



सत्यमेव जयते

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

Present: Shri.V.Vijaya Kumar, B.Sc., LLM, Presiding Officer.
(Monday, the 25th day of October 2021)

APPEAL No. 551/2019

Old No. ATA 549 (7) 2010

Appellant

Mar Baselious Marthoma Mathews – II
Training College
Kottarakkara
Kollam – 691 531

By Adv. Alias M Cherian

Respondent

The Assistant PF Commissioner
EPFO, Sub Regional Office
Kollam – 691 001

By Adv. Pirappancode V.S.Sudheer

This case coming up for final hearing on 30.04.2021 and this Tribunal-cum-Labour Court on 25.10.2021 passed the following:

ORDER

Present appeal is filed from order No.KR/12533/KLM/PD 2010-11/10385 dated 30.06.2010 assessing damages under Section 14B of EPF and MP Act(hereinafter referred to as ‘the

Act') for belated remittance of contribution for the months 01/1996 – 02/2003. Total damages assessed is Rs.7,65,000/- (Rupees Seven lakh sixty five thousand only). The impugned order is a composite order and the interest under Sec 7Q for the same period is also being demanded, as per the impugned order.

2. The appellant is a self-financing B.Ed college. The appellant college is managed by a society called 'Bethlehem Ashram, Chengamanad'. The society is registered under Travancore Cochin Literally Scientific and Charitable Society Registration Act 1955. A copy of the registration is produced and marked as Annexure A1. The appellant college started functioning in the year 1995. A copy of the No Objection Certificate issued by Government of Kerala dated 24.10.1995 is produced and marked as Annexure A2. The NCTE granted its recognition vide order dated 08.09.1998, a copy of which is produced and marked as Annexure A3. The college started functioning in the year 1996. In the year 2007, NCTE informed that all the employees working in the college shall be covered under the provision of EPF and MP Act. A true copy of the

order dated 12.11.2002 is produced and marked as Annexure A4. Since the appellant college was employing less than 20 employees, it was not coverable under the provisions of the Act. A true copy of the list of employees engaged by the appellant from the year 1996 – 2007 is produced and marked as Annexure A5. Since the NCTE instructions directed the appellant to extend the benefit of EPF and MP Act to the employees, the appellant decided to cover the employees under the Act. When contacted, the EPF office informed that a separate account number cannot be given to the appellant establishment as they have engaged less than 20 employees. The appellant brought to the notice of the respondent that it is a mandatory requirement by NCTE that all the employees shall be covered under the provisions of the Act. The respondents' office informed that the contribution in respect of the employees of the appellant can be paid through another institution ie; M/s. Mar Baselious English Medium School run by the same community. M/s. Mar Baselious English Medium School was already covered under the provisions of the Act under code No.KR/12533. Accordingly the appellant remitted the contribution in respect of its employees

on 10.07.2007 through the account number of M/s. Mar Baseliious English Medium School. The contribution was calculated from the starting of the college, ie from 01/1996 and an amount of Rs.6,69,684/- was paid through chalan dated 10.07.2007. A true copy of the chalan is produced and marked as Annexure A6. The appellant further paid an amount of Rs.11,28,928/- through chalan dated 25.06.2008. A copy of the chalan is produced and marked as Annexure A7. In the year 2003, an Enforcement Officer of the respondent inspected the appellant college, verified the records and came to the conclusion that the appellant establishment is not coverable under the provisions of the Act since the employees strength was below 20. A copy of the letter issued by the Enforcement Officer to the appellant is produced and marked as Annexure A8. The respondent authority issued a summons dated 04.05.2010 to M/s. Mar Baseliious English Medium School alleging delay in remittance of contribution and also directing the said school to show cause why penal damages shall not be levied for delayed remittance of contribution for period from 01/1996–02/2003. The respondent also enclosed a delay statement along with the Annexure A9 summons.

The appellant filed a written objection dated 11.06.2010, a copy of which is produced and marked as Annexure A10. In Annexure A10, it was pointed out that the appellant and M/s. Mar Baselious English Medium School are independent distinct and separate institutions and there is no unity of ownership, unity of finance, functional intergrality, control and supervision between the two institutions. The appellant establishment is run by Bethlehem Ashram, Chengamanad. A true copy of the Bye-laws of the said society is produced and marked as Annexure A1. The registration certificate of the society is produced and marked as Annexure A11. An English translation is produced and marked as Annexure A12. A true copy of the bank passbook is produced and marked as Annexure A13. The institution namely Mar Baselious English Medium School is owned, administered and managed by one father named P.C.George. A true copy of the bank passbook of the school is produced and marked as Annexure A14. A copy of the letter dated 03.02.1998 issued by the Assistant Educational Officer to the Manager of the school is produced and marked as Annexure A15. A true copy of the Government Order dated 12.02.1998 issued by the Government of Kerala to

the school is produced and marked as Annexure A16. These documents would go to show that both the institutions are independent and separate. The respondent authority rejected the contentions of the appellant and issued the impugned order. The original of the said order is produced and marked as Annexure A17. Now the respondent authority has issued recovery notice, a copy of which is produced and marked as Annexure A18. The respondent ought to have noticed that the appellant covered the appellant establishment under the provisions of the Act voluntarily in view of the directions from NCTE. Since the appellant was not coverable under the provisions of the Act, Sec 14B is not applicable to the appellant establishment. The interest under Sec 7Q of the Act shall apply only from the date of notification and the appellant levied interest as per the impugned order from a prior date. The respondent failed to exercise its discretion provided under Sec 14B of the Act.

3. The respondent filed counter denying the above allegations. The appellant is the principle of M/s. Baseliious Marthoma Mathews II Training College, Kollam. The

employees' of M/s. Baselious Marthoma Mathews II Training College are contributing to provident fund under code no KR/KLM/12533 which is allotted to the establishment M/s. Mar Baselious English Medium School. The date of coverage of M/s. Mar Baselious English Medium School is 01/06/1990. Hence the establishment M/s. Mar Baselious English Medium School and M/s. Baselious Marthoma Mathews II Training College has to be considered as one and the same. M/s. Mar Baselious English Medium School belatedly remitted the contribution under various schemes from 01/1996 – 02/2003. Therefore notice was issued to the establishment to show cause why damages as stipulated under Sec 14B of the Act read with Para 32A of EPF Scheme shall not be recovered from the appellant. The establishment was also called for personnel hearing on 17.08.2010. A delay statement showing the due date, the payment date, month wise dues, period of delay etc. was also provided to the employer for filing their objections. A representative of the appellant attended the hearing and filed a written statement dated 17.05.2010. On the request of the appellant, the enquiry was adjourned to 11.06.2010. There was no representation on

11.06.2010. However a letter is received from M/s. Mar Baselious English Medium School stating that the school was regular in compliance and there was no delay. However it was stated that the delay in remittance of contribution was in respect of M/s. Baselious Marthoma Mathews II Training College which paid the contribution vide chalan dated 10.07.2007. It was also stated that the training college is not coverable as employment strength was below 20. The establishment further stated that the date of remittance is 10.07.2007 and not 25.06.2008 as indicated in the notice. The establishment failed to enrol eligible employees to the fund and therefore violated the provisions of the Act and Schemes. Since the appellant remitted the contribution in the A/c of M/s. Mar Baselious English Medium School, the appellant is required to be taken as part and parcel of school which is covered under the provisions of the Act. After providing adequate opportunity, the appellant issued the impugned order. Since the appeal No. 551/2019 was dismissed vide order dated 30.01.2019, the respondent issued recovery notice for recovery of the outstanding damages and interests. Aggrieved by the said order appellant approached the Hon'ble High Court

of Kerala in WP(C) No.9023 of 2020. The Hon'ble High Court of Kerala vide interim order dated 20.03.2020 stayed the operation of the prohibitory order on condition of remitting an amount of Rs.1,00,000/- within two weeks. The appellant remitted the amount and hence the garnishee order issued by the respondent was withdrawn. As per the records of the respondent M/s. Mar Baselious English Medium School is covered under code No. KR/12533. When the appellant as per the instruction of NCTE decided to enrol the employees to provident fund benefits, they started remitting contribution through the account of the sister concern for the period from 01/1996 – 02/2003. The contention that the appellant voluntarily covered its employee's under EPF and MP Act is not correct. Since the appellant started complying in the code number allotted to M/s. Mar Baselious English Medium School, the appellant has to be considered as a branch of M/s. Mar Baselious English Medium School. M/s. Baselious Marthoma Mathews II Training College and M/s. Mar Baselious English Medium School are run by the same management as stated by the appellant in Para 4. Hence M/s. Baselious Marthoma Mathews II Training College would

have to be taken covered under Sec 2A of the Act. Proceedings for assessing damages are an inevitable step when there is delay in remittance of contribution. The respondent authority has no discretion and if at all there is any discretion it is confined to Sec 14B of the Act and Para 32 of EPF Scheme. The entire amount of damages levied under Sec 14B except for the amount related to administrative charges is firmly allotted to the respective funds and the employees are benefited by the same.

4. The interest demanded under Sec 7Q cannot be challenged in an appeal filed under Sec 7(I) of the Act.

5. According to the learned Counsel for the appellant, the appellant establishment M/s. Baselious Marthoma Mathews II Training College started functioning from the year 1996. As per the instructions issued by the National Council for Teachers Education dated 12.11.2002, which is produced and marked as Annexure 4, the appellant establishment was required to cover its employees under the provisions of the EPF and MP Act. Therefore they approached the respondent's office for a code number and they were informed that the

appellant establishment cannot be covered under the provisions of the Act since the employment strength of appellant establishment was below 20. It is pointed out that the pleading of the appellant cannot be accepted as there is a specific provision under Sec1(4) of the Act for voluntary coverage where in only the employer and the majority of the employees will have to consent to be covered under the provisions of the Act. Hence the claim of the learned Counsel that the respondent office informed them that the appellant establishment is not coverable, is not legally correct. Since there is a mandate from National Council for Teacher's Education to extend the benefit of the Act to its employees, the appellant started compliance under code No. KR/12533 which is allotted to M/s. Mar Baselious English Medium School. According to the learned Counsel for the appellant, these two institutions are independent and are owned and managed by separate institution and person. As rightly pointed out by the learned Counsel for the respondent, in Para 6 of appeal memorandum, the appellant has pleaded that "when it was instructed from the office of the respondent that contribution for the employees may be paid through another institution

namely M/s. Mar Baselious English Medium School run by the same community". In subsequent Paras, the appellant has pleaded that the appellant and M/s. Mar Baselious English Medium School are independent and separate institutions. Hence it can be safely concluded that, the appellant, considering the fact that the two institutions are run by the same community decided to enrol the employees of M/s. Baselious Marthoma Mathews II Training College through the code no allotted to M/s. Mar Baselious English Medium School. The claim of the appellant that it is done as per the instruction of the office of the respondent is denied by the learned Counsel for the respondent. The appellant remitted the contribution for the period from 01/1996 – 02/2003 in two instalments of Rs.6,69,684/- as per Annexure A6 chalan dated 10.07.2007 and Rs.11,28,928/- vide Annexure A7 chalan dated 25.06.2008. Since there was delay in remittance of contribution, the respondent authority issued Annexure A9 notice dated 04.05.2010 directing M/s. Mar Baselious English Medium School to show cause why damages shall not be levied for belated remittance of contribution. The school informed the respondent authority that there was no

delay in the remittance of contribution by them and the delay in remittance of contribution was due to the fact that M/s. Baselious Marthoma Mathews II Training College remitted the contribution in respect of their employees belatedly. In Annexure A10 representation dated 11.06.2010, it was also pointed out that the two institutions are entirely different and also the first instalment in remittance of contribution in respect of Baselious Marthoma Mathews II Training College was remitted on 10.07.2007 and not 25.06.2008 as alleged in the notice. The respondent authority after considering the objections raised by the appellant issued the impugned orders quantifying the damages and interest. It is pertinent to point out that the notice in Annexure A9 was issued to M/s. Mar Baselious English Medium School and the impugned order is issued to M/s. Baselious Marthoma Mathews II Training College Kollam but under the same code number. Though M/s. Mar Baselious English Medium School has taken a contention that the delay in remittance was in respect of contribution by M/s. Baselious Marthoma Mathews II Training College and the respondent has also taken a view that the appellant voluntarily started compliance under the

code no allotted to M/s. Mar Baseliious English Medium School it is not correct on the part of the respondent to issue notice to one of the institution and issue assessment order in the name of another establishment. Further it is seen that in Annexure A10 representation dated 11.06.2010 the appellatant has taken a specific contention that they remitted the contribution on 10.07.2007 and not on 25.06.2008. The impugned order is completely silent on the above aspect. The appellatant produced Annexure A6 chalan to prove that they remitted the first instalment of 6,69,684/-on 10.07.2007 and second instalment of 11,28,928/- on 25.06.2018. On a perusal of the delay statement in Annexure A9, there is no indication of the remittance made by the appellatant on 10.07.2007 and there is no reference to the same in the impugned order. This is a glaring anomaly which is required to be corrected by the respondent authority.

6. In the circumstances narrated above, it is not possible to accept the correctness of the impugned order. The respondent authority will have to examine the above aspects

and issue a fresh order on the basis of the contentions raised by the appellant.

7. The learned Counsel for the respondent pointed out that the quantification of interest under Sec 7Q may not be interfered as there is no provision under Sec 7(I) for challenging the order in appeal. It is seen that the impugned order is a composite order and any change in the date of remittance of contribution will affect calculation in the interest under Sec 7Q order. Further the Hon'ble Supreme Court of India in ***M/s. Arcot Textile Mills Ltd Vs Regional PF Commissioner and Others***, AIR 2014 SC 295 has held when there is a composite order the quantification under Sec 7Q can also be challenged.

8. Considering the facts, circumstances, pleadings and evidences in this appeal, I am inclined to interfere with the impugned order.

9. Hence the appeal is allowed, impugned order is set aside and the matter is remitted back to the respondent to reassess the damages under Sec 14B and interest under Sec 7Q after issuing notice to the concerned parties. The

assessment shall be done within a period of six months from the date of the receipt of this order. If the concerned parties fail to appear before the respondent or fail to produce documents called for, the respondent is at liberty to decide the matter according to law.

Sd/-
(V. Vijaya Kumar)
Presiding Officer