



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

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

(Tuesday the, 12th day of April 2022)

APPEAL No. 386/2019

(Old No. ATA.1444(7)2015)

Appellant : M/s. Adam Public School
Karukutty.P.O.
Karayamparambu,
Angamaly – 683 576

By Adv. P.Ramakrishnan

Respondent : The Assistant PF Commissioner
EPFO, Sub Regional Office,
Bhavishyanidhi Bhavan
Kaloor, Kochi – 682 017.

By Adv. Thomas Mathew Nellimoottil

This case coming up for final hearing on 29.07.2021 and this Tribunal-cum-Labour Court on 12.04.2022 passed the following:

ORDER

Present Appeal is filed from order No. KR/KC/19658/Enf. 5(3)/2015/9851 dated 30.10.2015 assessing dues under Sec 7A of EPF and MP Act 1952 (hereinafter referred to as ‘the Act’) on non-enrolled employees and also evasion of wages for period from

06/2013 to 08/2014. The total dues assessed is Rs. 3,87,177/- (Rupees Three lakh eighty seven thousand one hundred and seventy seven only)

2. The appellant is an educational institution and is covered under the provisions of the Act. An Enforcement Officer carried out inspection at the appellant school on 31.10.2014. The Enforcement Officer thereafter reported that the appellant remitted contribution only on a part of employee's salary from June 2013. The Enforcement Officer addressed a letter to the principle showing their difference in salary under the Act. A true copy of the letter dated 31.10.2014 is produced and marked as Annexure A1. The appellant received a notice dated 28.11.2014 from the respondent alleging that as per the report of the Enforcement Officer, there was default in payment of contribution and failure to remit dues on actual wages for the period from 07/2011 to 08/2014. The appellant was also offered an opportunity for personnel hearing on 13.01.2015. A copy of the notice dated 28.11.2014 is produced and marked as Annexure A2. The appellant appeared before the respondent and filed a detailed written statement. As per the written statement, there were 23

teaching staff and non-teaching staff in this school, out of which atleast half dozen teachers were drawing salary more than the statutory limit. Similarly out of the 7 non-teaching staff, two were drawing the salary beyond statutory limit of Rs.6500/-. The appellant stated that contribution is made only to those employee's who are entitled to be enrolled to the fund. A true copy of the statement is produced and marked as Annexure A3. The enquiry was held on 13.01.2015, 17.02.2015, 07.04.2015, 19.05.2015, 14.07.2015 and thereafter on 28.07.2015. The appellant produced all the registers and documents demanded by the respondent. Ignoring the contentions of the appellant, the respondent issued the impugned order, a copy of which is produced and marked as Annexure A4. The appellant was not given a copy of the report of the Enforcement Officer relied on by the respondent. The allegation about reduction of 25% from the salary and non-enrolment of 10 employees referred to therein is without any basis. Annexure A4 order is issued on the basis of an inspection report dated 11.11.2014 submitted by the Enforcement Officer. The appellant was not aware of its contents since a copy of the same was not made available to the appellant. The

allegation regarding non-enrolment of 10 employees and deduction of 25% from the salary of the employees towards contribution did not find a place either in Annexure A1 or Annexure A2. The respondent assessed Rs.1,64,645/- as if the appellant deducted an additional share of 13% from the employees' wages. Assuming without conceding such deduction, the respondent cannot claim the extra 13% allegedly deducted as contribution from the salary of the employees. The non-enrolled employees against whom the assessment is made is not identified by the respondent in the notice as well as in the impugned order.

3. The respondent filed counter denying the above allegations. The appellant establishment is covered under the provisions of the Act w.e.f. 01.10.2002. An Enforcement Officer who is a notified inspector under Sec 13 of the Act reported that the appellant establishment has not enrolled 10 employees to provident fund membership. The Enforcement Officer also reported that the appellant was deducting 25% of the salary towards provident fund from the salary of the employees and remitting only 12% from 07/2011 onwards. The Enforcement Officer further reported that from June 2013, the salary of the

employees' were increased but provident fund was remitted only on the previous salary. The provident fund deduction from the salary of the employees also continued to be 25%. The Enforcement Officer also reported that the non-enrolled employees were subsequently enrolled to the fund. The Enforcement Officer informed the appellant the discrepancies vide Annexure A1 letter dated 31.10.2014. Since the appellant failed to comply with the directions, the respondent authority initiated an enquiry under Sec 7A of the Act vide notice dated 28.11.2014. A representative of the appellant attended the enquiry and produced the balance sheet for 2012-2014 and challans for remittance of Rs.1,64,645/- for the period March 2012 to June 2013. As per Para 26 A(2), every member employed, other than exclude employees to which the Scheme apply, shall contribute to the fund. Such contribution shall be in accordance with the rates specified in Para 29 of the Scheme. The assessment of dues was done excluding the newly enrolled employees who were drawing salary above Rs.6500/- and limiting the salary of old employees for whom provident fund was deducted @ 25% to Rs 6500/-. The impugned order also took into account the remittance already made by the appellant. Since the

appellant already enrolled the 10 non-enrolled employees, the same was not taken up in these proceedings. The copy of the report of the Enforcement Officer was not provided to the appellant as the appellant never requested for a copy of the same. The claim of the appellant that the respondent cannot claim the extra 13% deducted from the salary is not correct. Deducting the employees share of contribution is an offence under Para 31 of EPF Scheme which states that “Notwithstanding any contract to the contrary the employer shall not be entitled to deduct the employer’s contributions from wage of a member or otherwise to recover it from him”. The Action of the employer in splitting the wages has resulted in not only a substantial loss to the employees by way of their rightful provident fund contributions being drastically reduced, but also affected the long term social security available to them as pensionary benefit available under Employees’ Pension Scheme.

4. According to the learned Counsel for the respondent, the appellant establishment defaulted by not enrolling 10 eligible employees, by splitting up of the wages of the employee and also deducting both the contribution from the salary of the employees

from June 2013. The respondent therefore initiated an enquiry under Sec 7A of the Act. A representative of the appellant attended the hearing and produced the records called for. The respondent issued the impugned order after considering the written submission made by the appellant, the report of the Enforcement Officer and the documents produced by the appellant.

5. In this appeal, the learned Counsel for the appellant pointed out that the respondent authority on the basis of the report of the Enforcement Officer dated 11.11.2014 has made some allegations against the appellant establishment. However, the copy of the report relied on by the respondent authority was not provided to the appellant. According to the learned Counsel for the appellant, they received only Annexure A1 letter from the Enforcement Officer stating that

1. From June 2013 onwards provident fund is remitted only for a part of the salary.
2. As per balance sheet, the total salary paid is Rs.21,49,515 + Rs.2,61,775/- being salary for drivers. However

provident fund is remitted only on a salary of Rs. 7,04,500/-.

The appellant explained the difference in salary vide Annexure A3 reply filed before the respondent authority at the time of 7A enquiry. The other issues raised during the course of 7A were neither raised by the Enforcement Officer nor pointed out by the respondent authority during the 7A enquiry. In such circumstances, the non-furnishing of the copy of the report of the Enforcement Officer prejudicially affected the appellant in defending the case. It is particularly so in view of the fact that one of the findings by the respondent authority is that the appellant establishment was deducting both the contribution from the salary of the employees' from June 2013. The learned Counsel for the respondent argued that the representative of the appellant who attended the proceedings under Sec 7A never raised the issue of not providing a copy of the inspection report and therefore no copy was furnished to the appellant. The learned Counsel for the appellant relied on the decision of the Hon'ble High Court of Bombay in ***Small Gauges Ltd and Others Vs Regional Provident Fund Commissioner***, 2009 (1) LLJ 485, to argue that

the order under Sec 7A of the Act cannot be sustained as it has been passed without furnishing a copy of the report of the Enforcement Officer relied on by the respondent. Unless the report is furnished to the appellant, the same cannot be relied on by the respondent to pass an order. In the special circumstances and pleadings in this case, I am inclined to accept the argument of the learned Counsel for the appellant that they are entitled for a copy of the report of the Enforcement Officer dated 11.11.2014 relied on by the respondent authority in the impugned order while quantifying the dues.

6. The respondent has made a very serious allegation against the appellant establishment that they are deducting 25% of the wages from the salary of the employees from June 2013 onwards. If it is established, the allegation is of very serious nature. The appellant is entitled to not only recover the amount and credit the same to the employees' account, but also take stringent action against the appellant so that similar violations will not be committed by the appellant in future.

7. The impugned order also refers to the non-remittance of contribution on full wages. It is stated that the salary of the

employees has been increased from 06/2013 for all staff but provident fund is being remitted only on basis of the previous salary. This also is required to be clarified whether the appellant establishment is resorting to any subterfuge by excluding certain portion of the salary in the name of allowances. It is seen that the impugned order is a non-speaking on this issue also.

8. Considering the facts, circumstances, pleadings and evidence 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-assess the dues after issuing summons along with a copy of the report of the Enforcement Officer dated 11.11.2014. If the appellant fails to appear or produce any records called for, the respondent is at liberty to finalise the matter according to law. The pre-deposit made by the appellant under Sec 7(O) of the Act as per the direction of this Tribunal shall be adjusted or refunded on conclusion of the enquiry.

Sd/-
(V.Vijaya Kumar)
Presiding Officer