



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

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

(Tuesday the, 17<sup>th</sup> day of May 2022)

**APPEAL No. 675/2019**

(Old No. ATA. 173(7)2012)

Appellant : M/s. Hotel Vanchinadu  
Chanthapura  
Kodungalloor.P.O.  
Thrissur – 680 664

By Adv. A.V.Xavier

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

By Adv. Thomas Mathew Nellimoottil

This case coming up for final hearing on 09.09.2021 and this Tribunal-cum-Labour Court on 17.05.2022 passed the following:

**ORDER**

Present Appeal is filed from order No. KR/KC/27202/Enf II (8)/2011/20855 dated 08.03.2011 assessing dues under Sec 7A

of EPF and MP Act 1952 (hereinafter referred to as 'the Act') and order No.KR/KC/27202/Enf II(7)/2011/11371 dated 19.10.2011 issued under Sec 7B of the Act assessing dues for the period from 01/2010 – 09/2010. The total dues assessed is Rs.1,71,584/- (Rupees One lakh seventy one thousand five hundred and eighty four only). It is seen that the appeal is admitted as per the direction of the Hon'ble High Court of Kerala in its judgement dated 21.12.2011 in W.P.(C) No. 34379/2011.

2. The appellant is a registered partnership engaged in Hotel business. The employment strength of the appellant was below 20, throughout. The provisions of the Act and Schemes thereunder are not applicable to the appellant. On the basis of a report of the Enforcement officer, the respondent authority decided the coverage of the hotel with effect from 12.01.2010. The respondent vide notice dated 01.11.2010 initiated an enquiry under Sec 7A of the Act and directed the appellant to attend the hearing on 25.11.2010. An authorised representative of the appellant attended the hearing. He produced a specimen of the training contract between the appellant and the trainees. The enquiry was further adjourned to 07.12.2010 for production

of books of accounts. The enquiry was further adjourned with a direction to produce vouchers, attendance and wages registers for 2009 – 2010 onwards. On 31.12.2010, the appellant requested for time for production of documents and majority of the documents were seized by the Sales Tax authority in the inspection conducted on 19.11.2010. Without considering the request, the respondent issued an ex-parte order on the basis of the report of the Enforcement Officer. A copy of the report of the Enforcement Officer dated 31.12.2010 was not provided to the appellant. The appellant therefore filed a review application under Sec 7B of the Act. A copy of the impugned order under Sec 7A dated 08.03.2011 is produced as Annexure A1. In the review application, one of the document produced is the Shop Inspection report dated 19.11.2010 which is produced as Annexure A2. Another document produced was the photocopy of the Muster Roll for January 2010 which is inclusive of the trainees to whom no solatium is paid on their absence. Even including the trainees, the number of employees were only 19 on 12.01.2010. On 12.01.2010, one of the trainees was on leave and therefore he was not entitled for a solatium. A copy of the

muster roll for January 2010 is produced as Annexure A3. Another document produced is the pension payment order dated 15.01.2004 of Sri.Venugopal, a Retired Treasury Officer who had been a consultant. He is treated as an Accountant by the respondent. A copy of the pension payment order is produced and marked as Annexure A4. A further document, the passport with expiry date 04.11.2006 of Sri.Devadas, aged 67, a Retired Security Guard who cannot be enrolled for pension benefits is also produced. A copy of the passport is produced and marked as Annexure A5. A copy of the training contract between the appellant and one of the trainees is produced and marked as Annexure A6. During the pendency of the review application, the appellant initiated action for recovery. The appellant appeared before the respondent authority on 09.06.2011. The appellant requested for a copy of the report of Enforcement Officer and therefore the review was adjourned to 13.07.2011. Two officers of the respondent organisations verified the records of the appellant organisation on 29.06.2011 and took photocopies of certain documents and obtained the signatures of the staff. Thereafter the appellant was directed to take the

records to their Trichur office. The documents were taken to the respondent officer at Trichur and the Enforcement officers took photocopies of some documents. A note of inspection was also prepared and they obtained the signature of the appellant's representative in the same. The appellant received a notice for enquiry. Being a bandh day, the enquiry was adjourned to 29.09.2011. The advocate of the appellant appeared before the respondent with the voucher file. The request of the learned Counsel of the appellant for the copy of the report of the Enforcement officer was denied to him. The closing of the enquiry in the review application suddenly was in violation of the principles of natural justice. The appellant sent the request on 01.10.2011 to reopen the enquiry and providing copies of reports of the Enforcement Officer relied on in Sec 7A and Sec 7B proceedings and afford an opportunity to defend the case. A copy of the application is produced and marked as Annexure A7. A copy of the acknowledgement card with date of receipt as 04.10.2011 is produced as Annexure A8. Annexure A7 is not replied by the respondent. However the order on review application is received, a copy of which is produced and marked

as Annexure A9. Annexure A9 order is followed by a recovery notice, a copy of which is produced and marked as Annexure A10. Being aggrieved by the arbitrary action, the appellant approached the Hon'ble High Court of Kerala in W.P.(C)No. 34379 of 2011. The Hon'ble High Court dismissed the Writ Petition vide judgement dated 21.11.2011. A certified copy of the judgement is produced and marked as Annexure A11. The Hon'ble High Court directed the appellant to remit 25% of the assessed dues and approach the EPF Appellate Tribunal and await further orders from the Tribunal. A copy of the DD dated 27.12.2011 which has deposited 25% of the assessed dues is produced and marked as Annexure A12.

3. The respondent filed counter denying the above allegations. The appellant establishment which started functioning w.e.f. 23.04.2006 was covered under the provisions of the Act w.e.f. 01.01.2010 vide coverage notice dated 27.09.2010. The appellant is engaged in the hotel business and therefore is coverable under the provisions of the Act. The appellant himself has submitted the proforma for coverage furnishing the details of number of employees employed in the

establishment as 20 on 12.01.2010. The appellant also furnished the wages of these employees. The copy of the Performa for coverage along with the enclosures are produced and marked as Exhibit R1(1) to R1(4). In these documents the appellant has never claimed that he has engaged trainees. However in the documents produced before the respondent authority under Sec 7A of the Act, Sri. Sreejith, Sri. Chandrababu and Smt. Mallika are termed as trainees. However trainees are not excluded under Sec 2(f) of the Act except those engaged under the Apprentices Act or under Standing Orders of the appellant establishment. The Enforcement officer reported that some of the employees are mentioned as trainees but the appellant does not have any Standing Orders. Further the name of Sri. Venugopalan, accountant whose name is not reflected in the attendance register or wage register appears in the note book maintained by the appellant. Copy of the same was produced by the Enforcement Officer but appellant failed to produce records such as cash book, ledgers etc. for the last 4 years and the profit & loss account, balance sheet, income tax return and ESIC returns

etc. called for by the Enforcement officer. However the Managing partner of the appellant gave a signed list of employees showing the names of 20 employees. The failure on the part of the appellant to produce the records called for compelled the Enforcement officer to recommend coverage w.e.f. 12.01.2010. A copy of the coverage notice is produced and marked as Exhibit R2. The appellant refused to comply on the ground that three of the employees are only trainees. No record to support the contention was produced. In view of the dispute, the respondent initiated an enquiry under Sec 7A of the Act. A representative of the appellant attended the hearing and produced wage register for 10/2009 to 03/2010. The only contention raised by the appellant before the respondent authority was that they never employed 20 employees excluding 3 trainees. It is seen that the so called trainees were also been paid wages. The appellant produced a training contract executed between the Managing Partner and the trainees. Since the employees are not coming under the Apprentices Act or the Standing Orders Act, the trainees were also taken as employees. An Advocate representing the appellant attended the hearing



and produced the ledger for 2009 – 2010 and Profit & Loss A/c, the appellant was directed to produce the vouchers and attendance register / wage register from 2009 – 2010 in respect of all category employees including the contract employees for housekeeping cleaning etc. The appellant requested for time to produce the records as the same has been seized by the Intelligence Officer Squad of the Commercial Tax Department. The enquiry was therefore adjourned. The appellant failed to produce any further documents called for and the respondent therefore issued the impugned order. The appellant filed a review application under Sec 7B of the Act. The appellant also produced the original passbook to prove the date of birth of Sri.Devadas and pension passport of Sri.Venugopal. The name of Sri.Venugopal was not considered for the employment strength and therefore it was not relevant. However Sri.Devadas, though aged 67, is engaged in the work of establishment comes within the definition of employees under Sec 2(f). An employee shall only cease to be the member of Pension Fund from date of attaining 58 years of age. It was also clarified that the provisions of the Act applies to the establishment employing 20

or more "Persons". The representative of the appellant requested for the copy of the report of the Enforcement officer dated 03.10.2012. The same was provided to the representative. The enquiry was adjournment to 13.07.2011 to submit a report in view of the claim of the appellant that they never employed 20 persons as on 12.01.2010. Since the appellant failed to produce any relevant records, the Enforcement Officer submitted his report on the basis of the available informations. The representative of the appellant produced certain vouchers relating to the establishment. However the vouchers pertaining to the housekeeping were not produced. Though the payment of Rs.2012 dated 07.11.2009 is shown towards housekeeping, it pertains to S.S. Laboratory. Hence the genuineness of vouchers is doubtful. Further the vouchers are manually prepared without any machine number. As per Sec 2(f) of the Act, "employee" means any person who is employed in any kind of work and who gets his wages directly or indirectly from the employer and who includes any person employed by or through a contractor in or in connection with the work of the establishment. It also includes apprentices other than

apprentices engaged under Apprentices Act or under the Standing Orders of the establishment. As per Para 26(1)(a) “Every employee employed in or in connection with the work of the establishment to which the Scheme applies shall be entitled and required to become a member of the fund from the day this paragraph comes into force in such establishment”. As already pointed out, the appellant establishment is covered under the provisions of the Act on the basis of the documents and informations furnished by the appellant itself and therefore the appellant cannot take a plea that they never employed 20 or more persons for the purpose of coverage under the provisions of the Act.

4. The appellant filed a rejoinder denying the averments in the written statement. Annexure A1 order dated 08.03.2011 speaks of the inspection report dated 31.12.2010 of the Enforcement Officer Sri.Muraleedharan and determination of dues on the strength of it. The Annexure A9 dated 19.10.2011 refers to a report dated 27.08.2011 of the Enforcement Officers Sri.Muraleedharan and Sri.Vincent Jacob Cheru. The copies of the reports have not been served on the appellant. The copies of

the same were not produced in this appeal also. The claim that the vouchers pertaining to housekeeping was not produced has no relevance as the housekeeping staff has already been included in the attendance register. The 12<sup>th</sup> person in Annexure A3 is employed for housekeeping. The payment of Rs.2012/- to S.S. Laboratory is in connection with the expenses in the housekeeping. The exhibit R1(1) to R1(4) are inadvertently prepared by someone in the office without reference to documents and signed by the appellant without knowing the implications. According to the attendance register, Annexure A3, the number of persons including the three trainees is 19 only. When the 20<sup>th</sup> person joined the service on 12.01.2010, the 19<sup>th</sup> person had already left service on 03.01.2010. Therefore excluding the trainees, number of persons as on 12.01.2010 is only 16. The Standing Orders are for establishments with more than 100/50 employees and therefore the same is not applicable to the appellant. However the appellant is having liberty to impart training to any person who approach him for training. The determination of dues is not based on Exhibit R1(2) or wages in ESI Returns. Sri.Venugopal

cannot be treated as an employee and Sri.Devadas has attained the age of 67 and therefore cannot be counted for employment strength.

5. The appellant is engaged in the business of running a hotel. The appellant establishment was covered under the provisions of the Act w.e.f. 12.01.2010 on the basis of the report of an Enforcement officer. Along with the report, the respondent also filed R1(2) statement of employees with their name, fathers name, date of joining and wages. The above statement is signed by the Managing Partner of the appellant. Further the Enforcement Officer also furnished the employment strength of the appellant establishment from 04/2006 to 07/2010, countersigned under the seal and signature of the appellant. As per these documents, the employment strength of the appellant establishment reached 20 as on 12.01.2010 and therefore the appellant establishment is covered under the provisions of the Act. Since the appellant failed to start compliance, the respondent initiated an enquiry under Sec 7A of the Act. In the 7A, the appellant took a contention that three of the employees engaged as per the list of employees are trainees and one of the

employee has crossed the age of 58 and therefore the four persons cannot be considered for the purpose of coverage. They also took a stand that Sri.Venugopal is not the Accountant but only a consultant for the accounting purposes. After taking into account the documents produced and also the report of the Enforcement Officer, the respondent authority issued an order confirming the coverage as on 12.01.2010 and also assessing the dues from 01/2010 to 09/2010. The appellant filed a review under Sec 7B of the Act. After taking into account all the contentions made by the appellant, the documents produced and the reports of the Enforcement officer, the respondent authority concluded that the appellant establishment was engaging 20 persons as on 12.01.2010 and therefore the appellant is coverable w.e.f. that date and also upholding the assessment as per the Sec 7A order. When the appellant approached the Hon'ble High Court of Kerala in W.P.(C) No 34379/2011, the Hon'ble High Court vide order dated 21.12.2011 allowed the appellant to file this appeal before the EPF Appellate Tribunal on the condition of deposit of 25% of the

amount assessed within a period of 120 days of service under Sec 7B order, dated 19.10.2011.

6. In this appeal the learned Counsel for the appellant reiterated the stand of the appellant before the respondent under Sec 7A and Sec 7B of the Act. One of the contentions by the learned Counsel is that the appellant never employed 20 persons as on 12.01.2010 and therefore the appellant establishment is not coverable from the said date. According to the learned Counsel for the respondent, as per Exhibit R1(2) and Exhibit R1(4), the Managing partner of the appellant himself has given the name of the employees with fathers name, date of joining and wages and therefore the appellant cannot go back on the employment strength to argue that the appellant establishment is not coverable from the said date. The learned Counsel for the appellant argued that Sri.Sreejith, Sri.Chandrababu and Smt.Mallika are only trainees and they are not employees as defined under Sec 2(f) of the Act. According to the learned Counsel for the respondent, these so called trainees are not covered under the exclusion provided under Sec 2(f) as they were not appointed under the Apprentices Act 1961 or the Standing

Orders of the appellant establishment. As per Sec 2(f), the trainees also will come within the definition of employees with specific exclusion of trainees engaged under the Apprentices Act and under the Standing Orders of the appellant establishment. In the present case, none of these trainees are engaged under the Apprentice Act or Standing Orders and therefore they will have to be treated as employees under Sec 2(f) of the Act. The learned Counsel for the appellant relied on the decision of the Hon'ble High Court of Kerala in ***Sivagiri Sree Narayana Medical Mission Hospital Vs Regional Provident Fund Commissioner***, 2018 KHC 542. It is not clear as to how the above decision will come to the rescue of the appellant. In the above case, the Hon'ble High Court decided that the establishments which come under the Standing Orders Act can rely on the model standing orders even if the establishment do not have a certified Standing Order.

7. Another contention taken by the learned Counsel for the appellant is that one of the employee Sri. Devadas has attained the age of 67 and therefore he cannot be treated as an employee for the purpose of coverage. As rightly pointed out by



the learned Counsel for the respondent, there is no age limit for enrolling a member to provident fund and all the employees irrespective of their age are required to be enrolled to the fund. The age restriction comes only under Employee's Pension Scheme and beyond the age of 58 the employer is required to remit pension contribution also along with the provident fund contribution of the employees.

8. Another contention taken by the appellant is that Sri.Venugopal who is a retired employee and who is drawing pension from Government is also an excluded employee. According to the learned Counsel for the respondent, Sri.Venugopal is not considered for the purpose of coverage as his name was not reflected in the list of employees given by the appellant and it was only found during the subsequent verification that Sri.Venugopal is engaged as an Accountant. However it is clarified that as per the definition of excluded employee under Para 2(f) of the EPF Scheme, an employee who having being a member of the fund, and also withdrew the full amount of his accumulation in the fund under Clause (a) or (c) of Sub Paragraph 1 of Paragraph 69 only will be treated as an

excluded employee for the purpose of the Act and Schemes thereunder. A Government employee drawing pension and who was not a member of the provident fund earlier will not be treated as an excluded employee.

9. The learned Counsel for the appellant raised another contention that the employment strength as on 12.01.2010 was only 19 even after taking into account the trainees and also Sri.Devadas. According to him, Sri.Reghu who joined on 01.01.2010 worked only for 2 days and Sri.Chandra Babu the 20<sup>th</sup> person in the Annexure A3 attendance register joined on 12.01.2010. So it is clear that at no point of time the employment strength of the appellant reached 20 and the same was only 19 as on 12.01.2010. He further contented that the appellant signed Exhibits R1 to R4 without knowing the legal implications and the same cannot be accepted for the purpose of coverage w.e.f. 12.01.2010. The learned Counsel for the appellant also contended that the reports of the Enforcement Officer dated 31.12.2010 and 25.08.2011 were not provided to the appellant even on request.

10. The plea of the learned Counsel for the appellant that the employment strength never reached 20 as on 12.01.2020 and there were only 19 persons, as the 19<sup>th</sup> person Sri. Raghu left on 03.01.2010 is required to be examined by the respondent authority before confirming the coverage of the appellant establishment. The claim of the learned Counsel for the appellant that the reports of the Enforcement officers dated 31.12.2010 and 25.08.2011 were not provided to the appellant, even after request, is also in violation of the principles of natural justice. The copies of the documents and reports relied on by the respondent authority shall be provided to the appellant to meet the requirement of natural justice. The learned Counsel for the appellant also raised a contention that the assessment of dues is not done on the basis of the wages furnished in Exhibit R1(2) and also on the wage register produced by the appellant. This is also an issue which requires clarification,

11. Considering the facts, circumstances, pleadings and evidences in this appeal, I am not inclined to sustain the impugned Order.

Hence the appeal is allowed, the impugned order is set aside and the matter is remitted back to the respondent to decide the applicability of the Act on the basis of the observations made above, after issuing notice to the appellant along with the reports of the Enforcement officers. If the appellant fails to appear or produce records called for, the respondent is at liberty to decide the matter according to law. The pre-deposit made by the appellant as per the direction of the Hon'ble High Court of Kerala shall be adjusted or refunded after conclusion of the enquiry.

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