



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

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

(Thursday the, 10th day of March 2022)

APPEAL No. 427/2019 & 475/2019
(Old Nos. ATA. 449(7)2016 & 493(7)2016)

APPEAL No. 427/2019

Appellant : M/s. Express Publications (Madurai)Ltd.
West Hill P.O.,
Kozhikode – 673 005

By Adv. T.C.Krishna

Respondent : The Assistant PF Commissioner
EPFO, Regional Office,
Eranjipalam.P.O.
Kozhikode – 673 006

By Adv.(Dr.)Abraham P Meachinkara

APPEAL No. 475/2019

Appellants : 1. George Poikayil
2. Sam Paul
3. Mohammed Shafeequ
4. Riyas Ali
5. Shijith K
6. Sanesh A
7. Sooraj T.P.
8. Sebastian P.John
9. Akarsha Prakash
10. Joy O.A.
11. Anilkumar M

12. Ramees K.P.
13. Ranjith M.B.
14. Renjith N.R.
15. Vijith Lal T.P.
16. Jijeesh K.
17. Jithesh N.D.
18. Nidhin O.M.
19. Jithin A
20. Anoop E.K.
21. Nidheesh V.P.
22. Sudheer kumar K.
23. Jineesh N.
24. Sreejith Babu N.

By Adv. Paulson C Varghese

Respondents :

1. The Assistant PF Commissioner
EPFO, Regional Office,
Eranjipalam.P.O.
Kozhikode – 673 006

By Adv. (Dr.)Abraham P Meachinkara

2. M/s. Express Publications
(Madurai)Ltd.
West Hill P.O.,
Kozhikode – 673 005

By Adv. T.C.Krishna

These cases coming up for final hearing on 17.11.2021 and this Tribunal-cum-Labour Court on 10.03.2022 passed the following:

ORDER

Appeal No.427/2019 is filed from order No. KR/KK/14142/Enf.1(01)/2016/10966 dated 23.03.2016 assessing dues under Sec 7A of EPF and MP Act (hereinafter referred to as ‘the Act’) for non enrolled employees’ for the period from 05/2013 – 01/2016. The total dues assessed is Rs. 44,28,957(Rupees Forty four lakh twenty eight thousand nine hundred and fifty seven only)

Appeal No. 475/2019 is filed by the non enrolled employees against the impugned order under Sec 7A of the Act.

Since common issues are raised, the appeals are heard together and disposed of by a common order

2. The appellant in Appeal No.427/2019 is a news paper establishment covered under the provisions of the Act. A squad of Enforcement Officers inspected the appellant establishment on 04.12.2014 and reported the names of 52 persons who were directed to be enrolled to the Provident Fund. The appellant vide his letter dated 12.01.2015 informed that all eligible employees have already been enrolled and persons listed and noted by the Enforcement Officer were not employees and they were engaged on contract, on principle to principle basis on their own request and

without any master and servant relationship. Hence it was pointed out that they will not fall within the definition of employee. The appellant also requested that they should be heard before taking a final decision. The respondent initiated an enquiry under Sec 7A of the Act. A representative of the appellant attended the hearing, produced all the records called for and filed a detailed written statement vide letter dated 29.02.2016. The contract persons also got themselves impleaded in the proceeding. They also pleaded that they wanted only contract arrangement and not employment, because contract was more beneficial to them. They informed the respondent authority during the course of proceedings that there is no transfer, no disciplinary proceeding and they are free to take up additional work and earn additional income. They impressed upon the respondent authority that they have voluntarily sought contract arrangement for which no wages was paid and the contract made it clear that there was no master and servant relationship but only principle to principle arrangement. The respondent authority without taking into account the submissions made by the appellants, issued the impugned order. The respondent authority went wrong in holding that independent contract person governed by contract were employees within the

meaning of EPF Act. The respondent authority failed to note that the contract persons were not employed by the appellant. The respondent authority went wrong in holding that the non-existence of Master & Servant relationship is not a criteria for determining whether the persons were employed. The respondent authority failed to note that Master & Servant relationship is the only criteria for determining employment. The respondent authority failed to take note of the fact that the concerned contract employees themselves had appeared through their Counsel and affirmed the genuineness and legitimacy of contract arrangement. The respondent authority ought to have noted that **Ghatge & Patil Concern's Employees' Union Vs Ghatge & Patil (Transports) Private Ltd. & Another**

clearly covers the facts of the present case, because it holds that it is open to the parties to arrive at an arrangement which is best suited to their benefits and interests. The respondent authority exceeded her jurisdiction in not confining her finding only to the preliminary issue before proceeding to compute the alleged dues under Sec 7A. The respondent authority went wrong in assessing the dues without giving an opportunity to the appellant to respond to the way the dues are assessed. The computation is also wrong to the extent

that the assessment is made uniformly as if the contract were in existence for the entire period. The decision of the respondent authority is contrary to the Supreme Court judgement that orders in such cases have to be passed in two stages.

i. As a preliminary issue determining the employer-employee issue, and

ii. Thereafter the question of fitting the respective persons within the Scheme provisions.

3. The respondent filed counter denying the above allegations. The appellant is a newspaper establishment covered under the provisions of the Act w.e.f. 01.09.1994. The appellant defaulted in payment of various dues under the Act and Schemes in respect of 52 non-enrolled employees from their date of eligibility of membership, ie; 13.05.2013 onwards. Hence an enquiry under Sec 7A of the Act was initiated vide notice dated 29.01.2015 fixing an enquiry on 10.02.2015. A representative of the appellant attended the hearing. They produced separate contract agreements between 52 employees and the management and also filed a written statement. The contracts produced by the appellant would clearly show that these non-enrolled employees

are employed to carry out the basic functions of the appellant news paper unit. Hence all the employees clearly fall within the definition of employee under Sec 2(f) of the Act. Besides, all these employees are drawing wages directly from the appellant. On the basis of the records produced by the appellant and also on the basis of the report of the Enforcement Officer, the outstanding dues of 52 non-enrolled employees from 05/2013 onwards have been worked out. The finding of the respondent authority that the contract employees will come within the definition of employee under Sec 2(f) of the Act is legally valid. The appellant establishment appointed regular employees and camouflaged them as contractual employees in order to evade the remittance of dues under the Act. The allegation of the appellant that the contract made by the appellant was accepted by the Assistant Commissioner is false and baseless.

4. Appeal No.427/2019 was admitted by order dated 27.02.2020 on a pre-deposit of 40% of the assessed dues within a period of one month from date of order, with the respondent. The learned Counsel for the appellant filed a memo to the effect that the above order of this Tribunal is stayed by the Hon'ble High

Court of Kerala in WP(C) No. 20921/2020(M). In view of the above the pre-deposit is not insisted and the matter is heard on merit.

5. After completion of the pleadings, both the Counsels on the appellant and respondent side were heard in detail. They also filed respective argument notes along with the copies of the judgements relied on by them.

6. According to the learned Counsel for the appellant, the respondent authority ought to have decided the applicability of the provisions of the Act to the contract employees. According to him, and on the basis of the legal authorities cited by him, the appellant is at liberty to arrive at an arrangement which is best suited to their business interest without violating the provisions of the other Acts. He also pointed out that it is more relevant since the contract persons also supported the arrangement of the appellant. The learned Counsel further pointed out that there is no master-servant relationship between the appellant and since there is no employer – employee relationship, it is not correct on the part of the respondent authority to assess the dues without deciding the preliminary issue. The learned Counsel also challenged the assessment of dues without exposing the appellant

to the basis of calculation. According to him, the assessment of dues is made assuming that all the contracts subsisted during the period of assessment.

7. The learned Counsel for the respondent pointed out that the appellant failed to enrol 52 eligible employees to the fund from their date of eligibility of membership. He further pointed out that the copies of the agreements produced by the appellant would clearly establish the fact that all those employees were employed for doing work in or in connection with the work of the establishment. All those employees are drawing their wages/emoluments directly from the appellant. He further pointed out that, from the Standing Orders of the appellant, it is clear that there is no provision for contract employment. The contract further clearly establishes the fact that they continued for long periods and not confined to the particular contract period. The contract also states that the employees are required to work for New India Express and also other allied publications which shows that there is an element of transfer from one publication to another. It was also pointed out that the contract employees are entitled for allowances which are the normal feature of regular

employee. Further the employee or the appellant will have to give three months notice to terminate the contract which is another feature of the regular employment. Remuneration is fixed per month but it is not based on any quantity or quality of work done by the employees. Relying on the decision of Hon'ble High Court of Calcutta in **Bengal Ingot Company Ltd Vs RPFC**, 1996 (3) LLJ 176, the learned Counsel for the respondent argued that the four essential ingredients for deciding the master-servant relation are

1. Who is the employing authority?
2. The authority who can terminate the service of an employee in accordance with law.
3. Who is the authority to supervise the employee?
4. Who is the authority to pay emoluments to the employees?

The learned Counsel also relied on the decision of the Hon'ble High Court of Chennai in **Madathupatti Weavers Co-operative Production and Sales Ltd Vs RPFC**, 2003 (2) LLJ 795, to argue that the relationship of the appellant and the contract employees was indicative of the master-servant status in substance irrespective of the nomenclature devised by the parties. The

learned Counsel for the respondent also pointed out that the employer or employee cannot contract out of the provisions of the Act. According to the learned Counsel, the impugned order issued by the respondent authority is valid and the assessment of dues is required to be upheld.

8. It is seen that the appellant establishment has raised a preliminary issue regarding the eligibility of the so called contract persons to be enrolled to provident fund membership before the respondent authority. It is seen that, in the written statement dated 29.02.2016, the appellant raised all these preliminary grounds raised by them in this appeal. According to the learned Counsel for the appellant, the respondent authority ought to have decided those issues before finally quantifying the dues. According to him the respondent authority assessed the dues without deciding the question whether the contract persons can be treated as an employee under Sec 2(f) of the Act. The learned Counsel relied on the decision of the Hon'ble High Court of Kerala in **Sasidharan Vs RPFC**, OP.No.1972 / 1979, in the above case, it is seen that the issue decided by the Hon'ble High Court is whether for the determination of the eligibility of an employee for

provident fund membership under Para 26B of Employees' Provident Fund Scheme 1952, whether a notice is required to be issued to the employees. In this case, there is no dispute between the employer and employee to be resolved under Para 26B of EPF Scheme which is particularly so since the contract persons are supporting the case of the appellant. The Hon'ble High Court of Delhi in **Glamour Vs RPFC**, 1975 (1) LLJ 514, Delhi held that such issues fall within the ambit of Sec 7A of the Act itself. The learned Counsel for the appellant also relied on the decision of the Hon'ble Supreme Court in **Express Publication (Madhurai Ltd.) Vs RPFC and Another**, Civil Appeal No. 7383/2014. In that case the Hon'ble Supreme Court held that the preliminary issue whether 47 journalist, working journalist, non-journalist etc are covered under the Provident Fund Act and Scheme is to be decided as a preliminary issue and if the issue is answered in the affirmative, the competent authority will decide whether such employees are entitled to become members of the Scheme as per Para 26B of the EPF Scheme 1952. In this particular case, the issue to be decided is only whether the contract persons will come within the definition of employees under Sec 2(f) of the Act. Hence the respondent authority ought to have decided this preliminary

issue before proceeding to assess the dues under Sec 7A of the Act.

9. On a perusal of the impugned order, it is seen that the respondent authority rightly raised the issues pointed out by the appellant establishment. However she disposed of the issue in one sentence without examining any of the legal issues raised by the learned Counsel for the appellant. According to her,

“While carefully gone (sic) through the subject it is observed that the argument made by the learned Counsel for the establishment are not a criteria for exempting from enrolment and payment of 52 eligible employees to the fund from their date of eligibility of membership”.

10. After raising the issues and after the above reply, the respondent proceeded to assess the dues in respect of the non-enrolled contract persons. It is difficult to uphold this kind of assessments when the preliminary issue was not at all considered by the respondent authority. The respondent authority will have to decide the preliminary issue whether the 52 contract persons will come within the definition of employees before quantifying the dues. If the respondent authority decides to proceed with the

assessment of dues, the method of calculation of dues shall be conveyed to the appellant to say that the assessment is done with regard to the persons during the contract period only and not uniformly for the whole period of assessment.

11. Considering the facts, circumstances, pleadings and arguments in these appeals, I am not inclined to sustain the orders.

Hence the appeals are allowed, the impugned order is set aside and the matter is remitted back to the respondent to decide the preliminary issue and thereafter assess the dues if required within a period of 6 months from the date of receipt of this order, after issuing notice to the appellants in both the appeals.

Sd/-
(V.Vijaya Kumar)
Presiding Officer