



सत्यमेव जयते

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

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

(Wednesday the 12<sup>th</sup> day of January, 2022)

**APPEAL No.63/2020**

Appellant : Muthoot M George Institute of  
Technology  
Varikoli P.O., Puthencruz  
Ernakulam - 682308

By M/s.Ashok B. Shenoy

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 13.10.2021 and this Industrial  
Tribunal-cum-Labour Court on 12.01.2022 passed the following:

**ORDER**

Present appeal is filed against order no.KR/KCH/1025439(7A)/ENF-  
VI(2)/2019/587 dt.02.07.2020 assessing dues U/s 7A of EPF & MP Act, 1952  
(hereinafter referred to as 'the Act') in respect of one non-enrolled employee

for the period from 05/2014 to 02/2016. The total dues assessed is Rs.1,34,430/-.

2. Appellant is an engineering college covered under the provisions of the Act. The appellant has enrolled all eligible employees and is regular in compliance. In 10/2019 the appellant received a letter from the respondent requiring the appellant to enroll one Ms.Supriya V. S. to provident fund membership. True copy of the said letter is produced and marked as Annexure A1. The appellant submitted a reply vide letter dt.24.10.2019 pointing out that Ms.Supriya V. S. joined their establishment on 05.05.2014 on contract basis for a period of 3 years on a monthly salary of Rs.28,000/-. Her term of contract was over on 05.05.2017. Her salary at the time of exit was Rs.32,960/. Ms.Supriya V. S. being an excluded employee is not entitled to be enrolled to provident fund. Even under the previous employers Ms.Supriya V. S. was not covered under the provisions of the Scheme and she had not submitted Form 11. True copy of the said reply is produced and marked as Annexure A2. Subsequently the respondent issued a summons dt.13.12.2019 U/s 7A of the Act to determine the question as to whether Ms.Supriya V. S. is eligible to be enrolled under the provisions of the Act and Schemes and to quantify the dues. A true copy of the aforesaid summons is produced and marked as Annexure A3. A representative of the appellant attended the hearing and reiterated its

position that Ms. Supriya V. S. is an excluded employee in terms of EPF Scheme as she was drawing wages above Rs.15,000/- ever since she joined the service of the appellant. The service details of Ms. Supriya V. S. was also produced before the 7A authority. Ignoring the contentions of the appellant, respondent issued the impugned order directing the appellant to remit the contribution for the period from 05/2014 to 05/2017. A true copy of the said order is produced and marked as Annexure A4. The impugned order is issued on the ground that Ms. Supriya V. S. was enrolled to provident fund by her earlier employer and ignoring the contention of the appellant that she was an excluded employee since her date of joining the present establishment. True copy of the appointment letter is produced and marked as Annexure A5. The wage details of Ms. Supriya from her date of joining till her relieve is produced and marked as Annexure A6. The respondent authority failed to provide a copy of the grievance letter filed by Ms. Supriya based on which the proceedings were initiated by the respondent authority. The eligibility regarding Ms. Supriya to be enrolled to the fund ought to have been decided under para 26B of EPF Scheme by the Regional Provident Fund Commissioner. The impugned order is issued misinterpreting the provisions containing in Paragraphs 26, 26A, 29 & 30 of the EPF Scheme.

3. The respondent filed counter denying the above allegations. Appellant is an establishment covered under the provisions of the Act. The respondent received a grievance dt.29.03.2019 from Smt.Supriya V. S. an ex-employee claiming that she was not enrolled to the fund for the period from 05.05.2014 to 05.05.2017. A copy of the complaint is produced and marked as Exbt.R1. The service particulars of the complainant are as follows.

1. She worked in SCMS School of Engineering & Technology for the period from 17.06.2002-13.07.2005 and she was covered under the provisions of the Scheme under code no.KR/19653/4
2. She was employed in Adisankara Institute of Engineering & Technology for the period from 15.07.2005-05.05.2011 under code no.KR/19667/10155 and
3. Christ Knowledge City for the period from 03.06.2011-30.04.2014 and was covered under code no.KR/27605/10036

Her provident fund account with Adisankara Institute of Engineering & Technology and Christ Knowledge City are still live and not settled. She joined the appellant establishment on 05.05.2014 and left on 05.05.2017. She was denied provident fund membership from the time of joining the appellant establishment. An Enforcement Officer was deputed to investigate the grievance of Smt.Supriya. He reported that Smt.V. S. Supriya was not enrolled

to the fund as the appellant was not aware that she was enrolled to provident fund by the earlier managements. They did not deduct provident fund contribution from her. The appellant produced details of salary paid to the complainant from the date of joining to exit. The respondent authority thereafter issued a notice dt.14.10.2019 directing the appellant to enroll Smt.Supriya with effect from her date of joining and remit contribution and upload the returns. Appellant vide their letter dt.24.10.2019 admitted that Smt.Supriya worked with the appellant establishment during the relevant period. She was not covered under provident fund by the previous managements. She did not submit Form 11. Her salary was beyond the statutory limit and therefore she is an excluded employee. As per Para 34 of EPF Scheme “ In order to ascertain if an employee is already a member of the funds, the employer is statutorily bound to take from the person, before taking him/her into employment, in writing whether or not he/she is a member of the fund and if he/she is, ask for the account number and/or the name and particulars of the last employer in Form 11”. The respondent initiated an enquiry U/s 7A and issued summons dt.13.12.2019 to the appellant establishment. A representative of the appellant attended the hearing and reiterated its earlier position that Smt.Supriya was an excluded employee as she was drawing salary of more than Rs.15,000/- at the time of

joining. As per the records produced by the representative of the appellant, the complainant had enjoyed EPF membership under code no.KR/19653/4 when she was working at SCMS School of Engineering & Technology, Adisankara Institute of Engineering & Technology and Christ Knowledge City before joining the appellant establishment. Experience certificate issued by Christ Knowledge City was also produced by the representative. The enquiry was concluded holding that it was explicit case of non enrollment as per provisions of Para 26A of EPF Scheme as Smt.V. S. Supriya was eligible for provident fund membership when she was working with the appellant establishment. Her provident fund contribution was remitted by M/s.Christ Knowledge City for the period from 03/2007 to 04/2014. It is not disputed that Annexure A2 reply was submitted by the appellant in response to Annexure A1 notice. But certain statements in Annexure A2 were misleading in as much as the averment that the complainant Smt.V. S. Supriya is an excluded employee and not entitled for EPF benefits. It was also stated in the reply that she was not a member of EPF under her previous employments. It was also stated that she had not submitted any Form 11. As already stated Smt.V. S. Supriya was member of provident fund for the period from 2002-2014 without any break. So the claim of the appellant that she was not enrolled to the fund prior to her joining the appellant by the pervious

managements is not correct. It is clear that the provident fund account in respect of the complainant is not settled in respect of her membership in Adisankara Institute of Engineering & Technology and Christ Knowledge City. As per Para 26A of the Scheme, a member of the fund shall continue to be a member until he withdraws under Para 69 the amount standing to this credit in the fund or is covered by a notification of exemption U/s 17 of the Act or an order of exemption under Para 27 or 27A. The exclusion is applicable only if an employee joins for the first time with a salary beyond the threshold limit. Hence once an employee becomes a member of the fund, by virtue of Para 26A of the Scheme, he/she continues to remain member so long as amount standing to his/her credit is not withdrawn from the fund under Para 69 of EPF Scheme notwithstanding the threshold limit of wages. It is the duty and responsibility cast upon the appellant to take Form 11 from a new employee before he/she is admitted into employment. Para 34 of the Scheme mandates the same. Form 11 is prescribed to ensure that a member of provident fund continues to be a member after he/she joins a new establishment. In **Steel Authority of India Ltd Vs National Union Water Front Workers**, AIR 2001 SC 3527 the Hon'ble Supreme Court held that while interpreting a beneficial legislation enacted to give effect to directive principles of the State policy which is otherwise constitutionally valid, the consideration of the Court cannot

be divorced from those objectives. The documents evidencing the eligibility of Smt.V. S. Supriya were produced by the representative of the appellant itself before the respondent authority. The letter dt.13.02.2020 wherein the representative of the appellant stated about the previous employment of the complainant is produced and marked as Exbt.R2. Further the application for employment at appellant establishment, the appellant furnished the details of her previous employment which is produced and marked as Exbt.R3. The appellant employer has shrewdly avoided stating the fact during the course of enquiry. On 13.02.2020, the representative of the appellant submitted details of previous employment of Smt.V. S. Supriya. As per Para 2(f) of EPF Scheme, an excluded employee means

- i) an employee who, having been a member of the fund, withdrew the full amount of his accumulation in the fund under clause 'a' or clause 'c' of sub paragraph '1' of Para 69;
- ii) an employee whose pay at the time he is otherwise entitled to become a member of the fund, exceeds Rs.15,000/- per month.

Para 26A of the Provident Fund Scheme pertains to retention of membership states that; a member of the fund shall continue to be member until he withdraws under Para 69 the amount standing to his credit in the fund. By virtue of Para 26, 26A of the Scheme, Smt.V. S. Supriya is



entitled to continue her membership though her salary exceeded the statutory limit while joining the appellant establishment, as she was already a member of the fund. The appellant never raised any issue regarding Para 26B of EPF Scheme at the time of the enquiry U/s 7A of the Act. Para 26(2) of EPF Scheme inter alia provides that every employee employed in or in connection with the work of an establishment to which EPF Scheme applies other than excluded employees shall be entitled and required to become a member of provident fund from the date of joining the said establishment. The appellant was aware of the previous employment and enrollment of Smt.V. S. Supriya to EPF Scheme as all the documents standing as proof were produced by the appellant himself during the course of enquiry. This appeal is filed only to delay statutory benefits to a hapless employee. The provisions of EPF & MP Act and the Schemes thereunder are mandatory in nature and even the beneficiary cannot relinquish his rights. Being a social security legislation an employer or an employee cannot contract out of the provisions of the Act.

4. The main issue involved in this appeal is with regard to the continued applicability of the provisions of the Act and Schemes to an employee employed by the appellant establishment and who was drawing salary beyond the statutory limit. The learned Counsel for the appellant took this

Tribunal elaborately through the provisions of EPF Scheme to argue that an employee employed in or in connection with the work of the establishment can only claim the benefit of the provisions of the Act and Schemes. According to him Paragraphs 26, 26A, 29 and 30 in Chapter 4 of EPF Scheme, 1952 speaks only with regard to an employee and not with regard to the excluded employee. According to the learned Counsel for the respondent Paragraphs 26, 26A and 2(f) of EPF Scheme makes it clear and without any ambiguity that Smt.V. S. Supriya is entitled to be enrolled to provident fund membership from the date of joining the appellant establishment. Coming to other facts of the case, Smt.V. S. Supriya complained to the respondent authority that she is not enrolled to provident fund membership though she was entitled to be enrolled. The respondent authority caused the matter investigated. It was found that the complainant was a member of provident fund when she was working with earlier management such as SCMS School , Adisankara and Christ Knowledge City and her membership with Adisakara and Christ Knowledge City are still alive and is not settled. The respondent authority directed the appellant to enroll Smt.V. S. Supriya to provident fund membership from 05.05.2014. Since the appellant took a view that Smt.V. S. Supriya need not be enrolled to fund as she was an excluded employee drawing a salary beyond the statutory limit of Rs.15,000/- the

respondent authority initiated an enquiry U/s 7A of the Act. The appellant took the view that Smt.V. S. Supriya need not be enrolled to the fund since she is an excluded employee. After examining the documents and written statements, the respondent authority issued the impugned order.

5. In this appeal, the learned Counsel for the appellant reiterated the position of the appellant establishment that Smt.V. S. Supriya is an excluded employee in view of the fact that she was drawing a salary beyond Rs.15,000/- at the time of joining the appellant establishment in May 2014. The appellant produced Annexure A5, the appointment letter and A6 the salary details from 05/2014 to 05/2017 to substantiate their case. According to the learned Counsel for the respondent, Smt.V. S. Supriya was earlier working in 3 institutions covered under the provisions of the Act and she was also enrolled to provident fund membership. According to him since the complainant was already enrolled to the fund and her provident fund account is yet to be settled, she is entitled to be enrolled to provident fund membership from the date she joined the appellant establishment. As per Para 26A, every employee employed in or in connection with the work of the establishment to which the Scheme applies other than an excluded employee shall be entitled and required to become a member of the fund from the day this Para comes into force in the establishment. As per Para 26(2) after this

Para comes into force in an establishment, every employee employed in or in connection with the work of the establishment other than excluded employee who has not become a member already shall also be entitled and required to become a member of the fund from the date of joining the establishment. As per Para 26A, a member of the fund shall continue to be a member until he/she withdraws under Para 69 the amounts standing to his credit in the fund and as per Para 2(f) an excluded employee means an employee who, having been a member of the fund withdrew the full amount of his accumulation in the fund under Clause 'a' or 'c' of sub para 1 of Para 69. As per Para 69(1), a member may withdraw the full amount standing to his credit in the fund on retirement from service after attaining the age of 55 years. As per Para 69(1)(c) a member may withdraw the full amount standing to his credit in the fund immediately before migration from India for permanent settlement abroad or for taking employment abroad. A combined reading of all the above provisions would clearly establish that once an employee becomes a member of provident fund, unless he/she withdraws the full amount standing to his credit on retirement from service after attaining the age of 55 years she/he will continue to be a member of provident fund. In the present case the appellant has no case that Smt.V. S. Supriya has become an excluded employee because she withdrew her provident fund amount on

attaining the age of 55. The learned Counsel for the appellant relied on the second link i.e., 2(f)(II) of the definition of excluded employee according to which “ an employee whose pay at the time he is otherwise entitled to become a member of provident fund exceeds Rs.15,000/- per month”, to argue that Smt.V. S. Supriya was an excluded employee at the time of joining the appellant establishment. As already pointed out Para 2(f)(II) is relevant only in the case of an employee who is joining for the first time and is drawing more than the statutory limit of Rs.15,000/-. To safeguard the interest of employees in such contingencies the EPF Scheme in Para 34 has provided that the employer in relation to an establishment shall, before taking any person into employment ask him to state in writing whether or not he is a member of provident fund and if he is, ask for the account number and/or the name and particulars of the last employer. If he is unable to furnish the account number, he shall, require such person to furnish and such person shall, on demand, furnish to him for communication to the Commissioner, particulars regarding himself and his nominee required for the declaration Form 11. Such employer shall enter the particulars in the declaration form and obtain the signature or thumb impression of the person concerned. To meet this requirements, the organisation has notified Form 11 in which the employers are required to take the particulars of previous employment details of an

employee before taking any person into employment. According to the learned Counsel for the appellant, the complainant Smt.V. S. Supriya did not furnish any Form 11. It is now well settled principle of common law that a wrong doer cannot take advantage of his own wrong. It is clearly the responsibility of the appellant to ensure taking Form 11 from all the employees and therefore the appellant cannot secure the assistance of this Tribunal for enjoying the fruits of his own wrong holding that the complainant failed to give Form 11 at the time of joining the appellant establishment. The learned Counsel for the appellant cannot plead that the appellant was not aware of the previous employment details of the complainant. According to the learned Counsel for the respondent, the representative of the appellant herself produced the details of previous employment of the complainant through their letter dt.13.02.2020 which is marked as Exbt.R2. Further in the application for employment in the appellant establishment, the complainant has furnished her employment history which is also produced and marked as Exbt.R3. From the above discussion it is very clear that the complainant Smt.V. S. Supriya is entitled and required to continue her membership under EPF Scheme from the date of joining of the appellant establishment.

6. The learned Counsel for the appellant also raised two more issues in this appeal. According to him the issue regarding entitlement of the

complainant to be enrolled to the fund ought to have been decided by Regional Provident Fund Commissioner under Para 26B of EPF Scheme. Though the respondent authority has framed the issue whether Smt.V. S. Supriya is eligible for enrollment under EPF & MP Act, the actual issue involved is with regard to her continued membership under EPF Scheme. Smt.V. S. Supriya is already a member of provident fund and therefore there is no dispute between the employer and employee to be resolved under Para 26B of the Act. The continued membership and assessment is required to be done U/s 7A of the Act. Another issue raised by the learned Counsel for the appellant is that a copy of the complaint filed by Smt.V. S. Supriya was not provided to the appellant at the time of hearing and thereby there is violation of principles of natural justice. According to the learned Counsel for the respondent, the representative of the appellant who attended the hearing never required a copy of the complaint. It is seen that the issue involved is only the continued enrollment of the complainant to provident fund membership. No prejudice what so ever is caused by non providing a copy of the complaint to the appellant. There may be contingencies wherein copies of the complaint are not provided to the employers to safeguard the interest of the employees. Anyway, the respondent has produced a copy of the complaint in

this appeal as the employee has already left the service of the appellant establishment. Appellant did not comment on the same in this appeal.

7. Considering the facts, circumstances 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