



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

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

(Wednesday the, 4th day of May 2022)

APPEAL No. 57/2021

Appellant : M/s Marthoma Mission Hospital
Chungathara.P.O.
Malappuram – 679 334

By M/s. Babu Varghese Associates

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

By Adv.(Dr.)Abraham P. Meachinkara

This case coming up for final hearing on 13.04.2022 and this Tribunal-cum-Labour Court on 04.05.2022 passed the following:

ORDER

Present Appeal is filed from order No. KR/KK/11519/Enf III(3)/7A/2020-2021/2427 dated 21.06.2021 assessing dues under Sec 7A of EPF and MP Act 1952 (hereinafter referred to as

‘the Act’) for the period from 04/2016 – 10/2019 on non-enrolled employees. The total dues assessed is Rs.7,22,007/- (Rupees Seven lakh twenty two thousand and seven only)

2. The appellant is a hospital and is covered under the provisions of the Act. All the eligible employees are already covered under the provisions of the Act. In order to cope up with the absence of permanent employees on account of their leave, the appellant is constrained to engage employees’ on casual basis. The wages of the employees are being paid from the donations received from the believers of the church. An Enforcement Officer of the respondent verified the records on 07.11.2019 and reported that the appellant failed to remit dues in respect of 25 non-enrolled employees. The respondent initiated an enquiry under Sec 7A of the Act on the basis of the report. A representative of the appellant participated in the enquiry. The enquiry was conducted online due to Covid restrictions. The appellant logged in many times but was not in a position to attend the hearing. A screen shot picture of the log in of the appellant is produced and marked as Annexure A1. The appellant however filed a written statement. The appellant

assured the respondent that the 10 employees now working will be enrolled to the fund. Without giving a further opportunity, the respondent issued the impugned order, a copy of which is produced and marked as Annexure A3. The report of the Enforcement Officer was relied on by the respondent without examining him. The list of employees prepared by the Enforcement Officer contained only the names and no further details such as Date of birth, Father's name, Designation etc. were available in the report. Contribution is payable only on 10 identifiable employees. Steps are being taken to enrol the casual employees who are now working. There are employees who are not eligible to be enrolled to the fund.

3. The respondent filed counter denying the above allegations. The appellant establishment is covered under the provisions of the Act and therefore they are liable to comply with the provisions of the Act in respect of all eligible employees. An Enforcement Officer who conducted an inspection of the appellant establishment found that 25 employees were not enrolled to the fund from their date of eligibility. An enquiry was initiated by the respondent under Sec 7A of the Act. The

appellant was directed to appear with the relevant records on 21.01.2020. The hearing was adjourned to 19.02.2020 and again to 03.04.2020 on the request of the appellant. The enquiry was not conducted for some time due to nation wide lock down. The enquiry was conducted on virtual mode on 15.03.2021 and a representative of the appellant attended the hearing. In view of the subsequent lock down, the enquiry was adjourned to 10.05.2021 and finally adjourned to 21.06.2021. The enquiry was finalised on the basis of the returns filed by the appellant.

4. The appellant filed a rejoinder denying the claims in the written statements. It is pointed out that the non-enrolled employees were not properly identified and the impugned order cannot be sustained in view of the same. The appellant also produced all the notices issued by the respondent for hearing as Annexure A4, A4(a), A4(b) A4(c), A4(d), A4(e) and A4(f). According to the learned Counsel for the appellant, the impugned order is issued without giving a proper opportunity to the appellant to prove the contentions before the respondent authority. According to the learned Counsel for the respondent, the appellant was given more than adequate opportunity, but the appellant failed to

respond to the summons by producing the records called for, however filed a written submission which was taken into account. Another contention taken by the learned Counsel for the appellant is that the non-enrolled employees are not identified by the respondent authority and it is not possible to identify the employee by name. However in the written statement filed by the appellant, it is conceded that 10 of these non-enrolled employees' are still working and they will be enrolled to the fund from the date of their eligibility. The learned Counsel for the appellant relied on the decisions of the Hon'ble High Court of Patna in **Rajkumar Gupta Vs Assistant Provident Fund Commissioner**, 2013 LLR 1254, **Car Scanner Vs EPFO**, 2020 LLR 77 and that of the Hon'ble Supreme Court in **Food Corporation of India Vs APFC and Others**, 1990 (1) SCC 65 and **HP State Forest Corporation Vs RPFC**, 2008 (5) SCC 756 to argue that assessment against unidentified employees is not sustainable. It is seen that the above decisions are rendered by the respective Courts on different facts situations. In this case, it is not correct to say that the employees are not identified. The Enforcement Officer who is an inspector notified under Sec 13 of

the Act conducted an inspection of the appellant establishment and identified 25 employees who were not enrolled to the fund, from the documents maintained by the appellant. Hence it is not correct to argue that the employees are not identified. However the appellant conceded that the 10 non-enrolled employees are still working with the appellant and therefore they will be enrolled to the fund. With regard to the claim of the learned Counsel for the appellant that some of the non-enrolled employees are excluded employees, it is pointed out that the liability to prove that some of them are excluded employees is on the appellant. Considering the claim of the appellant that they were not given proper opportunity to produce the records, it is felt appropriate that the appellant can be given one more opportunity to produce the records and substantiate their claim. However the appellant shall enrol the 10 non-enrolled employees who are still working with the appellant establishment from their date of eligibility and remit their contributions.

Considering the facts, circumstances and pleadings in this appeal, I am inclined to direct the appellant to enrol all the 10

non-enrolled employees to the fund from their date of eligibility and remit the contribution.

Hence the appeal is partially allowed. The assessment in respect of 15 non-enrolled employees is set aside. The 10 employees who continue in the services of the appellant shall be enrolled to the fund from their date of eligibility. The matter is remitted back to the respondent to reassess the dues in respect of the 15 non-enrolled employees. If the appellant fails to appear or fails to produce the records called for, the respondent is at liberty to decide the matter according to law. The pre-deposit made by the appellant as per 70 of the Act as per the direction of this Tribunal shall be adjusted or refunded after completion of the enquiry.

Sd/-
(V.Vijaya Kumar)
Presiding Officer