



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

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

(Friday the, 15th day of July 2022)

APPEAL No. 764/2019

(Old No. ATA.881(7)2012)

Appellant : M/s. Reghu Associates
Hill view, Madhu Bridge
Thiruvallam
Thiruvananthapuram – 695 027

By Adv. C.M.Stephen

Respondent : The Assistant PF Commissioner
EPFO, Regional Office
Pattom
Thiruvananthapuram – 695 006

By Adv. Ajoy.P.B

This case coming up for final hearing on 13.07.2022 and this Tribunal-cum-Labour Court on 15.07.2022 passed the following:

ORDER

Present Appeal is filed from order No. KR/22889/Enf. 1(5)/2012/7255 dated 04.09.2012 assessing dues under Sec 7A of EPF and MP Act 1952 (hereinafter referred to as 'the Act')

on non-enrolled employees for period from 12/2008 – 03/2011. The total dues assessed is Rs.2,02,440/- (Rupees Two lakh two thousand four hundred and forty only)

2. The impugned order is produced and marked as Annexure A1. The appellant is a proprietary concern for the purpose of taking over and discharging earth works of BSNL on contract basis. The appellant is not coverable under the provisions of the Act. However the respondent covered the establishment retrospectively on 26.02.2009 w.e.f. 01.12.2008. A true copy of the coverage notice is produced and marked as Annexure A2. The appellant did not employ 22 persons as on 01.12.2008 or any subsequent days. The appellant employed 22 casual employee's upto 01.12.2008 and regular staff of less than 6 employees. In pursuance of Annexure A2 notice, 6 causal employees were enrolled to the fund w.e.f. 01.12.2008. The appellant continued paying contribution with respect of 6 employees. A true copy of the Form 12-A filed by the appellant is produced and marked as Annexure A3. The respondent initiated an enquiry under Sec 7A of the Act for the period from 01.12.2008 to 31.03.2011. The appellant never employed 10

employees and therefore no contribution was due. A true copy of the statement submitted by the appellant before the respondent is produced and marked as Annexure A4. The contention that the appellant failed to produce records is not correct. The appellant produced wage register and muster roll and the appellant was never directed to produce records like cash book, ledger etc. The respondent failed to identify the non-enrolled beneficiaries. The respondent ought to have decided the eligibility of the employees to be enrolled under Para 26-B of the EPF Scheme.

3. The respondent filed counter denying the above allegations. The appellant establishment is covered under the schedule head "Building and Construction" by notification No. GSR 1069 dated 11.10.1980. The coverage notice was issued on 26.02.2009. As per the proforma of coverage submitted by the appellant during the time of coverage, the appellant employed 22 persons. A copy of the coverage proforma is produced and marked as Annexure R1. The Enforcement Officer reported that the appellant was remitting contribution only for six employees on a total wage of Rs.18,000/month in

12/2008, five employees with total wages of Rs.11,700/- in 04/2009, Rs.15,200/- for five employees on 12/2009 and Rs.12,000/- for four employees in 01/2011. For no work period, the appellant remitted only the administrative charges. The Enforcement Officers submitted the original wage register along with this report for the period from 09/2008 to 12/2008. The register shows that there are 22 employees engaged and salary has been paid to all 22 employees and all the 22 employees signed the salary register. Since the salary paid to the employees and employment strength does not tally with the information submitted along with the coverage proposal, an enquiry under Sec 7A of the Act was initiated. The main discrepancy was regarding the number of employees enrolled and the monthly wages paid from the date of coverage which did not agree with the information furnished by the appellant in the proforma for coverage. The appellant filed a reply. The appellant was directed to produce the necessary records. On his requests, the enquiry fixed on 29.12.2011 was adjourned to 01.02.2012, 29.02.2012 and then 29.03.2012. The appellant finally appeared on 03.05.2012 and filed his objection. The

Enforcement Officer was directed to offer his comments on the objection filed by the appellant. According to him as on the date of coverage and as per the coverage proposal given by the appellant, the appellant establishment was employing 22 employees. Out of the 22 employees 10 are eligible to be enrolled. The appellant remitted contribution on a fixed salary for five or six employees and not in respect of all eligible employees. Hence it is clear that the appellant establishment failed to remit contribution in respect of all eligible employees on the wages paid to them.

4. Present appeal was filed before the EPF Appellate Tribunal, New Delhi and the same was admitted by the Tribunal by order dated 24.01.2013. After transfer of the files to this Tribunal, notice was issued to the appellant and the same was acknowledged. There was representation for the appellant on 26.02.2020. Thereafter there was no representation for the appellant on 16.12.2020, 03.09.2021, 07.10.2021, 22.12.2021, 17.02.2022 and 13.07.2022. Since there was no representation, the learned Counsel for the

respondent was heard and the matter is taken up for final orders.

5. According to the appellant, the appellant establishment is not coverable under the provisions of the Act as the employment strength never reached 20. According to the learned Counsel for the respondent, the proforma for coverage submitted by the appellant clearly shows the employment strength of the appellant establishment as 22 with their names, name of father, date of joining and the wages paid. On a perusal of Exhibit R1, the proforma for coverage submitted by the appellant, it is clear that the appellant establishment was employing 22 employees and therefore is coverable under the provisions of the Act w.e.f. 01.12.2008. Another contention raised by the appellant is that the appellant remitted contribution in respect of 5 to 6 regular employees every month. The Annexure A3 series of Form 12-A produced by the appellant clearly indicates that the contribution is paid only in respect of 4 to 6 employees and also on a fixed wages. According to the learned Counsel for the respondent, the wages on which the contribution is paid has no co-relation with the

actual salary paid by the appellant. The appellant relied on the wage register of the relevant period produced by the Enforcement Officer to arrive at the actual contribution payable by the appellant establishment. Hence I don't find any infirmity in the assessment made by the respondent authority as per the impugned order.

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

Hence the appeal is dismissed.

Sd/-
(V.Vijaya Kumar)
Presiding Officer