



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

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

(Thursday the, 28th day of April 2022)

APPEAL No. 567/2019

(Old No. ATA.806(7)2012)

Appellant : M/s. Hotel Evergreen Continental
College Road
Pathanamthitta – 689 645

By Adv. C.M.Stephen

Respondent : The Assistant PF Commissioner
EPFO, Regional Office,
Pattom,
Thiruvananthapuram – 695 004

By Adv. Nita N.S.

This case coming up for final hearing on 17.02.2022 and this Tribunal-cum-Labour Court on 28.04.2022 passed the following:

ORDER

Present Appeal is filed from order No. KR/12801/Enf.1 (5)/2011/11837 dated 15.12.2011 assessing dues under Section 7A of EPF and MP Act 1952 (hereinafter referred to as 'the Act') against non-enrolled employees for the period from 04/2010 –

09/2011 and Order No KR/12801/Enf.1(5)/2012/6127 dated 03.08.2012 under Sec 7B of the Act. Total dues assessed is Rs.87,432/-(Rupees Eighty seven thousand four hundred and thirty two only)

2. This appeal is filed against Order issued under Sec 7B of the Act dated 03.08.2012 and the order issued under Sec 7A of the Act dated 15.12.2011. The copies of the orders are produced and marked as Annexure A1 and Annexure A2 respectively. The respondent authority issued a notice under Sec 7A of the Act on 08.12.2011. An authorised representative of the appellant attended the hearing and produced copies of chalans for having remitted the dues. True copies of the chalans and returns are produced and marked as Annexure A3 series. The respondent authority pointed out that 7 employees of the appellant were not enrolled to the fund. 7 employees were not enrolled to the fund as they were drawing a salary beyond the statutory limit of Rs.6500/. The true copies of the appointment orders of the non-enrolled employees is produced and marked as Annexure A4 series. The appellant was not provided with copies of documents or reports relied on by the respondent. No

opportunity was provided to the appellant to cross examine the Enforcement officer or adduce documentary as well as oral evidence. The respondent authority ought to have decided the eligibility of the non-enrolled employees under Para 26B of the EPF Scheme. Though the appellant produced the salary register of the non-enrolled employees, the respondent authority failed to consider the same.

3. The respondent filed counter denying the above allegations. The appellant establishment is covered under the provisions of the Act w.e.f. 30.09.1995. An enquiry under Sec 7A of the Act was initiated against the appellant on the basis of the report submitted by the Enforcement officer after inspection. The appellant failed to enrol seven eligible employees to provident fund membership during 03/2011 to 09/2011. Copy of the report of the Enforcement officer was served on the representative of appellant establishment on 05.10.2011 under due acknowledgment. Accordingly summons dated 27.11.2011 was issued to the appellant fixing the enquiry on 08.12.2011. Though the summons was acknowledged, nobody attended the enquiry. It is seen that all the non-enrolled employees received

their wages directly from the appellant. The assessment was made on the basis of the records maintained by the appellant and the report of the Enforcement officer. The name of the employees, the date of joining and also the wages paid were provided on the basis of the records produced by the appellant before the Enforcement officer. Hence the assessment of dues is legal and on the basis of the records maintained by the appellant.

4. Present appeal is filed before EPF Appellate Tribunal, New Delhi. The appeal was admitted by EPF Appellate Tribunal vide order dated 05.12.2012. After abolition of EPF Appellate Tribunal the matter was transferred to this Tribunal. This Tribunal issued summons to appellant as well as the respondent. The appellant acknowledged the summons on 26.12.2019. The appellant was represented in this proceeding on 30.01.2020 and 15.02.2021. Thereafter there was no representation for appellant on 29.06.2021, 25.08.2021, 04.10.2021, 01.12.2021, 22.12.2021, and 17.02.2022. Hence the Advocate for the respondent was heard and the appellant

was given three weeks of time to file his argument notes (if any). The appellant did not file any argument note.

5. The respondent raised a preliminary objection stating that the appeal is barred by limitation as the impugned order under Sec 7A was issued on 15.12.2011 and the rejection of review application under Sec 7B is not applicable under Sec 7(I) of the Act. It is seen that the impugned order under Sec 7A was issued on 15.12.2011 and the review under Sec 7B is disposed vide order dated 3.8.2012. Though the rejection of Sec 7B review is not appealable, the said order merges with the Sec 7A order and the limitation will start running only from the date of the 7B order. Any other interpretation in this regard will defeat the very purpose of the appeal as the respondent authority can withhold a review application till the statutory limitation to file the appeal under Sec 7(I) is over. Hence the appeal is filed within the period of limitation and is therefore maintainable.

6. An Enforcement officer of the respondent inspected the appellant establishment and reported that the appellant defaulted in regular dues and also failed to enrol seven eligible employees for the period from 03/2011 – 09/2011. The

respondent authority therefore initiated an enquiry under Sec 7A of the Act. Though summons was acknowledged by the appellant, none attended the hearing. A copy of the report of the Enforcement Officer was provided to the appellant on 05.10.2011 under acknowledgement. The appellant forwarded copy of chalan for having remitted regular dues and therefore the enquiry with regard to the assessment of regular dues for the period from 03/2011 – 09/2011 was dropped. Since the appellant did not raise any objection regarding the non-enrolment of seven employees, the dues in respect of the non-enrolled employees for the period from 04/2010 – 09/2011 was assessed on the basis of the report of the Enforcement officer. The appellant filed an application for review under Sec 7B of the Act stating that two non-enrolled employees, Sri. Nixen and Saji were enrolled to the fund. Further it was stated that other than Sri.Kannan others were drawing a salary of above Rs.6500/-. Sri.Suresh is a Security on contract enrolled with Smart Security Ltd. The respondent authority issued notice directing the appellant to produce records. The appellant produced the salary register to prove that the non-enrolled employees were drawing salary beyond the statutory limit. The Enforcement

officer who verified the salary register informed the respondent authority that the salary register now produced by the appellant are fake as the salary register produced before him for inspection was different and the salary paid was less than Rs.6,500/- as furnished in his inspection report. Since there was a dispute regarding the genuineness of the salary register produced in the Sec 7B enquiry, the appellant was directed to produce cash book, ledger and profit & loss A/c for the relevant period to support his claim that the non-enrolled employees were drawing salary beyond the statutory limit of Rs.6,500/-. However the appellant failed to produce any of the documents. Accordingly Sec 7B review application was rejected.

7. In this appeal, the appellant has taken a stand that all the 7 non-enrolled employees are excluded employees as their salary was beyond the statutory limit. To support his claim, he also produced the so called appointment orders issued to 6 employees. It may be recalled that as per the Sec 7B review application, the non-enrolled employees such as Sri.Nixen and Sri.Saji are already enrolled to the fund and except Sri.Kannan, others are drawing salary of Rs.6,500/-. However the

appointment orders produced in respect of Sri.Kannan, Sri.Nixen and Sri.Saji shows that they were all receiving salary beyond the statutory limit. As rightly pointed out by the learned Counsel for the respondent, these appointment orders now produced in this appeal and the salary register produced before the respondent authority under Sec 7B are manipulated records and therefore the claim of the appellant cannot be accepted. The appellant failed to produce any documents such as cashbook, ledger and balance sheet to support their claim that these 7 non-enrolled employees were excluded employees drawing salary beyond the statutory limit.

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

Hence the appeal is dismissed

Sd/-
(V.Vijaya Kumar)
Presiding Officer