



सत्यमेव जयते

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

Present: Shri.V.Vijaya Kumar, B.Sc., LLM, Presiding Officer.
(Thursday the 7th day of October 2021)

APPEAL No. 737/2019

Old ATA No. 982(7)2012

Appellant : M/s. Sahodaran Ayyappan Smaraka
SNDP Yogam College
Konni
Pathanamthitta – 689 691

By Adv. Pallichal S K Pramod

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

By Adv. Nita N S

This case coming up for final hearing on 26/04/2021
and this Tribunal-cum-Labour Court on 07/10/2021 passed
the following:

ORDER

Present appeal is filed from order No.KR/22966/Enf.1(5)/
2012/8439A dated 09/10/2012 assessing dues under Sec 7A
of EPF and MP Act (hereinafter referred to as 'the Act') on

evaded wages for the period from 11/2009 – 02/2012. Total dues assessed is Rs.68304/-(Sixty eight thousand three hundred and four only).

2. The appellant establishment is covered under provisions of the Act. At the time of coverage there were only eight employees working. Still the appellant establishment was covered in the year 2009 retrospectively w.e.f 08/2005. The amount due towards contribution was assessed under Sec 7A and the same was also remitted by the appellant, to avoid any further dispute. On 08/03/2012, an Enforcement officer of the respondent organisation conducted an inspection and issued the inspection report. A copy of the report is produced and marked as Exbt.A1. The Enforcement officer also enclosed a copy of the Form No. 12A along with the report. A copy of the Form No. 12A is produced and marked as Exbt.A1(a). Thereafter a revised inspection report dated 16/03/2012 was served on the appellant. Copy of the said report is produced and marked as Exbt.A2. In Exbt.A2, the Enforcement officer reported that there is evasion of wages and therefore a revised

Form 12 was also enclosed along with inspection report. Copy of the said revised Form No. 12A is produced and marked as Exbt.A2(a). The respondent authority initiated an enquiry on the basis of the report of Enforcement officer. Copy of said summons is produced and marked as Exbt.A3. The appellant send a letter dated 24/04/2012 in response to the summons requesting for copies of documents relied on by the appellant for initiating such proceedings. A copy of the said letter is produced and marked as Exbt.A4. A representative of the appellant attended the hearing and filed objection dated 04/07/2012. A copy of the said objection is produced and marked as Exbt.A5. Thereafter, a preliminary order dated 01/08/2012 was received from the respondent. Copy of the said order is produced and marked as Exbt.A6. On 21/08/2012, the appellant appeared before the respondent and pointed out that the actual wages paid to the employees' and the employers' share of contribution are shown in the acquaintance role and the Enforcement officer by mistake stated that there is evasion of wages. The amount received from the head office of the appellant towards employers' share

of contribution was clubbed as gross salary by the Accountant and there was no splitting or evasion of wages. In order to prove the same, statements signed by all employees were produced. A copy of the said statement is produced and marked as Exbt.A7. During the month of April 2011 to February 2012 a special allowance of Rs.1000/- for seven employees and Rs.754/- for rest of the employees were paid while a course of the college was approved as aided by the Mahatma Ghandi University. Special allowance paid for certain persons will not attract PF deduction. The appellant received another notice dated 07/09/2012 informing the appellant to appear on 24/09/2012. A representative of the appellant attended the hearing. By that time there was change in respondent authority. The representative of the appellant requested the respondent authority vide letter dated 25/09/2012 to summon the Enforcement officer for cross examination. A copy of the said letter is produced and marked as Exbt.A8. Without considering the Exbt.A8 representation and also without allowing the cross examination of the Enforcement officer, the respondent issued the impugned order.

There is variation in amounts as per the report of the Enforcement officer in Exbt.A6 and the impugned order Exbt.A9. The appellant filed Exbt.A4, A5, and A8 objection which were not considered by the respondent. The amount recorded in Exbt.A2(a) is payment already effected towards employers' share of contribution for respective months and again demanding provident fund contribution on the said amount is irregular.

3. The respondent filed counter denying the above allegations. The appellant establishment is covered under provisions of the Act w.e.f. 01/04/2002. It was reported that there was evasion of wages in remitting the contribution and therefore, an enquiry under Sec 7A of the Act was initiated by fixing the date of enquiry on 26/04/2012. The hearing was adjourned to 24/05/2012 and 04/07/2012. The appellant was represented in the enquiry. A copy of the report of the Enforcement officer was handed over to the appellant to file objections, if any and the enquiry was adjourned to 31/07/2012. None attended on behalf of the appellant.

However the respondent authority received fax message from the appellant stating that their objection had already been filed on 04/07/2012. The appellant did not file any written objection. On verification of the acquaintance role, it was seen that the employees are in receipt of gross salary i.e, a consolidated figure without any splitting of salary. For the provident fund contribution from 01/2010 to 03/2011, the appellant is, therefore, liable to remit contribution on the gross salary as all the employees were receiving less than Rs.6500/-. It was also noticed from the acquaintance roll that the employer's contribution have been made on the gross salary. Hence the appellant is liable to contribute the same amount towards employees' share also to be deducted on gross salary. Under the column employees' share, the contribution shown is less than the contribution show in the employer's share of contribution. Accordingly there is a difference in the employees' and employers' share of provident fund contribution which was not explained by the appellant. From 04/2011 onwards the employees' were granted an additional allowance @ Rs.1000/- for 7 employees' and Rs.754/- to the rest of the

employees. The allowance is being paid uniformly to all the employees'. The major discrepancy pointed out in salary records are

- a) There is difference between employer and employees share of contribution. The employees' share of contribution is less than the employers' share of contribution. The employers' share of contribution is calculated on gross salary. The difference in contribution was not explained by the appellant.
- b) For the period 04/2011 onwards the appellant is giving a special allowance to its employees. No provident fund is deducted from the allowances.
- c) It is seen from the acquaintance role that the management has deducted both employers' and employees' share from the gross salary of the employees.

4. The appellant establishment is run by the corporate management of SNDP Yogam and it has four unaided institutions. These four unaided colleges started functioning

from 01/08/2005 and therefore the appellant establishment was covered under Sec 2A of the Act as a unit of SNDP Yogam Corporate Management. The part 2 report of the Enforcement officer only reported the employment strength and the remittance made by the appellant. Item No.4 of the report dated 08/03/2012 has indicated that a revised part 2 report will be issued separately. Accordingly a revised part 2 report was issued on 16/03/2012 informing the evasion by the appellant. The Enforcement officer during the inspection noticed that the wages shown in the acquaintance role and Form 12A report submitted by the appellant to the respondent office varies. The appellant failed to explain this anomaly to Enforcement officer or respondent authority. The respondent authority invoked the powers under Sec 7A of the Act and he is competent to conduct the enquiry as per the provisions of Code of Civil Procedure code. It is evident from the records and registers of the appellant that there was a mismatch between the total monthly salary shown in the acquaintance role and Form 12A report submitted to the office of the respondent. The appellant did not remit contribution as per the

acquaintance role maintained by the appellant. It is also clear from the records that there is a difference between the employees' and employers' share of contribution as per the acquaintance role. The employees' share is less and the employers' share is higher and is calculated on the gross salary. The request for examination of the Enforcement officer was made on 25/09/2012 after conclusion of the proceedings on 24/09/2012. As per Sec 2(b) of the Act, the basic wage is defined to include all emoluments but specifically excludes certain components. The special allowance paid by the appellant to its employees' will not come within the excluded category and therefore will attract provident fund deduction. In **Gujarat Cypromat Ltd Vs APFC**, 2005 LAB IC 422, the Hon'ble High Court of Gujarat held that "the term 'basic wages' is defined to mean all emoluments which are earned by an employee. In cases where Legislature intended certain benefits to be excluded from the meaning of the term 'basic wages', the same has been specifically provided for". The Hon'ble High Court of Bombay in **Hindustan Lever Employees Union Vs Regional Provident Fund Commissioner and Another** 1995

LAB.IC 775 held that in context of the term “basic wages” as defined under Sec 2(b) unless the payment falls in any one of the specifically mentioned exempted categories, every emolument earned by the employee while on duty, leave or on holidays with wages, in either case, in accordance with the terms of contract of employment and which are paid or payable in cash to him, must be included in basic wages.

5. There are basically two issues that are raised in this appeal. The first issue is with regard to the difference in wages on which the contribution is paid by the appellant establishment. According to the learned Counsel for the appellant, the issue arose because the gross salary reported from the corporate office of the appellant establishment included the employers’ share of contribution. The employees’ also filed a statement to that effect before the respondent authority. However the issue involved is entirely different, as can be seen from the impugned order as well as the reply filed by the respondent authority. According to the learned Counsel for the respondent, the actual issue is the difference in

contribution made by the employer and employees'. The appellant has remitted contribution on gross wages. However it is seen that the employees' contribution is lesser than the contribution paid by the appellant establishment. The explanation offered by the appellant that the clerk by mistake included the employers' contribution in the gross salary, will not explain a lesser contribution by the employees'. This anomaly is noticed on the basis of the records such as the salary register for the relevant months and the statutory return in Form 12A filed by the appellant establishment. The respondent in the impugned order only attempted to correct this anomaly and therefore there is no issue as such as pointed out by the appellant in this appeal. In the normal course the employees and employers share of contribution shall be equal and the reason for lesser contribution by the employees is not explained by the appellant. As rightly pointed out by the learned Counsel for the respondent, the request for examining the Enforcement officer is seen to be made after conclusion of the proceedings and the respondent cannot be held responsible for non-examining the Enforcement officer in the proceedings.

Further the examination of the Enforcement officer will not in any way help the appellant, as the issue to be corrected is clear from the records available to the respondent authority.

6. Another issue raised in this appeal is with regard to the special allowance being paid to the employees' by the appellant. According to the learned Counsel for the appellant, a special allowance was being paid to the employees because a course conducted by the college was approved as "aided" by the Mahatma Gandhi University. However as per Exbt.A8 dated 25/09/2012 filed by the appellant before the respondent authority, it is stated that a special allowance was being paid to the employees for their extra time spend to improve the academic career of the students. It is clear from the contradictory stand that the special allowance paid to the employees are without any reason and is only to escape provident fund payment. The test laid down by the Hon'ble Supreme Court in various judgements, when applied to the facts of the present case, will clearly establish that the special

allowance being paid to the employees will form part of basic wages and will attract provident fund deduction.

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

Hence the appeal is dismissed.

Sd/-

(V. Vijaya Kumar)
Presiding Officer