liable to pay contributions, the appellant is liable to pay the contribution only from 2008 onwards and the appellant cannot be held liable for payments made prior to 2008. Contribution under EPF Act would become payable only on the wages paid. The amount paid in terms of Annexure A2 is a lumpsum payment of Rs.3 lakh. The Hon'ble High Court had never ordered that while effecting payment of the said amount, the statutory deduction under EPF Act could be made. The appellant has till date not effected payment of balance amount

determined under the order of the Labour Court in C.P.No.37/2009. The contribution under the EPF Act could become payable only on the wages paid. Hence even if the amount paid pursuant to Annexure A2 order is treated to be wages, such contribution could be determined only from 01.04.2000 to 20.8.2008 and not from August 1995 onwards.

3. The 1<sup>st</sup> and 2<sup>nd</sup> respondents filed counter denying the above allegations. The 3<sup>rd</sup> respondent in the appeal is a dismissed employee of the appellant, directed to be reinstated with 50% back wages by Labour Court, Ernakulam vide award dated 28.02.2008. In view of the award, the 3<sup>rd</sup> respondent became eligible for back wages from August 1995 till his reinstatement on 13.12.2012. Back wages had been held as wages by the Hon'ble Supreme Court and thus provident fund contribution shall be paid on the back wages. The appellant challenged the award of the Labour Court before the Hon'ble High Court of Kerala and the Hon'ble High Court of Kerala dismissed the writ petition. The enquiry initiated under Sec 7A of the Act by the 1<sup>st</sup> respondent was kept in abeyance since the appellant informed that they filed Writ Appeals before the

Hon'ble Division Bench of Hon'ble High Court of Kerala. Upon dismissal of the writ appeal, the Enforcement Officer was directed to verify the records of the appellant to confirm the provident fund contribution payable by the appellant to the 3<sup>rd</sup> respondent. The appellant informed the Enforcement Officer vide letter dated 09.09.2016 that an amount of Rs.5,34,477/- had been paid to the 3<sup>rd</sup> respondent as per the directions of the Hon'ble High Court of Kerala, out of which Rs.2,34,477/- has been paid under Sec 17B of the ID Act. The balance amount of Rs.3 lakh was disbursed in compliance with the Annexure A2 order of the Hon'ble High Court of Kerala in O.P.(LC)No.3269/2012. The contentions of the appellant that provident fund contribution is not payable on the last drawn wages paid in compliance with Annexure A1 order as well as Rs.3 lakhs paid in compliance with Annexure A2 order of the Hon'ble High Court are baseless. Both the payments are wages and the appellant is therefore liable to pay the contribution on the same. Though 1<sup>st</sup> respondent after giving ample opportunities for hearing, passed Annexure A15 order determining the provident fund dues at Rs.2,27,217/- for the

period from 09.08.1995 to 13.12.2012, on the wages of Rs.4,471.67/- per month, determined by the Hon'ble High Court in W.P.(C)No.19327/2008, the appellant filed a review application under Sec 7B of the Act. The appellant took a contention that the 3<sup>rd</sup> respondent did not work with the appellant during the relevant period nor any salary is paid to the 3<sup>rd</sup> respondent during the said period. The 1<sup>st</sup> respondent initiated and continued the enquiry under Sec 7A in the capacity as officer in charge of the Sub Regional Office, Kottayam. When the 2<sup>nd</sup> respondent assumed the charge, the 2<sup>nd</sup> respondent continued the enquiry under Sec 7B of the Act. As per the prevailing instructions, the 2<sup>nd</sup> respondent is liable to conduct the enquiry, if the employment strength of a particular establishment is beyond 250. Since the appellant employed more than 250 employees as per EPFO Head office circular No.I/1(5)16/7A/ MOL&E/6242 dated 22.06.2017 the original jurisdiction to conduct an enquiry rests with the 2<sup>nd</sup> respondent. At the time of initiating the enquiry under Sec 7A, since there was no officer in the rank of Regional PF Commissioner, the first respondent initiated the enquiry in his capacity as officer in

charge of the Sub Regional Office. After the 2<sup>nd</sup> respondent assumed the charge, he continued with the enquiry. The Enforcement Officer was directed to conduct a fresh investigation of the records of the appellant after verifying wage register and attendance register for the relevant period. The appellant failed to produce the records called for. The 3<sup>rd</sup> respondent produced the available documents. On the basis of the available documents, the appellant was directed to remit an amount of Rs.4,52,563/-. Since the appellant failed to remit the amount and failed to produce any further records to dispute the provisional assessment, the 2<sup>nd</sup> respondent issued the Annexure A30 impugned order. The Labour Court, Ernakulam in the claim petition filed by the 3<sup>rd</sup> respondent found that the 50% back wages payable from 09.08.1995 - 28.02.2008 was Rs.7,30,843/. The Labour Court further found that for the period from 01.03.2008 to 13.12.2012, the date of superannuation, the 3<sup>rd</sup> respondent is entitled for wages of Rs.8,23,332/-. On the basis of the above, the Enforcement Officer reported the actual provident fund contribution payable by the appellant against the 3<sup>rd</sup> respondent. The back wages would also include

Rs.2,34,465/- paid as per the direction of the Hon'ble High Court in Annexure A1. This also is required to be included in the wages for the purpose of arriving at the contribution. Accordingly the total wages paid for the period from 09.08.1995 to 28.02.2008 is Rs.7,30,843/- and the wages paid for the period from 01.03.2008 to 13.12.2012 is Rs.10,57,797/-. The quantification of wages attained finality with the dismissal of the Writ Appeals filed by the appellant and also SLP No.2943/2017 filed by the appellant before the Hon'ble Supreme Court against the judgement of the Division Bench. As per Para 3 of the daily order sheet dated 11.10.2017, the appellant agreed that the judgement delivered by the Hon'ble High Court of Kerala in furtherance of the calculation sheet submitted by the 3<sup>rd</sup> respondent and the amount arrived by the Hon'ble High Court of Kerala on the basis of the calculation sheet has been upheld by the Hon'ble High Court of Kerala. The calculation sheet approved by the Hon'ble High Court of Kerala had been taken into account while arriving at the wages and also calculating the contribution. A true copy of the order dated 11.10.2017 is produced and marked as Annexure R1(a). Hence the appellant

cannot dispute the quantification of the amount which has become final in view of the dismissal of SLP by the Hon'ble Supreme Court. The claim of the appellant that the 2<sup>nd</sup> respondent cannot go beyond the 7A assessment is not correct as the Proviso to Sec 7B(1) clearly permits suo motu review by the 2<sup>nd</sup> respondent.

4. The 3<sup>rd</sup> respondent filed a detailed reply dated 29.04.2019. The 3<sup>rd</sup> respondent supported the case of the 1<sup>st</sup> and 2<sup>nd</sup> respondent along with the photocopies of all the proceedings initiated by the appellant against him and also the details and copies of the orders issued by various authorities including the Hon'ble High Court of Kerala and also the Hon'ble Supreme Court in the SLP. For the sake of brevity, the contentions of the 3<sup>rd</sup> respondent are summed up as follows. The 3<sup>rd</sup> respondent was dismissed from the service of the appellant and later reinstated as per the direction of the Labour Court. Since the appellant failed to pay the 50% back wages and subsequent regular wages as ordered by the Labour Court, he again approached the Labour Court with claim petitions C.P.No.37/2009 and C.P.No.43/2012. C.P.No.37/2009 was filed



for claiming 50% wages and C.P.No.43/2012 was filed for claiming wages from 01.03.2008 to 13.03.2012 till his date of superannuation. The appellant lost all the cases from the Single Bench of the Hon'ble High Court of Kerala, Division Bench and also the SLP before the Hon'ble Supreme Court. Since the appellant failed to give him the back wages and wages as ordered by the Labour Court, he initiated the execution proceedings. In C.P.No.37/2009, he received a total of Rs.11,46,348/- being 50% of his wages for the period from 09.08.1995 till the date of reinstatement order of the Labour Court dated 28.02.2008. In C.P.No.43/2012, he received a total amount of Rs.10,76,237/- which includes an amount of Rs.2,34,465/- paid as per the interim direction of the Hon'ble High Court under Sec 7B of the Industrial Disputes Act. Accordingly he denied the claim of the appellant that he was not paid the complete amount as per the decisions in C.P.No.37/2009 and C.P.No.43/2012. In the review application under Sec 7B of the Act the 2<sup>nd</sup> respondent noticed that the complete amount due as wages for the period from 09.08.1995 to 30.12.2012 had already been paid and accordingly he revised

the amount assessed under Sec 7A of the Act. As already pointed out, the 3<sup>rd</sup> respondent filed all the copies of the relevant orders along with his counter.

5. After the 3<sup>rd</sup> respondent filed his counter, the appellant filed a further statement dated 15.01.2020. When the proceedings before the respondent authority was pending, the 3<sup>rd</sup> respondent filed two execution petitions before the Sub-Court Kottayam for realising the amount Rs.11,46,348/- in C.P.No. 37/2009 and C.P.No.43/2012. The appellant was allowed to pay the amount in instalments. Copy of the objection filed by the appellant in E.P.No.104 of 2017 and E.P.No.105 of 2017 is produced and marked as Annexure A31 and A32 respectively. The Sub-Court ordered sale proclamation of the properties of the appellant on 04.12.2018 and copies of the sale proclamations are produced and marked as Annexure A33 and A34 respectively. Accordingly sale was scheduled on 2019. Copies of the sale notices are produced and marked as Annexure A35 and Annexure A36 respectively. The appellant challenged the order before the Hon'ble High Court of Kerala as OP(C)No.17/2019 and OP(C)No.18/2019. The Hon'ble High Court passed an interim

direction that the appellant shall pay the entire admitted amount in two equal instalments, copy of the interim orders dated 04.01.2019 are produced and marked as Annexure A37 and A38 respectively. The appellant paid 50% of the admitted amount after deducting the EPF contribution. The deducted amount was forwarded to EPF authorities along with the letter dated 02.02.2019, copies of the letter dated 02.02.2019 is produced and marked as Annexure A39 and A40 respectively. However due to the pendency of the appeal, the amount was returned by EPF authority. In order to avoid any future dispute with respect to the EPF contribution, the appellant filed an IA's in the Original Petition before the Hon'ble High Court seeking permission to effect payments of the deducted amounts to EPF authority. Copy of the IAs are produced and marked as Annexure A41 and A42 respectively. The 3<sup>rd</sup> respondent filed a counter stating that as per the order in the original petition, the appellant is required to pay the complete amount and no deductions are permissible. Copies of the counter affidavits filed by the 3<sup>rd</sup> respondent are produced and marked as Annexure A43 and Annexure A44 respectively. On the basis of the

contentions raised by the 3<sup>rd</sup> respondent, the Hon'ble High Court modified its earlier order dated 04.01.2019 and directed to pay the entire amount as per the order dated 26.03.2019. Copy of the orders are produced and marked as Annexure A45 and A46 respectively. Hence the entire amounts were paid without any deductions in terms of Annexures A44 and A45. The Hon'ble High Court disposed of the original petition by a common judgement dated 26.07.2019. Copy of the said judgment is produced and marked as Annexure A47.

6. During the pendency of this appeal, the learned Counsel for the 3<sup>rd</sup> respondent reported that the 3<sup>rd</sup> respondent expired on 11.11.2019. The IA filed for impleading Sri.Ashish Cherian Zachariah, Mrs. Anju Elizabeth Zachariah and Smt. Aleyamma Zachariah was allowed and they were impleaded as additional respondents 4, 5 and 6 in this appeal.

7. The learned Counsel for the appellant raised two preliminary objections. The 1<sup>st</sup> objection is regarding the fact that the 1<sup>st</sup> respondent issued the Sec 7A Order and therefore the 1<sup>st</sup> respondent ought to have heard the review application

under Sec 7B of the Act. According to the learned Counsel for the respondent, at the time when the 7A enquiry was initiated heard and disposed off, there was no Regional Commissioner posted respondent's office at Kottayam and the 1<sup>st</sup> respondent in his capacity as Officer-in-charge, disposed of the 7A enquiry. By the time the review application was filed, the 2<sup>nd</sup> respondent Commissioner assumed charge and as per their Headquarters instructions, the enquiry under Sec 7A/7B for an establishment employing more than 250 employees will have to be conducted only by the 2<sup>nd</sup> respondent and accordingly the 7B review application was heard and disposed of by the 2<sup>nd</sup> respondent. Though the review under Sec 7B is required to be conducted by the Officer who passed the Sec 7A order, in the circumstances explained by the learned Counsel for the respondent, it is not possible to hold that there is any infirmity in the 7B review application being conducted by the 2<sup>nd</sup> respondent, Regional Provident Fund Commissioner. Any different interpretation to the above provision will only delay the process as the authority conducting the 7A enquiry may be transferred or retired by the time a 7B application is filed and if any interpretation that the

review application shall be heard only by the same Assistant Commissioner/Regional Commissioner can only delay the process of disposal of such long pending matters.

8. The 2<sup>nd</sup> preliminary objection raised by the learned Counsel for the appellant is with regard to the limit upto which an authority under Sec 7B can go, to review the earlier order issued under Sec 7A of the Act. Sec 7B of the Act reads as follows:

*7B. Review orders passed under Sec 7A*

- 1. Any person aggrieved by an Order made under sub-section (1) of Sec 7A, but from which no appeal has been preferred under the Act, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the order was made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of*

*such order may apply for a review of that order to the officer who passed the order....*

*Provided that such officer may also on his own motion review his order if he is satisfied that it is necessary so to do on any such ground.*

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From the above provision, it is clear that an Officer on his own motion can review the order under Sec 7A if he is satisfied that there are some new facts or there is some mistake or for any other sufficient reason. In this case during the enquiry under Sec 7A, the respondent considered only the monthly wages paid from 09.08.1995 to 13.02.2012 on a salary of Rs.4,353/-. The 2<sup>nd</sup> respondent during the 7B review application noticed that the appellant paid an amount of Rs.7,30,843/- for the period from 09.08.1995 till 28.02.2008 as 50% of the back wages as ordered by the Labour Court in C.P. No.37/2009 and a further amount of Rs.10,57,797/- being the salary from the date of the order of

reinstatement ie, on 01.03.2008 to 13.12.2012, the date of superannuation of the 3<sup>rd</sup> respondent. It is relevant to point out that the above back wages or regular wages were paid as per the direction of Labour Court confirmed by the Hon'ble High Court of Kerala. When the additional facts were brought to the notice of the reviewing authority under Sec 7B, he is competent to re-assess the dues on the basis of the additional evidence. There is no infirmity in the order of the 2<sup>nd</sup> respondent. This is a typical case where an employee working with a publication house is terminated from the service and he fought the management all throughout and won his cases starting from the Labour Court, High Court to the Hon'ble Supreme Court of India. The issue involved in this appeal is whether the back wages paid by the appellant to the 3<sup>rd</sup> respondent on the basis of the various court orders will attract provident fund deduction. For brevity, the facts of the case are not repeated. The assessment involves two parts. The first part is with regard to the 50% back wages paid by the appellant from the date of suspension of 3<sup>rd</sup> respondent on 09.08.1995 to the date of reinstatement on 28.02.2008. The amount of wages involved is Rs.7,30,843/-. This amount was



directed to be paid as per the order of the Labour Court in C.P.No.37/2009. This order is later confirmed by the Hon'ble High Court. The 2<sup>nd</sup> part of the assessment pertains to the period 01.03.2008 to the date of superannuation on 13.12.2012. The total amount involved is Rs.10,57,797/- which includes the wages paid under Sec 17B of the Industrial Disputes Act for the period from 01.08.2008 to 13.12.2012 amounting to Rs.2,34,465/-. There cannot be any dispute regarding the amount of wages paid for the period from 01.03.2008 to 13.12.2012 which amounts to Rs.8,41,772. The only dispute is whether the amounts paid under Sec 17B of Industrial Disputes Act will attract provident fund deduction. The 2<sup>nd</sup> part of the wages was also subject matter of CP 43/2012 which has also become final in view of the order of the Hon'ble High Court of Kerala. The learned Counsel for the appellant disputed the liability of the appellant establishment to pay contribution on 50% back wages paid from 09.08.1995 to 28.02.2018 and also the amounts paid as per the direction of the Hon'ble High Court under Sec 17B of the Industrial Disputes Act. The learned Counsel for the appellant pointed out that the appellant

forwarded DD's worth Rs.95,830/- and Rs.89,784/- being provident fund contribution deducted from the amounts paid to the 3<sup>rd</sup> respondent. However the same was returned by the 1<sup>st</sup> respondent vide letter dated 14.02.2019 as there was no provision to receive DD's after the introduction of electronic system of payments by the respondent organisation. The learned Counsel for the appellant also pointed out that they filed an I.A in O.P No. 17 & 18 seeking permission from the Hon'ble High Court to remit the contribution deducted from the amount paid to the 3<sup>rd</sup> respondent, subject to outcome of this appeal. In the counter filed by the 3<sup>rd</sup> respondent, he has taken a view that the Hon'ble High Court has directed the appellant to pay the complete amount and therefore the deduction is not permissible. The Hon'ble High Court in the final order in O.P No.17 & 18 of 2019 held that

*The learned Counsel for the petitioner submitted that certain deductions have been made from the 1<sup>st</sup> instalments paid in terms of interim order under the impression that such deductions are permissible. The*

*learned Counsel undertakes that the short fall in 1<sup>st</sup> instalment also will be paid before 29.03.2019.*

The learned Counsel for the appellant pointed out that in view of the above position the 3<sup>rd</sup> respondent cannot claim the provident fund on the back wages and Sec 17 B wages paid to him. I am not in a position to agree with the contentions of the learned Counsel for the appellant as all the above developments took place during the pendency of the appeal and the Hon'ble High Court has not given any decision regarding the liability of the appellant to remit contribution on back wages.

9. The contention of the learned Counsel for the appellant is that the back wages paid as per the direction of the Labour Court will not come within the definition of basic wages and therefore will not attract provident fund deduction. The learned Counsel relied on the decision of the Hon'ble High Court of Gujarat at Ahamadabad in **Swastik Textiles Engineers Pvt. Ltd. Vs Virjibhai Mavjibhai Rathod and Others**, Special Civil Application No. 4336/1999. In the above case the Hon'ble High Court considered a similar situation wherein the facts are almost same and held that

*In my view, when the court awards back wages for the period, the employee was kept away from the duty, what the court does is to award damages assessed in terms or whole or part of wages the workman would have earned had he been continued in service without interruption. It is not the same as payment of wages for duties performed or for the period deemed to have been on spent on duty. The amount of damages or compensation awarded by a Court would not constitute the 'basic wages' as envisaged by the Act.*

*For the aforesaid reason, I am of the opinion that the amount of back wages paid to the workman did not constitute the 'basic wages' as envisaged by the Act. The petitioner was therefore under no obligation to make statutory contribution to the provident fund under the Act.*

The learned Counsel for the respondent 4 to 6 relied on the decision of the Hon'ble Supreme Court in **Shree Changdeo Sugar Mills Vs Union of India**, 2001 KHC 606. The Hon'ble

Supreme Court held that the back wages paid as per settlement are basic wages within the meaning of Sec 2(b) of Employees Provident Fund Act, as this was a claim of wages for the period during the employees deemed duty. The learned Counsel also relied on the decision of Hon'ble Supreme Court in ***Prantiya Vidhyut Mandal Mazdoor Federation Vs Rajasthan State Electricity Board***, 1992 (2) Supreme Court Case 723, wherein the Hon'ble Supreme Court held that the arrears of wages payable as per a settlement or award will come within the definition of basic wages attracting provident fund deduction.

10. The Hon'ble High Court of Kerala examined the question with regard to the liability to pay provident fund contribution on back wages, as per an award passed by the Labour Court, in ***The Manager, Wallardie Estate, Harrisons Malayalam Limited Vs Regional Provident Fund Commissioner and Another***, W.P.(C).No.40468 of 2018. The facts of this case are similar to the present case. One of the employee of the estate was dismissed from service alleging violation of standing orders. The Industrial Tribunal, Idukki by award dated 28.08.2019 held that the dismissal is illegal and

therefore ordered reinstatement of the workman with back wages and all consequential benefits. The management approached the Hon'ble High Court in W.P.(C).No 934/2010 and the same was dismissed. The management filed Writ Appeal No. 2691/2015 and the same was also dismissed and the award has become final. The employee filed a claim petition before the Labour Court and the Labour Court awarded a sum of Rs.7,55,202/-. The employee approached the EPFO to ensure contribution on the back wages paid by the management. The respondent authority passed an order assessing the dues on the back wages. The same was challenged before the Hon'ble High Court in above Writ Petition. The Hon'ble High Court examined the judgement of the Hon'ble High Court of Gujarat in **Swastik Textiles Engineers Pvt. Ltd. Vs Virjibhai Mavjibhai Rathod and Others**, 2008 1 CLR 953, **Prantiya Vidhyut Mandal Mazdoor Federation and Others Vs Rajasthan State Electricity Board (Supra)**, **Shree Changdeo Sugar Mills Vs Union of India (supra)** and the decision of the Division Bench of the Kerala High court in **K Y Varghese Vs Puthuppadi Service Co-operative Bank Ltd and Others**, W.A No.881/2007 in

detail. In its judgement dated 05.05.2020, the Hon'ble High Court held that

*Para 12 : In view of the above, it has to be held that contribution towards provident fund can only be on basic wage and it is not at all necessary that the workman must necessarily be on duty or that the workman should actually have worked in order to attract the provisions of EPF Act. The judgement of the Gujarat high court in **Swastik Textiles Engineers Pvt. Ltd (Supra)** being against the principles laid down cannot be accepted in the light of the above precedents. Furthermore a Division Bench of this court in **K Y Varghese Vs Puthuppadi Service Co-operative Bank Ltd and Others (Supra)** held that when the workman is reinstated in service with full benefits including back wages, he should have been deemed to be in service from the date on which he has kept under suspension till 16.03.1981, on which day, he was reinstated in service. **Applying the principles above, the workman being covered under the Employees***

***Provident Fund, the employer becomes liable to remit their share of contribution during the period when the workman kept out of service, irrespective of whether the employee had made any contribution or not. The petitioner had a statutory duty to pay the contribution to the EPF and the contention contrary to same cannot be sustained.***

***Para 13 : For the aforementioned reasons I find that the order directing the petitioner to remit EPF and EPS contribution for the period from 10.07.2004 to 02.11.2009 is in order and no interference is warranted . (emphasis added)***

11. It is seen that the Hon'ble High Court of Kerala in the above decision, in a similar fact situation as in this case, disagreed with the decision of the Hon'ble High Court of Gujarat in ***Swastik Textiles Engineers Pvt. Ltd (Supra)*** and held that the back wages paid to the employee will come within the definition of basic wages and therefore will attract provident fund deduction. Sec 17B of the Industrial Disputes Act itself



refers to payment of full wages to the workman pending proceedings in higher courts and it clearly states that the employer is liable to pay full wages last drawn by him inclusive of any maintenance allowance admissible to him under any rule. This becomes particularly relevant when the employee is reinstated with back wages. Hence I am of the considered view that the back wages paid by the appellant to the 3<sup>rd</sup> respondent as per the direction of the Hon'ble High Court will come within the definition of basic wages under Sec 2(b) of the Act attracting provident fund deduction.

Considering the facts circumstance, pleading and evidence in this appeal, I am not inclined to interfere with the impugned order.

Hence the appeal is dismissed.

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