



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

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

(Tuesday the 28th day of September, 2021)

Appeal No. 277/2018

(Old No. A/KL-54/2017)

Appellant : The Kinship Services (India) Pvt. Ltd
Willingdon Island
Cochin -682 003.

By Adv. Paulson C Varghese

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

By Adv. S. Prasanth

This appeal came up for hearing on 20/09/2021 and this Industrial Tribunal cum Labour Court issued the following order on 28/09/2021.

ORDER

Present appeal is filed from order No. KR / KCH / 2138/Enf-3(3)/2017/18670 dt. 30/03/2017 assessing dues U/s 7A of EPF & MP Act,1952 (hereinafter referred as ‘the Act’.) for the

default period from 06/2010 to 04/2011. The total dues assessed is Rs.9,50,571/-.

2. The appellant is an establishment engaged to shipping services and is covered under the provision of the Act. The respondent initiated action U/s 7A and 7C alleging default in compliance for the period 06/2010 to 04/2011. The respondent authority issued an order assessing an amount of Rs.9,50,511/- purely on the basis of the report of the Enforcement Officer. The appellant challenged the said order before the EPF Appellate Tribunal and the Tribunal remanded the case back to the respondent authority to conduct enquiry afresh. The appellant establishment is running on huge loss for several years. The Managing Director of the appellant establishment is suffering from terminal illness. Hence the entire business activity of the appellant establishment is in a bad shape. The respondent authority initiated a fresh enquiry vide notice dt. 01/04/2017 which culminated the impugned order which is produced and marked as Annexure A1. The appellant attended the hearing on various dates, filed written statement and produced various documents before the respondent authority. The respondent authority issued the impugned order ignoring the contentions of the appellant establishment. The appellant was regular in

compliance till the end of 2010. Many of the employees left and the appellant had only a staff strength of 24 employees. The true copies of the resignation letters submitted by 18 employees are produced and marked as Annexure A2 to A2(a)-A2(g). The gratuity of these employees were also settled through LIC and the proof thereof is produced and marked as Annexure A3 to A3(c) and Annexure 4 to Annexure A4(k) respectively. The 18 employees who left service also submitted their application for pension under Employees Pension Scheme. The true copies of the applications are produced and marked as Annexure A5 to A5(k).

3. The respondent filed counter denying the above allegations. The appellant establishment is covered under the provisions of the Act with effect from 01/04/1967. The appellant establishment defaulted in payment of contribution from 06/2010 to 04/2011. An Enforcement Officer whom conducted the inspection reported the default and also produced the statutory return in Form 12A submitted by the appellant signed by the employer showing the complete details regarding the strength of the employees, the amount of wages, the amount deducted towards employees share of contribution and also the amount due from the appellant. The respondent initiated an

enquiry U/s 7A of the Act fixing an enquiry on 17/06/2011. The enquiry concluded on 27/09/2011 and an assessment order dt.13/10/2011 was issued assessing an amount of Rs.9,50,571/ as provident fund dues payable by the appellant from 06/2010 to 04/2011. The appellant preferred Appeal No. ATA 292(7)/2012 before the Hon'ble EPF Appellate Tribunal. The appeal was disposed by the EPF Appellate Tribunal vide order dt.11/02/2014 remanding the matter back to the respondent with a direction to conduct a fresh enquiry and pass a reasoned order after affording an opportunity to the appellant. The impugned order was set aside for the reason that the assessment was made on the basis of the report of the Enforcement Officer and the respondent authority has not done any enquiry to ascertain the facts. It is pointed out that the said order was issued without hearing this respondent. In compliance of the directions of EPF Appellate Tribunal, a fresh enquiry was initiated and notice dt. 04/04/2014 was issued to the appellant fixing the enquiry on 21/02/2014. The respondent authority thereafter gave 20 adjournments and opportunities to the appellant to produce records to substantiate their claim. The appellant on 22/08/2014 filed a written statement but failed to produce any documents to substantiate their claim. The only claim made by the appellant before the respondent authority was

that some of the employees left the service of the appellant establishment and they signed the attendance and muster roll when they came to collect the service benefits. The enquiry was concluded on 21/08/2017 after providing more than adequate opportunity to the appellant to produce the records. Since the appellant failed to produce any records even after remand of the case by the Hon'ble EPF Appellant Tribunal and the appellant establishment through its Director has filed the statutory returns in Form 12A showing the number of employees for each month, dues recovered from the employees and also the dues that the appellant is liable to remit as his contribution is already available with the respondent authority, the impugned order was issued on the basis of the admitted liability. The amount of EPF dues for the period from 06/2010 to 04/2011 was determined on the basis of the statutory monthly return in Form 12A submitted by the Managing Director of the appellant under his seal and signature in terms of Para 38(2) of EPF Scheme admitting the liability for the above period. Copy of Form 12A for 06/2010 to 04/2011 filed by the appellant is produced and marked as Exbt R1. As per the statutory return in Form 12A, the employment strength of the appellant establishment as on 06/2010 was 66 and the wages paid was Rs.4,12,535/-. The employment strength started reducing from 11/2010 and ultimately reached 38 as on

04/2011 and the wages also came down to Rs.2,45,925/-. The assessment of dues was done on the basis of the admitted liability by the appellant establishment and hence the appellant is estopped from disputing the assessment. It is further pointed out that the appellant further defaulted in remittance of provident fund dues from 05/2011 to 09/2011 and the respondent authority assessed the dues vide order dt. 06/09/2013 based on the statutory return and admitted liability in Form 12A. The appellant challenged the said order before the Hon'ble High Court of Kerala in WP (C) No. 7823/2014, contenting on similar grounds and pleadings that an appeal is pending before the appellate authority which was remanded for fresh consideration. The Hon'ble High Court vide its judgment dt.18/05/2014 dismissed the Writ Petition and allowed the appellant to remit the amount in 12 equal installments. The appellant remitted the entire dues as per the installment facility granted by the Hon'ble High Court of Kerala. It is pointed out that the subsequent assessment from 05/2011 was also made on the basis of the admitted liability of the appellant establishment in Form 12A.

4. The main contention of the learned Counsel for the appellant is that majority of the employees included in the

assessment left the service and took their service benefits such as gratuity, service compensation and also provident fund benefits and therefore the assessment is not correct as the respondent authority failed to consider the claim of the appellant during the course of the enquiry. The appellant also produced the settlement details of 18 employees which includes resignation letters, final settlement payments, gratuity paid through LIC and also Form 19 for settlement of provident fund in respect of these 18 employees. According to the learned Counsel for the respondent the respondent authority U/s 7A has indeed taken in to account the submissions made by the appellant before issuing the impugned order. It is also pointed out by the learned Counsel for the respondent that the appellant was given 20 opportunities to produce the records with regard to the employees who were in service and also who left service as claimed by the appellant. However the appellant failed to produce any of those documents or clarify any of the issues raised by the respondent authority during the course of Sec 7A enquiry. The appellant produced the wage register wherein the employees' strength as on 02/2011 to 04/2011 is shown as 6. The wage register produced by the appellant does not even contain the name of the appellant establishment. The Enforcement Officer who conducted the inspection collected

copies of attendance register from 01/2011 to 4/2011 and the employment strength during the same period varies. The respondent authority also noticed that the appellant establishment has already filed the statutory return in Form 12A for the period from 06/2010 to 04/2011 under the seal and signature of the Managing Director. It is also seen that the wage reported in form 12A tallies with the wages obtained by the Enforcement Officer during his inspection. It is the case of the appellant that 18 employees left the service of the appellant establishment during 10/2010 to 12/2010. It is seen that the claim of the appellant tallies with the statutory return furnished by the Managing Director of the appellant establishment. The employees' strength of the appellant establishment as per the statutory return for the month of June 2010 was 66 and the employment strength as on 01/2011 was 41 and is subsequently reduced to 38 as on 04/2011. Hence it is very clear that the respondent authority has rightly taken the resignation of the employees into account while assessing the dues for the period from 06/2010 to 04/2011. The most important aspect of the assessment in the impugned order is that it is on the basis of the admitted liability by the Managing Director of the appellant establishment in the statutory return in Form 12A submitted to the respondent in terms of Para 38 of EPF Scheme. As rightly

pointed out by the learned Counsel for the respondent, the appellant is estopped from disputing the contents of the statutory return. If at all the same is to be disputed the appellant ought to have produced the relevant documents to substantiate the claim. It is clear from the above analysis that the respondent authority has taken into account the employees who resigned from service of the appellant establishment while assessing the dues in respect of the actual employees working with the appellant establishment during the respective months. The learned Counsel also pointed out that there was a subsequent assessment of dues for the period from 05/2011 to 09/2011, again based on the admitted liability in Form 12A, filed as per Para 38 of EPF Scheme. The challenge from that order before the Hon'ble High Court was rejected by the Hon'ble High Court vide its order 06/09/2013 and the appellant was allowed to remit the contribution in 12 equivalent installments.

5. Considering all the facts, pleadings, evidence and arguments in this appeal I am not inclined to interfere with the impugned order.

Hence the appeal is dismissed.

Sd/-
(V.VijayaKumar)
Presiding Officer