



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

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

(Tuesday the, 8th day of March 2022)

APPEAL No. 562/2019

(Old No.ATA.158(7)2012)

Appellant : The Changanacherry Co-operative
Rubber Marketing Society Ltd.
No. K.364, Karukachal
Kottayam – 686 540

By Adv. Mathew Sebastian

Respondent : The Assistant PF Commissioner
EPFO, Sub Regional Office,
Thirunakkara,
Kottayam - 686001

By Adv. Joy Thattil Ittoop

This case coming up for final hearing on 02.12.2021 and this Tribunal-cum-Labour Court on 08.03.2022 passed the following:

ORDER

Present Appeal is filed from order No. KR/KTM/12247/ENF 1(2)/2010/6699A dated 11.08.2010 assessing regular dues under Section 7A of EPF and MP Act (hereinafter referred to as 'the Act') for the period from 08/2008 – 03/2010. The total dues assessed is

Rs.2,67,170/-(Rupees Two lakh sixty seven thousand one hundred and seventy only)

2. Appellant is a Co-operative Society registered under the provisions of Kerala Co-operative Societies Act 1952. The appellant is engaged in purchase and procurement of rubber and other agricultural products. The members of the appellant society are small holders of rubber and other primary societies. During 1996-1998, the price of natural rubber and latex went down. In order to safeguard the interests of the small holders, the appellant society collected large quantity of rubber latex from the members. The appellant society was forced to sell the collected latex at very low price. The appellant society suffered a loss of more than one crore. The appellant could not pay the monthly wages of its employees from July 2001. To get over the financial crisis and also to get some funding from Government, it was decided to reduce the wages of the employees from July 2000 onwards, in the General Body meeting on 16.09.2002. Pursuant to the said decision the employees were given 1/4th of their salary. Even though it was decided to implement the said decision till 31.03.2004, since the financial position did not improve the 1/4th salary is being paid to

the employees even now. In view of the reduced payment of salary, some of the employees agitated and four employees cut off the electric supply from the motor to the machineries of the P.L.C factories. Disciplinary action was taken against the four employees. During the pendency of the enquiry, the appellant society was prepared to pay 1/4th of the salary as subsistence allowance to the suspended employees. They approached the Deputy Labour Commissioner, Kottayam. Without considering the financial position of the appellant, the Deputy Labour Commissioner, Kottayam ordered full subsistence allowance to the suspended employees. The appellant society challenged the said order before the Hon'ble High Court of Kerala in W.P.(C) No. 6007/2007. After considering the financial position of the appellant society, the Hon'ble High Court granted stay of the order issued by the Deputy Labour Commissioner on the condition of paying 1/4th of the wages as subsistence allowance. A true copy of the order dated 22.02.2007 is produced and marked as Annexure A1. Three of the suspended employees' complained to the respondent organisation with regard to the non-deposit of full provident fund contribution. On the basis of the complaint, an enquiry under Sec 7A was initiated. During the said enquiry also

the appellant society clarified the financial incapacity to pay the entire provident fund contributions legally due. It was also pointed out that from 01.07.2001 provident fund contribution was also being deposited proportionate to the salary disbursed. The appellant society also undertook and assured to deposit the entire contribution legally due, on improving the financial position of the appellant society. Without considering the request, the respondent authority issued the impugned order. The appellant did not deny their liability to pay the entire amount legally due. Their request was only that they could not remit the entire amount due to financial crisis.

3. The respondent filed counter denying the above allegations. Appellant is a Co-operative society covered under the provisions of the Act. The respondent received a complaint from the employees of the appellant establishment that the appellant was not remitting monthly contribution under EPF Scheme. On inspection by an Enforcement Officer, it was confirmed that the appellant establishment defaulted in remittance of contribution. A true copy of the Inspection Report dated 26.04.2010 is produced and marked as Annexure R1. The respondent initiated an enquiry

under Sec 7A of the Act vide notice dated 09.06.2010. The enquiry was adjourned on numerous occasions on the request of the appellant to enable the appellant to produce the relevant records. However the appellant failed to produce any record other than Form 12A. The appellant cited financial constraints as a reason for default in payment of monthly contribution. Financial constraint is not a valid reason for failing to remit the contributions. After giving adequate opportunity and hearing the appellant, the respondent authority issued the impugned order. The averment of the appellant that they were facing financial constraints is not proved by any evidence. The claim of the appellant that the management and the employees agreed to reduce the wages to 1/4th of the wages from July 2001 is also not supported by any evidence.

4. The learned Counsel for the appellant filed an application for production of an additional document in this proceeding. The application was objected to by the learned Counsel for the respondent. However considering the fairness and principles of natural justice, the application was allowed and the minutes of the General Body meeting dated 16.09.2002 is taken as additional evidence.

5. The respondent authority received a complaint from some of the employees of the appellant establishment alleging non-remittance of full contribution by the appellant establishment. The respondent got the matter investigated through Enforcement Officer. The Enforcement Officer vide his Inspectional report, Annexure R1 reported that the compliance of the appellant establishment is not satisfactory as the appellant is remitting only part of the contribution as salary is paid in part. The respondent authority initiated an enquiry under Sec 7A of the Act. Notice was issued to the appellant and a representative of the appellant attended the hearing. The representative of the appellant however failed to produce any documents inspite of various adjournments provided by the respondent authority. The representative of the appellant submitted in the enquiry that the payment of salary to the employees are not regular and due to financial constraints the contribution could not be paid. As financial constraint is not a ground for non-remittance of provident fund, the respondent issued the impugned order.

6. In this appeal, the learned Counsel for the appellant admitted their liability to remit the provident fund contribution.

According to him, the appellant could not remit the contribution due to financial difficulties. The learned Counsel for the appellant argued that as per the General Body Meeting, dated 19.06.2002, it was decided to reduce the take home pay of the employees to 1/4th of the actual salary payable to them. It was also decided that the balance amount of salary will be paid to the employees as and when the financial position of the appellant establishment improves. The learned Counsel for the respondent argued that financial difficulties cannot be pleaded as a ground for non remittance of provident fund contribution. According to him the appellant failed to produce any document to support their claim regarding their decision to reduce the wages temporarily to 1/4th and also to prove that the wages are actually paid at 25% of the wages payable to the employees. The learned Counsel for the appellant pointed out that the minutes of the General Body Meeting dated 16.09.2002, now produced in this appeal, would establish the fact that there was a decision to reduce the salary to 1/4th w.e.f 01.07.2001. On a perusal of the minutes of the General Body Meeting on 16.09.2002, it is seen that there is a decision to reduce the salary of the employees to 1/4th w.e.f 07/2001. It is also decided to pay the difference in salary as and when the financial position of the appellant establishment

improves. Further it is also seen that it was decided to remit the provident fund contribution on the original salary as instructed by the Enforcement Officer of the respondent organisation. It is also seen that as per the above minutes, the decision is to restrict the salary of its employees from 01.07.2001 – 31.03.2004 though no document whatsoever is produced, either before the 7A authority or in this appeal, to substantiate the case of the appellant that the appellant establishment continued to pay the reduced wages even beyond 31.03.2004. The present assessment of dues is for the period from 08/2008 to 03/2010 and therefore it was the responsibility of the appellant to prove before the respondent authority that even during the relevant period of the impugned order ie, 08/2008 to 03/2010, the appellant establishment was paying only reduced wages or atleast there is a decision to the effect that the employees of the appellant can be paid reduced wages during the relevant point of time. It is not the case of the appellant that the salary is reduced to 1/4th. According to the appellant, it was only a temporary phenomenon to tide over the financial difficulty of the appellant establishment with a clear understanding that the complete wages will be paid when the financial position of the appellant establishment improves. According to the learned

Counsel for the respondent, provident fund contribution is assessed on due basis on the salary payable and not on the actual salary paid. Further it is the responsibility of the establishment to pay both the contribution in the first instance and adjust the employees' share of contribution as and when the salary is paid to the employees. The learned Counsel for the appellant admitted the liability. It is specifically pleaded in the appeal memo also. According to him, the financial constraints only prompted then to file the present appeal. It is for the appellant to approach the respondent authority for time to remit the contribution or seeking instalment facility to remit the same.

7. Considering the facts, circumstances, pleadings and evidences in this appeal, I am not inclined to interfere with the impugned order.

Hence the appeal is dismissed

Sd/-
(V.Vijaya Kumar)
Presiding Officer