



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

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

(Monday the, 7th day of March 2022)

APPEAL No. 65/2019

Appellant : M/s. Alfeen Public School,
26th Mile, NH 220
Palampra P.O., Kanjirapally
Kottayam – 686 518

By Adv. C. Anil Kumar

Respondent : The Assistant PF Commissioner
EPFO, Regional Office,
Thirunakkara
Kottayam – 686 001

By Adv. Joy Thattil Ittoop

This case coming up for final hearing on 02.12.2021 and this Tribunal-cum-Labour Court on 07.03.2022 passed the following:

ORDER

Present Appeal is filed from order No. KR/KTM/20131/Enf:1(2)/2018/869 dated 20.06.2018 assessing dues under Sec 7A of the Act (hereinafter referred to as 'the Act') on regular dues from 06/2010 – 09/2017, dues on non-enrolled employees from 06/2010 – 11/2015 and dues on evaded wages for the

period from 12/2015 – 06/2016. The total dues assessed is Rs.55,34,218/- (Rupees Fifty five lakh thirty four thousand two hundred and eighteen only)

2. The appellant is an educational institution run by a Charitable Trust. It is an establishment covered under the provisions of the Act. During the period 2015 – 2017 there were three inspections in the appellant establishment. On the basis of the verified documents, the Enforcement Officer raised three demands for non-enrolment of employees and evasion of wages. In the first Inspection report, the omission was Rs.11,31,591/- but in the 3rd report it was enhanced to Rs.56,07,698/-. A true copy of the inspection report dated 21.11.2015 is produced and marked as Annexure-1. True copy of the inspection report based on the inspection conducted on 27.10.2017 is produced and marked as Annexure-2. The respondent authority relied on the report of the squad of Enforcement Officers while quantifying the dues as per the impugned order dated 20.06.2018, a copy of which is produced and marked as Annexure-3. The review application filed was also rejected by the respondent authority vide order dated 04.12.2018, a copy of which is produced and marked as

Annexure-4. 74 employees against whom the assessment is made by the respondent authority are excluded employees as they were drawing a salary beyond the statutory limit. The list of employees in the impugned order contains the names of 158 employees whereas in the narrative part of the order the assessment is made with regard to 142 employees only. The appellant was not given adequate opportunity for personnel hearing before the impugned orders are issued. The figures arrived at by the respondent does not bear any relation to the total wages/salary as furnished in the audited balance sheet and Income and Expenditure A/c of the appellant establishment.

3. The respondent filed counter denying the above allegations. The appellant is a school covered under the provisions of the Act. The respondent received an anonymous complaint dated 23.10.2015 alleging that the appellant violated the provisions of the Act by not extending provident fund benefits to all its employees. Pursuant to the said complaint, an Enforcement Officer was deputed to investigate. The Enforcement Officer reported that 132 eligible employees were not enrolled to the fund. The Enforcement Officer also reported that the appellant

establishment is splitting up wages of its employees to evade provident fund contribution. After the enquiry and perusal of records produced by the appellant, the respondent authority concluded that there is non-enrolment of employees, evasion of wages and also default in remittance of regular contribution. The respondent authority found that the first report of Enforcement Officer was not complete as the appellant failed to produce complete records for inspection. Accordingly an Enforcement Officer was deputed and he furnished his report dated 18.07.2017. The Enforcement Officer also reported that the appellant establishment failed to produce all the relevant records for inspection. Therefore a squad of Enforcement Officers were deputed and they submitted their report dated 05.04.2018. The squad of Enforcement Officers reported that the appellant establishment had remitted part of the regular contribution. However there was large scale non-enrolment of eligible employees and evasion of dues from 06/2010 onwards. The respondent authority initiated an enquiry under Sec 7A of the Act. Eleven opportunities were given to the appellant to produce the relevant records during the course of enquiry. The appellant establishment did not produce the complete records. Therefore the respondent

authority finalise the enquiry on the basis of the records produced by the appellant and also on the basis of the report of the squad of Enforcement Officers. The appellant is liable to remit contribution on allowances other than those allowances which are specifically excluded under the provisions of the Act.

4. The respondent authority received an anonymous complaint dated 23.10.2015 alleging that the appellant establishment is not enrolling all the eligible employees to provident fund benefits. The respondent authority therefore deputed an Enforcement Officer to investigate the complaint. The Enforcement Officer reported that there is a large scale evasion by the appellant establishment as

1. they fail to remit the regular contribution,
2. they fail to enrol all the eligible employees to the fund and
3. the salary of the employee's were split into various allowances to evade the Provident fund contribution.

5. The respondent authority initiated an enquiry under Sec 7A of the Act. A representative of the appellant attended the hearing and produced part of the records called for. Since the

documents produced were incomplete, the respondent authority, relying on the report of the Enforcement Officer and also on the basis of the records produced by the appellant concluded the enquiry assessing the dues.

6. In this appeal, the learned Counsel for the appellant pointed out some basic errors in the impugned order. According to him, the impugned order contains the names of 158 non-enrolled employees but in the narrative part of the order it is stated that only 142 employees are not enrolled to the fund. Further it is also seen that in the calculation part of the impugned order, the dues in respect of 132 non-enrolled employees from 06/2010 to 11/2015 is assessed. It is also seen that in the written statement filed by the respondent authority at Para 5, it is mentioned that the appellant failed to enrol 132 eligible employees to provident fund membership. Hence it is not clear whether the assessment in respect of non-enrolled employees is for 158 employees whose list is furnished in the impugned order or 142 employees as furnished in the narration part of the impugned order or 132 employees as stated in the calculation part of the impugned order as well as in the counter.

7. The learned Counsel for the appellant produced a set of seven additional documents in these proceedings. The acceptance of these documents into the record of the appeal is strongly objected by the counsel for the respondent. However considering the fairness of the matter and also in the interest of justice, the production of additional documents is allowed.

8. According to the learned Counsel for the appellant, 74 of the 158 employees whose names are available in the impugned order are excluded employees as they were drawing a salary beyond the statutory limit. It is seen that no such claim is made by the appellant before the respondent authority at the time of the enquiry under Sec 7A of the Act or the appellant produce any documents to substantiate the present claim of the appellant. The appellant ought to have produced these additional documents before the respondent authority who ought to have verified the correctness of the same before taking a final decision in this matter.

9. Another component of assessment in the impugned order is with regard to the assessment of dues on evaded wages from 12/2015 to 06/2016. The impugned order is completely

silent regarding the components or the allowances on which the said assessment is made. In the written statement filed by the respondent, there is a passing reference that the appellant establishment is splitting wages into several components such as Basic pay, Dearness Allowance, House Rent Allowance and other allowances. However there is no clarity as to which allowances are considered for assessment of dues as components such as House Rent Allowance is specifically excluded from definition of Basic Wages.

10. The third component of assessment of dues is default in remittance of regular dues for the period from June 2010 to September 2017. The appellant has not raised any serious contention regarding this part of the assessment. It was only pointed out that part of the assessed amount has already been paid by the appellant establishment.

11. Considering the facts, circumstances, pleadings and evidence in this appeal, I am not inclined to accept the assessment in respect of non-enrolled employees and also the assessment on evasion of wages. However the assessment of regular dues for the period from 06/2010 to 09/2017 is upheld since the respondent

has already taken into account the remittances made by the appellant during the relevant point of time.

Hence the appeal is partially allowed, the assessment of dues in respect of non-enrolled employees and evaded wages is set aside. The assessment of dues on regular dues is upheld. The matter is remitted back to the respondent to re-examine the dues in respect of non-enrolled employees as well as evaded wages, within a period of six months, after issuing notice to the appellant. If the appellant fails to appear or produce the records called for, the respondent is at liberty to decide the matter in accordance with law. The pre-deposit made by the appellant under Sec 7(O) of the Act as per the direction of this Tribunal shall be adjusted or refunded on conclusion of the enquiry. The appellant may produce all the additional documents produced in this appeal before the respondent authority to substantiate their claims.

Sd/-
(V.Vijaya Kumar)
Presiding Officer