



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

Present: Shri.V.Vijaya Kumar, B.Sc., LLM, Presiding Officer.
(Friday the, 29th day of April 2022)

APPEAL No. 778/2019

Appellant : College of Veterinary and Animal Sciences
Mannuthy
Thrissur – 680 601

By Adv. Manoj Ramaswamy

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

By Adv. Sajeevkumar K Gopal

This case coming up for final hearing on 30.03.2022 and this
Tribunal-cum-Labour Court on 29.04.2022 passed the following:

ORDER

Present Appeal is filed from order No. KR/KC/13818/Enf
IV(4)2017/8563 dated 22.09.2017 assessing regular dues under
Sec 7A of EPF and MP Act 1952 (hereinafter referred to as ‘the Act’)
for the period from 02/2015 – 01/2016. The total dues assessed is

Rs. 1,95,444/- (Rupees One lakh ninety five thousand four hundred and forty four only)

2. The Veterinary College is having four hostels, Undergraduate hostel (Main), Undergraduate hostel Annex (Men), Postgraduate Hostel (Men) and Ladies Hostel (Undergraduate and Postgraduate). Mess of these hostels are run by Mess Committees of students run by the student representatives. The university is not providing any finance for running the mess. The respondent authority passed Exhibit P4 and P5 orders on the ground that the warden is in charge of the affairs and is therefore entitled to be covered under the provisions of the Act. The university is having its own provident fund and therefore Provident Fund Act is not applicable to Kerala Veterinary and Animal Science University. The appellant received a notice from the Enforcement Officer of the respondent organisation dated 28.10.2015 and the same was replied by the university. A true copy of the agreement signed between the contractors and Secretary of the Students Committee on 01.01.2016 is produced and marked as Annexure A2. The hostel committee is elected every year. Thus it is evident that the

mess workers are not engaged in or in connection with the college and the mess workers are not paid by the college.

3. The respondent filed counter denying the above allegations. The appellant along with the four hostel messes maintained by the appellant are covered under the provisions of the Act w.e.f. 01.12.1990. The appellant disputed the applicability on the ground that the hostels are independent entities. The matter was taken under Sec 7A and the respondent authority decided that the provisions of the Act is applicable to the hostels run by the Veterinary College. A copy of the order is produced and marked as Exhibit R1. The appellant filed OP No. 9583/1996 before the Hon'ble High Court of Kerala against Exhibit R1. The Hon'ble High Court directed the appellant to file statutory appeal before the EPF Appellate Tribunal. The appellant filed Appeal No.ATA 53(7)2004 before the EPF Appellate Tribunal. The Tribunal issued a detail speaking order upholding Exhibit R1. The order of the Tribunal dated 26.02.2005 is produced and marked as Exhibit R2, wherein the Tribunal held that all the hostels in Veterinary College are coverable under the provisions of the Act. While disposing off the matter, the Tribunal has also relied on the communication dated

08.03.1995 issued by the Kerala Agricultural University to the respondent intimating that they have already issued necessary direction to the appellant to comply with the provisions of the Act in respect of the mess employees. The order of the EPF Appellate Tribunal was challenged by the appellant before the Hon'ble High Court of Kerala in WP(C) No. 23554/2005. The Hon'ble High Court vide judgement dated 17.10.2013 directed the appellant to comply with the provisions of the Act w.e.f. the date of coverage i.e. 01.12.1990. The warden of the College of Horticulture also challenged the Exhibit R2 before the Hon'ble High Court of Kerala in WP(C) No.23586/2005. A copy of the judgement dated 26.05.2016 in WP(C) No. 23586/2005, which is a common judgement, is produced and marked as Exhibit R4. The respondent issued a Prosecution Notice dated 28.10.2015, a copy of which is produced and marked as Exhibit R5. The appellant filed a reply dated 11.11.2015, a copy of which is produced and marked as Exhibit R6. Based on this, an Enforcement Officer visited the establishment on 18.02.2016 and submitted a report dated 15.04.2016, a copy of which is produced and marked as Exhibit R7. On the basis of the report of the Enforcement Officer, an enquiry under Sec 7A was initiated for assessment of dues fixing the date of

enquiry on 28.09.2016. After providing 11 opportunities, the respondent authority finalised the enquiry on 27.07.2017. The appellant filed an application for review under Sec 7B of the Act. The appellant was provided 10 opportunities in the Sec 7B review application starting from 12.01.2018 to 02.04.2019. After considering all the issues raised by the appellant, the respondent authority dismissed the 7B review application, a copy of which is produced and marked as Exhibit R9, upholding the issues under Sec 7A of the Act. The Hon'ble High Court of Madras in **IIT Vs RPFC**, 1980(40)FLR 123, held that where an educational institution runs a mess as a subsidiary or incidental to its primary activity of imparting education, then the mess is not an independent establishment.

4. The learned Counsel for the appellant challenged the impugned order on the ground that the provisions of the Act is not applicable to the hostels run by College of Veterinary and Animal Science. The learned Counsel for the respondent pointed out that the issue regarding the coverage is already settled in a previous proceedings starting from Sec 7A proceedings. Appeal before the EPF Appellate Tribunal and the final decision by the Hon'ble High

Court of Kerala deciding that the mess workers working in the hostel attached to the appellant will come under the provisions of the Act. The appellant either suppressed the above round of litigation and conclusion by the Hon'ble High Court of Kerala in WP(C) No. 23586/2005 that the mess workers are coverable under the provisions of the Act or were not aware of the same. It is seen that the Hon'ble High Court has considered all the contentions now raised by the appellant in this appeal and rejected the same. It is also relevant to point out that the EPF Appellate Tribunal in its order dated 26.02.2005 in ATA No. 53(7)/2004 also pointed out that the Kerala Agricultural University vide letter No.4A/F3/4230/1993 dated 08.03.1995 had informed the Regional Commissioner, Kochi that it had issued necessary instruction to the wardens of Kerala Agricultural University Hostels to comply with the provisions of the EPF and MP Act in respect of its employees. In spite of such a direction by the university, the college and the wardens are contesting the coverage. Further the issue of coverage of the mess workers of the hostels run by the college has already become final in view of the decision of Hon'ble High Court of Kerala in WP(C) No. 23586/2005, which was not challenged by the appellant.

5. The learned Counsel for the appellant further pointed out that there is violation of natural justice as a copy of the report was not given to the appellant in the 7A enquiry. The learned Counsel for the respondent pointed out that the report of the Enforcement Officer was sought by the appellant during the review petition under Sec 7B and the same was provided to them. The appellant being a Government institution had successfully delayed the implementation of the social security legislation to the mess workers engaged by the hostels in spite of the final decision by the Hon'ble High Court of Kerala. The appellant shall not further delay the implementation of the same as denial of social security to the poor workers which is mandated by law is a clear case of rights violation.

7. 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