



सत्यमेव जयते

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

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

(Wednesday the 29<sup>th</sup> day of November, 2021)

**APPEAL No.349/2019**

(Old no.441(7)2015)

Appellant : Holy Angels Sr. Secondary School  
Edathuva P.O.  
Alappuzha – 689573

By Adv.C B. Mukundan

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

This case coming up for final hearing on 10.09.2021 and this Industrial Tribunal-cum-Labour Court on 29.11.2021 passed the following:

**ORDER**

Present appeal is filed against order no.KR/KC/15784/ENF-2(5)/2014-15/14726 dt.09.03.2015 assessing dues U/s 7A of EPF & MP Act, 1952 (hereinafter referred to as 'the Act') on non enrolled employees and evaded wages for the period from 12/2009 to 09/2013. The total dues assessed is Rs.16,41,369/-.

2. The appellant is a school run by Model Education Society. The appellant establishment is covered under the provisions of the Act w.e.f. 01.06.1998. On 04.11.2013 an Enforcement Officer of the respondent organization conducted an inspection and submitted an inspection report alleging that an amount of Rs.6,88,758/- is due being the omitted wages and an amount of Rs.9,52,611/- was due being the contribution of non enrolled employees for the period from 12/2009 to 09/2013. A copy of the inspection report of the Enforcement Officer dt.04.11.2013 is produced and marked as **Annexure A1**. The respondent initiated an enquiry U/s 7A on the basis of the report and the appellant was directed to appear before the respondent authority on 24.04.2014. A true copy of the notice is produced and marked as **Annexure A2**. The appellant entered appearance through an Advocate and requested for a copy of the inspection report. A copy of the inspection report was given to the appellant in the sitting held on 05.08.2014. During verification of the records for production before the respondent authority it was found that the Accountant of the school had committed serious malpractices, financial irregularities and embezzlement of school funds by entering fictitious names in the attendance register. The Accountant was dismissed from the service of the appellant. A Police complaint was filed and internal audit was directed to investigate into the activities of the Accountant

for the period from 04/2008 to 11/2014. For the current year itself it is reported that there was an misappropriation for the tune of Rs.46 Lakhs out of which Rs.10.50 Lakhs was from the employees salary. A true copy of the salary paid details of the employer in the Bank dt.11.07.2014 is produced and marked as **Annexure A4**. The statement of omitted wages and non enrolled employees was prepared by the Accountant. The Police registered a case against the Accountant. A true copy of the First Information Report no.097 of the Sub Inspector of police, Edathua Police Station filed before the Judicial First Class Magistrate-1 dt.03.02.2015 is produced and marked as **Annexure A5**. The appellant filed objection before the respondent authority. Thereafter the enquiry was adjourned to 13.11.2014, 06.01.2015, 13.01.2015 and 05.02.2015. The appellant sought further adjournment so that the appellant will be in a position to facilitate a proper assessment by identifying the true beneficiaries. A true copy of the written request dt.05.02.2015 is produced and marked as **Annexure A6**. The respondent authority ought to have given further extension of time to the appellant to produce the records. However the respondent authority rejected the request and issued the impugned order which is produced and marked as **Annexure A7**. The respondent ought to have considered whether the records submitted by the Enforcement Officer are genuine. The respondent authority ought to have

given some more time to the appellant to produce further details and documents.

3. The respondent filed counter denying the above allegations. During the course of an inspection conducted by the Enforcement Officer of the respondent organization, who is an Inspector appointed U/s 13 of the Act, it was revealed that there was large scale evasion of statutory provisions by the appellant establishment by not enrolling all the eligible and entitled employees under the Scheme as mandatory under the Act and by resorting to gross evasion of wages to the detriment of the beneficiary employees. It was reported by the Enforcement Officer that 76 temporary employees engaged by the appellant were not enrolled to the fund though they were eligible for membership. The Enforcement Officer also submitted a list of non enrolled employees with the monthly wages paid to them. It was also reported that the appellant establishment failed to remit contribution on actual wages paid to the employees subject to the wage limit of Rs.6500/-. A copy of the report of inspection was provided to the appellant with a direction to remit the contributions as proposed by the Enforcement Officer. Since the appellant failed to remit the dues, the respondent authority initiated an enquiry U/s 7A vide summons dt.20.02.2014. An Advocate representing the appellant attended the hearing and sought a copy of the inspection report

which was provided to him. Thereafter the enquiry was adjourned to various dates. On 06.01.2015 another Advocate appeared on behalf of the appellant and again sought a copy of the inspection report which was provided to him. After many adjournments the appellant filed a written statement. But no records were produced before the respondent authority. Though the representative of the appellant pleaded that there was some misappropriation by the Accountant, no documents were produced to substantiate their case. In spite of adequate opportunities to the appellant, they failed to produce any documents before the respondent authority. Sec 2(b) defines basic wages as all emoluments which are earned by an employee while on duty in accordance with the terms of employment but does not include certain allowances such as DA, HRA, overtime allowance, bonus, commission or any other similar allowances payable to the employee. However Sec 6 of the Act states that contribution is payable on basic wages, DA and retaining allowance. Non-inclusion of various components of wages for the purpose of contribution under EPF & MP Act would result in not only a substantial loss to the employees by way of their rightful and legitimate provident fund contributions being drastically reduced, but also affected the long term social security available to them as the pensionary benefits depending on the contributory wages.

4. The appellant establishment is covered under the provisions of the Act. An Enforcement Officer who conducted the inspection of the appellant establishment found that 72 employees working in the appellant establishment are not enrolled to provident fund membership. He also noticed that the wages reflected in the salary register does not tally with the statutory returns filed by the appellant and provident fund contribution does not tally with the salary actually paid by the appellant establishment. The appellant establishment was therefore directed to comply with the directions of the Enforcement Officer as per inspection report. Since the appellant failed to comply, an enquiry U/s 7A was initiated. The appellant was represented in the enquiry through an Advocate. On the request of the Advocate for the appellant, copies of the inspection report was provided to the appellant twice during the course of the proceedings. The appellant was provided 10 opportunities from 24.04.2014 to 05.02.2015 to produce records before the respondent authority. The appellant failed to produce any records, therefore the respondent authority was constrained to issue the impugned order on the basis of the report of the Enforcement Officer.

5. According to the learned Counsel for the appellant, the Accountant of the appellant establishment committed some financial misappropriations for which criminal case was filed against him with the Police. The appellant produced Annexure A5, FIR dt.03.02.2015 filed by the Police to substantiate their claim. As per the FIR, the management of the appellant school appointed an internal audit team to investigate the financial misappropriation of the Accountant between 01.04.2014 and 05.11.2014. They located a misappropriation of Rs.46,93,952/-. It is also reported in the FIR that out of the above amount, an amount of Rs.10,50,000/- pertains to the salary of the employees which is transferred from the account of the school to the Bank account of the Accountant. In view of the above misappropriation, the appellant felt that the Accountant ought to have inflated the salary bills or included the names of people who were not actually employees of the school, for misappropriating the funds. According to the learned Counsel for the appellant, since these records are used by the Enforcement Officer to arrive at the dues, the amount of dues calculated by the Enforcement Officer and therefore in the impugned order are not correct. However on a perusal of the inspection reports, it is seen that the names of the 72 non enrolled employees and the wage particulars pertaining to the period from 12/2009 to 09/2013 are signed by none other than the Director of the appellant establishment. As

already pointed out, the FIR is filed in respect of the misappropriation of money by the Accountant for the period from 01.04.2014 which is subsequent to the period for which the assessment is made. The appellant was given 10 opportunities by the respondent authority to produce the records pertaining to the period upto 09/2013. However the appellant failed to produce any records and kept on seeking for further extension of time for producing the records before the respondent authority. It is clear from the enclosures with the inspection report that the wage particulars and list of non enrolled employees were on the basis of the records maintained by the appellant establishment and is authenticated by the Director of the appellant establishment. Therefore the appellant cannot dispute the statement of the non enrolled employees and also the wage particulars provided by the appellant itself, unless they produce the records and prove the same before the respondent authority. It is very clear that the appellant has taken the criminal case against the Accountant as an excuse for delaying the process of assessment and recovery of dues as it is clear that the period of assessment pertains to a period much earlier to the periods mentioned in Annexure A5, FIR. The contention of the learned Counsel for the appellant that the non enrolled employees were not identified is also not correct. As already stated, the list of 72 non enrolled employees are provided by the Director of the



establishment and they cannot plead that the 72 non enrolled employees are not identified by the respondent authority. The assessment of dues in respect of non enrolled employees and also on evaded wages pertains to a period from 12/2009. Any further delay in recovering the amount and extending social security benefits to the employees will be detrimental to the interest of the poor employees. As per Sec 7A(3A) of the Act., “ Where the employer, employee or any other person required to attend the inquiry under sub-section (1) fails to attend such inquiry without assigning any valid reason or fails to produce any document or to file any report or return when called upon to do so, the officer conducting the inquiry may decide the applicability of the Act or determine the amount due from any employer, as the case may be, on the basis of the evidence adduced during such inquiry and other documents available on record ”. It is clear that the respondent authority relied on the documents and statements authenticated by the Director of the appellant establishment in the absence of any additional documents, inspite of 10 opportunities provided to the appellant. Further the FIR is dt.03.02.2015 and the learned Counsel for the appellant could not explain the progress of investigation by internal audit as well as by the Police even at the time of leaving. In such circumstances there is absolutely no reason to interfere with the impugned order.

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

Hence the appeal is dismissed.

Sd/-  
(V. Vijaya Kumar)  
Presiding Officer