



सत्यमेव जयते

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

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

(Tuesday the, 25<sup>th</sup> day of January 2022)

**APPEAL No. 642/2019**

(Old No. ATA.195 (7) 2013)

Appellant : M/sEx-Service Mens Organisation of  
Security Service/Conservancy Service  
R.K.Kartha, Memorial Building,  
A.C.Road, Cherthala,  
Alappuzha – 688 524

By Adv. Sankarankutty Nair

Respondent : The Assistant PF Commissioner  
EPFO, Sub Regional Office,  
Bhavishyanidhi Bhavan  
Kaloor, Kochi – 682 017.

By Adv. Sajeev Kumar K Gopal

This case coming up for final hearing on 01.10.2021 and this Tribunal-cum-Labour Court on 25.01.2022 passed the following:

**ORDER**

Present Appeal is filed from order No. KR/KC/27656/Enf-II(1)2013/13874 dated 28.01.2013 assessing dues under Sec 7A EPF and MP Act (hereinafter referred to as 'the Act') on non-

enrolled employees for the period from 10/2011 – 11/2012 and employees share of contribution for the period from 07/2011-11/2012. The total dues assessed is Rs.7,05,176 (Rupees Seven lakh five thousand one hundred and seventy six only)

2. The appellant is a security agency covered under the provisions of the Act. The appellant supplied 46 security personnel, both armed and unarmed to the Alappuzha District Co-operative Bank Ltd. on the basis of a contract. The armed security guards are paid Rs. 11,000/- as monthly salary and unarmed security staffs are paid Rs.7,200/- and Rs.6,900/- each as monthly salary. The salary statement for the months of October 2011 and November 2012 are produced as A1 series. Copy of the wages register for the month of October 2011 is produced as Annexure A2. Copy of the agreement with the Co-operative Bank is produced and marked as Annexure A3. The respondent initiated an enquiry under Sec 7A to assess the dues for the period 07/2011 to 09/2011. The respondent suomoto enlarged the scope of enquiry to determine the contribution in respect of 40 excluded employees deployed to the Co-operative bank. The respondent also summoned the bank authorities to produce the records pertaining to the security men supplied by

the appellant. The Enforcement Officer prepared a statement showing the monthly salary of 40 security men as Rs. 4800/- and Rs.4600/- respectively against actual monthly salary of Rs. 7200/- & Rs. 6900/- for the period from 10/2011 to 11/2012. A true copy of the inspection report and the statement is produced and marked as Annexure A4 and A5 respectively. The appellant is liable to pay the employees share of contribution for the period from 07/2011 – 09/2011 and appellant remitted the said contribution on 06.02.2013. Copies of chalans are produced and marked as Annexure A6 series. The assessment of dues in respect of excluded employees drawing salary beyond Rs.6500/- is based on presumptions and assumptions and is therefore unjust and untenable.

3. The respondent filed counter denying the above allegations. The appellant is a proprietary concern engaged in the supply of security guards. The appellant is covered under the provisions of the Act w.e.f. 01.07.2011. The appellant failed to remit employees' share of contribution for the period from 07/2011–09/2011. Hence an enquiry under Sec 7A was initiated on 03.10.2012. Notice was also issued to Alappuzha District Co-operative Bank to produce details of employees engaged from the

appellant and the payment made thereof. Though the enquiry was initiated to assess the dues for the period from 07/2011 – 09/2011, it was noticed, during the course of enquiry, from the documents produced by Alappuzha District Co-operative Bank, that there is extensive variation in amounts paid by the bank and the wages submitted towards Provident Fund contribution. It was also noticed that the number of employees enrolled to the fund also varied with the number of employees deployed at Alappuzha District Co-operative Bank Ltd. The Enforcement Officer of the respondent organisation was directed to investigate and report compliance. The Enforcement Officer reported the dues in respect of employees engaged at Alappuzha District Co-operative Bank from 11/2011 – 09/2012. The appellant did not dispute the eligibility of the employees and the dues reported by the Enforcement Officer. Accordingly the respondent authority issued the impugned order assessing the employees' share of contribution for the period from 07/2011 – 09/2011 and also the dues in respect of 40 non-enrolled eligible employees for the period from 10/2011 to 11/2012. As per the report of the Enforcement Officer, the wages of 40 non-enrolled employees varied from Rs. 7200/- to Rs. 6900/- month for 12 hours duty.

Proportionate wages for 8 hours were taken as normal wages in respect of 40 non-enrolled employees.

4. The appellant establishment is an agency supplying security guards to principle employers. The appellant establishment was supplying 46 security guards to Alappuzha District Co-operative Bank on the basis of Annexure A3 agreement. According to the learned Counsel for the appellant, the 6 security guards were drawing salary below the statutory limit of Rs. 6500/- and therefore they were enrolled to the fund. However the employees' share of contribution for the period from 07/2011 – 09/2011 was not remitted by the appellant. The respondent authority initiated an enquiry under Sec 7A of the Act to assess the dues in respect of pre-discovery period, ie, from 07/2011 – 09/2011. During the course of enquiry, the respondent authority summoned the Alappuzha District Co-operative Bank for whom the appellant supplied security guards, during the relevant point of time. From the documents produced by Alappuzha District Co-operative Bank, the respondent authority found that 40 security guards were not enrolled to provident fund membership. The respondent authority therefore suomoto enlarged the scope of enquiry to assess the dues in

respect of the 40 security guards. The appellant took a plea that all these 40 security guards are drawing salary beyond Rs. 6500/- and therefore they are excluded employees. On the basis of the report of the Enforcement Officer, the respondent authority issued the impugned order assessing the dues in respect of employees share for the period from 07/2011 – 09/2011 and also dues in respect of non-enrolled employees from 10/2011 – 11/2012.

5. In this appeal also, the learned Counsel for the appellant reiterated its position of the appellant that the 40 non-enrolled security guards are excluded employees as per Sec 2(f) of EPF Scheme since they are drawing salary beyond Rs.6500/- month. According to the learned Counsel for the respondent, the salary computed for these employees are for 12 hours duty and when the proportionate salary for 8hours is worked out all these 40employees become eligible to be enrolled to the fund and accordingly the dues were assessed. On a perusal of Annexure A3 agreement dated 20.09.2011 between Alappuzha District Cooperative Bank and the appellant establishment for supply of security guards, it is seen that the agreement specified Armed security guards for 8 hours duty and also unarmed security

guards for 12 hours night duty at 52 branches and unarmed security guards round the clock in two shifts of 12 hour duty at Head office and ATM sites. Further it is also seen that for Armed Ex-servicemen security guards for 8 hours duty, the monthly salary agreed between the bank and the appellant is Rs. 13000/-month. For unarmed Ex-service security guards for 12 hours duty, the monthly salary is fixed at Rs.7611/-month. The duty hours are fixed by the agreement between the appellant and the bank and the salary is fixed on per month basis. Hence it is not correct on the part of the respondent authority to calculate the wages proportionately on 8 hours duty and come to a conclusion that all these excluded employees will come within the definition of employee and therefore the appellant is liable to remit contribution. The respondent authority ought to have examined whether the 40 excluded employees at any time prior to their present employment were members of Provident Fund and should have insisted for Form 11 in respect of all these employees to confirm the same. Since their previous enrolment to Provident Fund membership could not be confirmed, it is not possible to accept the argument of the learned Counsel for the respondent that if the proportionate wages for 8 hour duty is

taken, all these 40 security guards become eligible to be enrolled to Provident Fund membership.

6. It is already confirmed by the learned Counsel for the appellant through Annexure A6 series of chalans that the appellant establishment remitted the employees' share of contribution for the period from 07/2011 – 09/2011. As already pointed out, the assessment of dues in respect of the 40 excluded employees cannot be sustained in view of the reasons stated above.

Hence the appeal is allowed and the impugned order is set aside.

Sd/-  
**(V.Vijaya Kumar)**  
Presiding Officer