



सत्यमेव जयते

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

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

(Tuesday the 18<sup>th</sup> day of January, 2022)

**APPEAL No.339/2019**  
(Old no.1360(7)2015)

Appellant : M/s.Ocean Wealth Exports  
Kakkathuruth Road  
Eramalloor Post  
Cherthala  
Alappuzha - 688537

By Adv.C. B. Mukundan

Respondent : The Assistant PF Commissioner  
EPFO, Regional Office, Kaloor  
Kochi - 682017

By Adv.Sajeev Kumar K. Gopal

This case coming up for final hearing on 10.09.2021 and this Industrial Tribunal-cum-Labour Court on 18.01.2022 passed the following:

**ORDER**

Present appeal is filed against order no.KR/KC/24931/ENF-II(2)/2015 dt.30.09.2015 assessing dues U/s 7A of EPF & MP Act, 1952 (hereinafter referred to as 'the Act') for the period from 04/2010 to 08/2013 in respect of

22 international workers and two security guards. The total dues assessed is Rs.30,20,796/-.

2. The appellant is an establishment engaged in processing of fish and exporting of the same to overseas buyers. The appellant is covered under the provisions of the Act. The appellant is regular in compliance. The appellant is remitting contribution even in respect of excluded employees. The appellant entered into an agreement with M/s.Marine Daiou Company Ltd, Japan. As part of the agreement, the Japanese company agreed to purchase finished fish products from the appellant. A copy of the agreement is produced and marked as **Annexure A2**. To ensure the quality of the product purchased by them, the Japanese company deputed a few of their technicians to personally oversee the processing carried out by their clients. M/s.Marine Daiou Company deputed 22 technicians for the above mentioned purpose. As per the terms and conditions of agreement, the appellant has to provide food and accommodation to them and the appellant was required to extend help for securing visa and other related facilities. The technicians being the employees of M/s.Marine Daiou Company, the salary and wages are required to be paid by them. However as per the terms of agreement, the appellant used to provide free accommodation and used to give an amount of Rs.2500/- per month to each of such technician towards their food expenses.

The technicians are appointed by M/s. Marine Daiou Company Ltd. Their salaries and allowances are paid by them. The appellant allowed them to oversee the processing job. They never used to attend any of the work of the appellant. The appellant had no control or supervision on such persons. There was no employer-employee relationship between the appellant and those technicians. As such the appellant is not liable to enroll such technicians under EPF Scheme and to pay any dues in respect of them. An Enforcement Officer of the respondent conducted inspection of the appellant establishment on 08.11.2012, 09.12.2013 and 23.10.2013. It was pointed out that the 22 technicians will have to be enrolled to the fund. The Enforcement Officer also pointed out that the security guards deployed by outside agency also will have to be enrolled to the fund. The reports provided by the Enforcement Officer is produced and marked as **Annexure A3** and **Annexure A4** respectively. On the basis of the report of the Enforcement Officer the respondent issued show cause notice dt.17.01.2013 and 14.02.2013, copies of the show cause notices are produced and marked as **Annexure A5** and **Annexure A6** respectively. The appellant vide his reply dt.01.02.2013 and 22.02.2013 explained the facts, copies of the replies are produced as **Annexure A7**, **Annexure A8** respectively. Ignoring the explanations offered by the appellant, the respondent initiated an enquiry U/s 7A of the Act. The

appellant produced salary register, cash book, ledger and balance sheet for the relevant period. The appellant had also produced a letter dt.27.03.2013 issued by M/s.Marine Daiou Company Ltd and a statement of reconciliation of salary paid by him during the period of enquiry. The copies of the same are produced as **Annexure A9** and **Annexure A10**. Those records would clearly show that the appellant had not paid any salary or wages to these international workers. The assessment of dues is made on the declaration made by the international workers regarding the salary received in US Dollars. The said salary was never paid by the appellant. The copy of the said statement is produced and marked as **Annexure A11**. The statement only disclosed the salary received by them from their employer in US Dollars. Two technicians representing others, appeared before the respondent and deposed the above facts. Both of them filed affidavits before the respondent. The copies of the affidavits dt.06.08.2015 are produced and marked as **Annexure A12** and **Annexure A13**. Even the Enforcement Officers has no case that the salary in respect of these international workers are paid by the appellant. Hence the question to be decided is whether the appellant is liable to pay EPF dues on the salary paid by a different employer to his employees for the service rendered by them. Regarding the non-enrollment of two security guards, it is pointed out that they are engaged through

M/s.B. World and their salary is beyond the statutory limit and as such they are excluded employees under Para 2(f) of EPF Scheme.

3. The respondent filed counter denying the above allegations. The appellant is an establishment covered under the provisions of the Act. The impugned order is issued assessing dues in respect of 22 international workers and two security guards employed through M/s.Times Security Service/B - Force. During the course of inspection conducted by the Enforcement Officer who is an Inspector U/s 13 of the Act, it was revealed that the appellant establishment has not enrolled all eligible and entitled employees under EPF Scheme. The Enforcement Officer reported non-enrollment of 22 international workers from Philippines who are engaged from 04/2011 onwards and two security guards working in the appellant establishment from 01.04.2010. The Enforcement Officers reported that 22 international workers were employees of M/s.Marine Daiou Company, Japan and the workers were provided free accommodation and were paid Rs.2500/- per head monthly as food expenses by the appellant establishment. It was also found that two security guards are not enrolled to the fund. The appellant claimed that the security guards are excluded employees. However it is seen that the security charges paid during 2010-11 for 2 security guards was only Rs.11000/- per month and hence they are not excluded employees as claimed by the

appellant. The Enforcement Officer has forwarded a copy of the business contract. The appellant did not produce a copy of the agreement entered between the appellant establishment and M/s. Marine Daiou Company Ltd even after repeated reminders. The appellant establishment was again inspected by a squad of Enforcement Officers on 08.11.2012 but the appellant failed to produce a copy of the agreement. Hence the Enforcement Officers contacted the international workers and prepared a statement showing the name, designation, date of joining, salary etc., and signed by the workers. The workers were treated as non-enrolled contract workers as they were paid wages indirectly through the Japan company. A copy of the report of the Enforcement Officers was served on the appellant. Since the appellant failed to remit the contributions, an enquiry U/s 7A was initiated and summons dt. 26.09.2013 was issued to the appellant. The enquiry was adjourned to various dates and the Advocate for the appellant establishment produced wage register, one CD for cash book, ledger, salary ledger copy and copy of reconciliation of salary. The Advocate also produced two of the international workers and filed affidavits stating that their salary is being paid by M/s. Marine Daiou Company Ltd. After concluding the enquiry, the respondent issued the impugned order. As per Para 26(1)(a) of EPF Scheme, every employee employed in or in connection with the work of an establishment to which this

Scheme applies, other than an excluded employee, shall be entitled and required to become a member of the fund. As per Sec 2(f) of the Act, "Employee" means any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an establishment and who gets his wages directly or indirectly from the employer. Under Para 83(2)(ja) an 'international worker' means

- a. an Indian employee having worked or going to work in a foreign country with which India has entered into a social security agreement and
- b. an employee other than an Indian employee, holding other than an Indian Passport working for an establishment in Indian to which the Act applies.

The scheme also defines an excluded employee under Para 83(1), an 'excluded employee' means an international worker who is contributing to a social security programme of his country of origin, either as a citizen or resident, with whom India has entered into a social security agreement on reciprocity basis and enjoying the status of a detached worker for the period and terms, as specified in such an agreement. As per Para 26(1)(a) : every international worker (other than an excluded employee), employed as on first day of October 2008, in an establishment to which EPF Scheme applies, shall be

entitled and required to become a member of the fund with effect from the first day November 2008. Any international worker other than an excluded employee employed after first day of October 2008 is also required to become a member of the fund from the date of joining the establishment. The appellant establishment had engaged international workers for supervision and quality control and the appellant is liable to ensure that all the international workers are enrolled to the fund from the date of eligibility and contribution is paid against their wages. The appellant is liable to remit contribution in respect of the complete wages paid to the employees including that of the allowances paid to these international workers.

4. The appellant establishment is engaged in processing and export of fish and fish products. The appellant has got an agreement with M/s. Marine Daiou Company Ltd, Japan for purchase of fish and fish products from the appellant establishment. To ensure the quality of processing, the Japanese company deployed 22 workers to the appellant establishment. The appellant establishment is providing accommodation and food allowance of Rs.2500/-. The technicians are all from Philippines. An Enforcement Officer who conducted the inspection of the appellant establishment found that these 22 technicians will come within the definition of international workers and therefore they are required to be enrolled to the fund. The Enforcement



Officer also found that two security guards deployed through an agency were also not enrolled to the fund. On the basis of the report of the Enforcement Officer, the respondent authority initiated an enquiry U/s 7A of the Act and found that all the 22 international workers are liable to be enrolled to the fund and the two security guards deployed through an agency is also eligible to be enrolled to the fund.

5. In this appeal, the basic contention raised by the learned Counsel for the appellant is that though the 22 international workers are supervising the work in the appellant company, they are deployed by M/s. Marine Daiou Company Ltd and their salary is also being paid by the Japanese company. The appellant is only providing accommodation and Rs.2500/- per month per worker towards food allowances. According to the learned Counsel for the appellant, these international workers will not come within the purview of the Act and Schemes as they are not the employees of the appellant establishment and their salary is not being paid by the appellant. The learned Counsel also submitted that with regard to the two non-enrolled security guards, their salary is beyond the statutory limit and therefore they are excluded employees as per Sec 2(f) of the Act.

6. The learned Counsel for the respondent elaborately took this Tribunal through various provisions relating to international workers and

argued that these 22 workers will come within the definition of international worker and therefore they are liable to be enrolled to the fund.

7. The relevant provisions in the Scheme concerning an international worker are discussed below.

**Para 83** is a special provision in respect of international worker. As per Para 83(2)(ja) an international worker means;

- a. “ an Indian employee having worked or going to work in a foreign country with which India had entered into a social security agreement and being eligible to avail the benefits under a social security programme of that country, by virtue of the eligibility gained or going to gain, under the said agreement;
- b. an employee other than an Indian employee, holding other than an Indian passport working for an establishment in India to which the Act applies ”.

Para 26 of EPF Scheme is substituted as per Para 83(3) of the Scheme.

As per the substituted provision

“ Class of international workers entitled and required to join the fund :

(1)(a). Every international worker (other than an excluded employee), employed as on the 1<sup>st</sup> day of October, 2008, in an establishment to which this Scheme applies, shall be entitled and required to become a member of the Fund with effect from the first day of November 2008.

(2). Every international worker (other than an excluded employee), employed after the 1<sup>st</sup> day of October, 2008 in an establishment to which this Scheme applies, who has not become a member already shall be entitled and required to become a member of the fund from the date of his joining the establishment “.

An excluded employee is defined as per Para 2(f) as follows.

“ Excluded employee” means ;

1. an International Worker, who is contributing to a social security programme of his country of origin, either as a citizen or resident, with whom India has entered into a social security

agreement on reciprocity basis and enjoying the status of detached worker for the paid and terms, as specified in such an agreement; or

2. an International Worker, who is contributing to a social security programme of his country of origin, either as a citizen or resident, with whom India has entered into a bilateral comprehensive economic agreement containing a clause on social security prior to 1<sup>st</sup> October, 2008, which specifically exempts natural persons of either country to contribute to the social security fund of the host country “.

The sum and substance of the above statutory provisions is that an international worker may be an Indian worker or a foreign national. Any Indian employee working or having working abroad in a country with which India had entered into a social security agreement or any foreigner working in India in an establishment where the Employees' Provident Funds and Miscellaneous Provisions Act is applicable, is an international worker. A detached international worker contributing to the social security programme of the home country and certified as such by a detachment certificate for a specified period in terms of the bilateral social security agreement signed between that country and India is an excluded employee under these

provisions. Every international worker other than an excluded employee will have to become a member of the fund from 01.11.2008. These provisions are applicable to an establishment which are covered under the provisions of the Act and where they engaged international workers in which ever format. After amendment of the Scheme by incorporating Para 83 in respect of international workers, various establishments in India covered under the provisions of the Act and engaging international workers started resorting to various methods to exclude such international workers from the provisions of the Act and Scheme. One of the methods adopted is that if a principal employer is deploying some international workers to a company in India their salary will be paid in their parent country as is done in the present case. In some cases a part of the salary is paid in India and the rest is paid in their parent country. Govt of India, through Employees Provident Fund Organization, in their FAQ clarified that the provisions of the amendment scheme for international workers will apply even if salary is paid outside India and also that if the establishments adopted a split pay roll, in such cases also the establishments are liable to remit contribution on the total salary earned by the international worker.

8. The learned Counsel for the appellant stressed the point that the so called international workers are not employees of the appellant

establishment and therefore the appellant establishment is not liable to enroll these 22 employees to provident fund membership. As per Sec 2(f) of the Act, "Employee means any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an establishment and who gets his wages directly or indirectly from the employer and includes any person employed by or through a contractor in or in connection with the work of the establishment . As per Para 26(1)(a);

"Every employee employed in or in connection with the work of a factory or other establishment to which this scheme applies, other than an excluded employee, shall be entitled and required to become a member of the fund from the day this paragraph comes into force in such factory or other establishment ".

The expression " in or in connection with the work of an establishment" has got a large connotation. In this case there is no dispute regarding the fact that the 22 international workers were working in connection with the work of the appellant establishment. The Hon'ble Supreme Court of India in **Royal Talkies Hyderabad Vs Employees State Insurance Corporation**, 1978 4 SCC 204 examined the implication of the term "in or in connection with the work of an establishment". According to the Hon'ble Supreme Court

“ The expression ‘in or in connection with the work of an establishment’ ropes in a wide variety of workers who may not be employed in the establishment but may be engaged only in connection with the work of the establishment. Some nexus must exist between the establishment and the work of the employee but it may be a loose connection. “In connection with the work of an establishment” only postulates some connection between what the employee does and the work of the establishment. He may not do anything directly for the establishment; he may not do anything statutorily obligatory in the establishment; he may not even do anything which is primary or necessary for the survival or smooth running of the establishment or integral to the adventure. It is enough if the employee does some work which is ancillary, incidental or has relevance to or link with the object of the establishment “.

9. The 22 international workers engaged by the appellant establishment will definitely satisfy the requirements of the above test as laid down by the Hon'ble Supreme Court of India. Therefore I don't have any hesitation in concluding that all the 22 international workers are required to be enrolled to the fund. There is no dispute regarding the quantum of dues assessed as the same is based on the statement of the international workers.

10. The learned Counsel for the appellant pointed out that two security guards deployed by an agency are excluded employees. However the appellant failed to produce any documents to substantiate the same. However the learned Counsel for the respondent pointed out that the total monthly payment paid to the agency for the period 2010-11 was only Rs.11,000/- per month, for two security guards, as per the vouchers produced by the Enforcement Officers. Hence the claim of the appellant that the 2 security guards are excluded employees cannot be sustained.

11. 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