



**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 Nos. 95/2019 (Old No. ATA. 834(7)2014)
& 276/2019

- Appellants : 1. M/s.Pinakin Services,
VI/I(L), Ezhumanthuruthil
Near Parutheli Bridge
Edappaly Toll
Kochi – 682 024
2. M/s.Pinakin Security Pvt. Ltd.
Ezhumanthuruthi Building
Near Parutheli Bridge
Edappaly Toll
Kochi – 682 024

By Adv. C.B.Mukundan

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

By Adv. S.Prasanth

This case coming up for final hearing on 10.03.2022 and this
Tribunal-cum-Labour Court on 29.04.2022 passed the following:

ORDER

Appeal No.95/2019 is filed from order No. KR/KC/24129/Enf. III (1)2013/12360 dated 07.11.2013 assessing dues under Sec 7A of EPF and MP Act 1952 (hereinafter referred to as 'the Act') for non-enrolled employees for the period from 03/2012 to 08/2012. The total dues assessed is Rs. 9,64,633/- (Rupees Nine lakh sixty four thousand six hundred and thirty three only)

Appeal No. 276/2019 is filed from order No. KR/KCH/Enf. 3(4)/24129(7A)/2019/286 dated 25.01.2019 assessing the dues for the period from 09/2012 – 04/2013. Total dues assessed is Rs. 10,03,784/- (Rupees Ten lakh three thousand seven hundred and eighty four only)

Since common issues are raised, both the appeals are heard together and disposed of by a common order.

2. Present appeal is filed against Order No. KR/KC/24129/Enf 3(1)/2013/12360 dated 21.10.2013 issued under Sec 7A of the Act and also order dated 11.06.2014 issued under Sec 7B of the Act, copies of which are produced as Annexure A1 and A2. The appellant is a company engaged in consultancy and

also supply of trained manpower as security guards. The appellant received a notice dated 28.05.2013 from the respondent to determine the dues under Sec 7A of the Act and fixing the date of enquiry on 12.06.2013. A representative of the appellant attended the hearing and submitted that the appellant remitted the contributions against all eligible members. The only finding by the respondent is that the appellant establishment failed to enrol around 100 employees to provident fund membership. It is true that the non-enrolled employees were drawing pay less than Rs.6500/- in many months. However the respondent failed to take note that the normal pay in respect of those employees were more than 6500/-. The salary was less because of the attendance was less in those months. As per Para 2(f), an employee whose pay exceeds 6,500/- will come under the purview of the excluded employee.

3. The respondent filed counter denying the above allegations. The respondent received an application under the RTI Act 2005 from one Sri.C.Zacharia regarding the non-remittance of provident fund dues by the appellant. Even though the application was under RTI, the respondent decided to

investigate the matter. The Enforcement Officer in his report dated 22.02.2013 reported that the appellant is paying consolidated salary of Rs.6,942/- and therefore the employees are excluded. On the basis of the records submitted by the Enforcement Officer, it was noticed that the appellant was not remitting contribution on actual wages. Subsequently, Sri.C.Zacharia, again filed another grievance. Another Enforcement Officer was directed to investigate and in the meanwhile, the respondent initiated an enquiry under Sec 7A of the Act vide summons dated 28.05.2013. The Enforcement Officer reported that Sri.C.Zacharia was drawing a salary of Rs.6,740/- and therefore he was not enrolled to the fund. It has also come out during the investigation that Sri.C.Zacharia was a member of provident fund and he continues to be a member and therefore he is eligible to be enrolled to the provident fund membership. The Enforcement Officer, therefore, directed the appellant to enrol Sri.C.Zacharia and remit the contribution. The appellant remitted the contribution in respect of Sri.C.Zacharia. During the hearing on 21.10.2013, on verification of the registers provided by the appellant, it was noticed that in the case of large number of

employees, the gross salary is fixed above Rs.6,500/- and for those employees whose gross salary is below Rs.6,500/- are enrolled to the fund. On further verification it was found that the so called “excluded employees” were drawing salary below Rs.6,500/- every month and the respondent authority concluded that the higher basic pay is kept only to exclude those employees, whereas the actual salary paid to the employees is less than the statutory limit. A copy of the wage register for June 2012 is produced and marked as Exhibit R1. As per sec 2(f)(ii) of EPF Scheme, an employee whose pay at the time he is otherwise entitled to become a member of the fund exceeds Rs.6,500 – 15,000 per month, is an excluded employee. From the wage register produced by the appellant, it is seen that all the employees are eligible to be enrolled to the fund. As per Para 29 of EPF Scheme, the contributions shall be calculated on the basis of basic wages, DA and Retaining allowance **actually drawn during the whole month** whether paid on daily, weekly, fortnightly or monthly basis. As per the Kerala Gazette (Extraordinary) Notification G O (Ms.) No.80/2010/LBR dated 24th July 2010, Thiruvananthapuram S.R.O No. 736/2010,

marked as Exhibit R2, the rates of minimum wages payable by the security services in the State of Kerala, are the minimum wages of Security Guards (unarmed) is Rs. 4,274/-, Security Guard (armed) is Rs. 5,274/-, for Head Guard it is Rs 5,750/- and for Supervisor it is Rs.6,000/-. Hence the claim of the appellant that the minimum wages payable to the Security Guards exceeded Rs.6500/- as per the state Government notification is false. As per Para 34 of EPF Scheme, the employers are required to take a declaration from the employees' at the time of appointment with regard to their membership to provident fund in their earlier appointments. As per Para 24 of employers pension scheme 1995, an employer shall before taking a person into employment ask him/her to state in writing whether or not he is a member of employees pension fund.

4. The respondent received an application under RTI Act from one of the employees' of the appellant requiring to furnish his enrolment details. The respondent authority initiated action to investigate. The initial reports submitted by the Enforcement Officer indicated that the appellant is paying a consolidated salary beyond statutory limit of Rs.6,500/- and therefore the

complainant is not entitled to be enrolled to the fund. The employee further filed an application under RTI Act furnishing certain particulars. It was found that the complainant employee was a provident fund member earlier and therefore he is entitled to continue his provident fund member with the appellant also. Hence the appellant was directed to remit the contribution in respect of the complainant and be remitted the same. The respondent initiated an enquiry under Sec 7A of the Act and found that more than 100 employees are not enrolled to the fund. The contention taken by the appellant was that though the actual salary paid to the employees were less than the statutory limit of Rs.6,500/-, the original salary fixed for these employees were above the statutory limit and depending on the attendance, the salary has been reduced to those employees during the relevant point of time. The respondent authority perused the attendance register and found that these employees will not come within the definition of excluded employees under Sec 2(f) of the Scheme as they were drawing salary below the statutory limit for every month. The respondent produced a copy of the wage register for June 2012 as Exhibit R1 to substantiate his claim. He further

pointed out that as per Para 29 of EPF Scheme, the contribution shall be calculated on the wages actually drawn during the whole month and not on the salary proposed to be paid by the appellant. The learned Counsel for the respondent also pointed out that the claim of the appellant that minimum wages notified by Government of Kerala for security guards during the relevant period was beyond the statutory limit of Rs.6500/- is also not correct. A copy of the gazette notification issued by the Government of Kerala dated 24.07.2010 is produced as Exhibit R2 which clearly shows that the minimum wages fixed by the State Government was much below the statutory limit of Rs.6,500/-. This is a statutory adopted by establishments like appellant which exclude large number of employees from provident fund membership on the ground that the salary proposed is beyond the statutory limit, whereas the actual salary paid is less than the statutory limit. It is also proved that the appellant establishment failed to take the declaration under Para 34 of EPF Scheme 1952 and Para 24 of Employees' Pension Scheme 1995 wherein it is mandatory that the appellant shall take a declaration from the employees at the time of appointment

regarding their previous enrolment to the fund, as an employee who has already become a member of the fund will have to continue his membership in spite of the fact the wage of the employee has gone beyond the statutory limit.

5. The learned Counsel for the appellant also pointed out that the copy of the report of the Enforcement Officer or the copy of the complaint was not given to the appellant. It is seen that there is no such pleading before the respondent authority or in this appeal.

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