



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

Present: Shri.V.Vijaya Kumar, B.Sc., LLM, Presiding Officer.
(Friday the, 4th day of March 2022)

APPEAL No. 502/2019

Appellant : M/s. Kizhakethalackal Rocks
Kumily.P.O.
Idukki – 658 509.

By Adv. Ashok B Shenoy

Respondent : The Assistant PF Commissioner
EPFO, Regional Office,
Kottayam – 686 001

By Adv. Joy Thattil Ittoop

This case coming up for final hearing on 02.12.2021 and this Tribunal-cum-Labour Court on 04.03.2022 passed the following:

ORDER

Present Appeal is filed from order No. KR/KTM/20626/Enf. 1(3)/2019/1578 dated 25.06.2019 assessing dues under Sec 7A of EPF and MP Act (hereinafter referred to as ‘the Act’) for non-enrolled employees for the period from 01/2016 to 09/2018. The

total dues assessed is Rs. 12,89,303/- (Rupees Twelve lakh eighty nine thousand three hundred and three only).

2. The appellant establishment is engaged in the manufacture of Quarry dust and Quarry sand and is covered under the provisions of the Act. The respondent authority vide notice dated 26.03.2019 initiated an enquiry under Sec 7A of the Act for assessing dues from 01/2015 to 09/2018 on the ground that appellant failed to enrol 16 eligible employees to provident fund membership. True copy of the notice is produced and marked as Annexure A1. The above enquiry was initiated on the basis of a report dated 15.01.2019 by the Enforcement Officer. A true copy of the report is produced and marked as Annexure A2. The above said enquiry was initiated on the ground that the salary of the 16 non-enrolled employees was below the statutory limit of Rs.15,000/- on February 2015. It was pointed out to the respondent that the monthly pay was below Rs.15,000/- since the salary was calculated on the basis of the number of days they had worked. A true copy of the written statement filed by the appellant before the respondent authority is produced and marked as Annexure A3. The appellant brought to the notice of

the respondent authority that all the 16 are excluded employees within the definition under Sec 2(f)(ii) of EPF Scheme. Wage registers and check rolls in respect of the employees were also produced before the respondent authority. Without considering the documents produced and the pleadings in their statement, the respondent authority issued the impugned order, a copy of which is produced and marked as Annexure A4.

3. The respondent filed counter denying the above allegations. The area Enforcement Officer during the inspection conducting on 20.07.2018 reported that as per the wage register for 01/2015 to 09/2018, in the month of February 2015, the wages of some of the employees fell below the statutory limit of Rs.15,000/- and the said employees are daily wages employees eligible for enrolment from 02/2015. As per Para 26(3) of EPF Scheme, “an excluded employee employed in or in connection with the work of the factory or other establishment to which this Scheme applies shall, on ceasing to be such an employee, be entitled and required to become a member of the fund from the date he ceased to be such employee.” Since the appellant failed to enrol the 16 employees, the respondent initiated an enquiry

under Sec 7A of the Act. In the enquiry, the appellant submitted Annexure A3 explanation stating that the said 16 daily wages are excluded employees earning more than Rs.15,000/- month and their wages fell below Rs.15,000/- in February 2015 due to lesser number of working days. The appellant also produced the wage register and check roll. After verifying the records, the respondent authority came to the conclusion that the wages of those 16 employees were below the statutory limit as on 02/2015 and therefore cannot be treated as an excluded employee under Sec 2(f)(ii) of EPF Scheme. The appellant failed to produce any relevant records to establish the wages of 16 non-enrolled employees to establish the wages from 01/2015 – 09/2018. The non production of relevant records lead to an adverse inference that the appellants case is false.

4. The issue involved in this appeal is whether the 16 non-enrolled employees will come within the category of excluded employee under Para 2(f)(ii) of EPF Scheme. One of the criteria prescribed under the said Para is that the employee shall be drawing more than the statutory limit of Rs.15,000/- to be considered as an excluded employee. According to the learned

Counsel for the appellant, all the 16 non-enrolled employees were drawing more than Rs.15,000/- and in the month of February 2015, the wages came below Rs.15,000/- since the number of working days were less. According to the learned Counsel for the respondent, Para 26(3) of EPF Scheme mandates that when the salary of an excluded employee comes below the statutory limit, he ceases to be an excluded employee and is entitled and required to become a member of the fund from the date he ceased to be an excluded employee. According to him, in the month of February 2015, all these 16 employees were drawing wages below the statutory limit and therefore they cease to be excluded employees and are liable to contribute under the provisions of the Scheme. As already pointed out , the contention of the learned Counsel for the appellant is that in the month of February 2015, the salary of these employees came below the statutory limit since the number of working days in the month of February is less. This is an issue which is required to be examined on fact. According to the learned Counsel for the respondent, the appellant establishment failed to produce all the relevant records to facilitate a proper decision. Since the appellant failed to produce the records, the

respondent authority was constrained to take an adverse inference. From the pleadings of the respondent and the report of the Enforcement Officer, it is seen that all these employees are daily wagers. If the wages are paid on the basis of the number of days worked by the employees, it is possible that the wages may come down in a particular month when the number of working days are less. The respondent authority ought to have examined this aspect with reference to the records for not only the current period but also previous years and relating the same to the books of accounts of appellant establishment, so that a correct decision in this regard can be arrived. If the wages paid is on monthly basis, the explanation offered by the appellant cannot be accepted. This is particularly so in view of the argument of the learned Counsel of the appellant that prior to February 2015 and subsequently the wages of the employees were beyond the statutory limit.

5. Considering the facts, circumstances, pleadings and arguments 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 authority to re-examine the issue in the light of the above observation 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 in accordance with 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