



**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL~CUM~LABOUR COURT, ERNAKULAM**
Present: Shri.V.Vijaya Kumar, B.Sc., LLM, Presiding Officer.

(Friday the 25th day of February, 2022)

APPEAL No.173/2018
(Old No. A/KL-112/2016)

Appellant

PRS College of Engineering & Technology
Paliyode, Neyyattinkara
Dalummugham P.O
Thiruvananthapuram– 695 125.

By Adv. T.L.Sreeram

Respondent

The Assistant PF Commissioner
EPFO, Regional Office, Pattom
Thiruvananthapuram- 695 004.

By Adv. Ajoy P.B

This case coming up for final hearing on 04/10/2021 and this Tribunal-cum-Labour Court on 25/02/2022 passed the following:

ORDER

Present appeal is filed from order No KR/16826/Enf- 2 (3) /2016 / 3444 dt. 20/7/2016 assessing dues U/s 7A of EPF & MP Act, 1952 (hereinafter referred to as 'the Act'.) on regular dues for the period from 04/2015 to 05/2015 and non-enrolled employees from 09/2014 to 09/2015 and dues on evasion of

wages from 09/2014 to 09/2015. The total dues assessed is Rs.7,52,608/-.

2. The appellant is a Engineering College covered under the provisions of the Act. There was a change in management with effect from 05/06/2008. An Enforcement Officer of the respondent conducted an inspection of the appellant establishment and pointed out non-enrollment of 19 employees working in the appellant establishment for the period from 09/2014 to 09/2015. The Enforcement Officer also reported the dues on non-enrolled employees and also with regard to evasion of wages for the period 09/2014 to 09/2015. The respondent authority initiated an enquiry U/s 7A of the Act. The appellant appeared before the respondent authority through its Administrative Officer and disputed the list of non-enrolled employees and consequent assessment of dues. The specific case of the appellant is that out of the 18 persons included in the list of non-enrolled employees. 7 persons are excluded employees who are aged above 60 years and are also receiving pension from the government. The salary calculated against the names of the respective person are highly inflated one. The gross salary is considered for the purpose of assessment of dues. 7 employees out of the 18 have already left the

service of the appellant establishment. With regard to dues on evasion of wages, the details of employees, method of arriving the dues etc. are not provided to the appellant. Ignoring the contentions of the appellant the respondent issued the impugned order. The respondent authority took the gross salary for calculating the contribution. The copies of the salary bill for the month of 09/2014 and 07/2015 pertaining to the teaching staff whose names are included as serial numbers 1 to 3, 6 to 8 are produced and marked as Exbt A2 and A3 series respectively. The establishment was unaware of the amendment regarding the salary ceiling brought with effect from 01/09/2014 which in turn led to the non-enrollment of certain persons. The appellant admitted the liability regarding the regular dues for the wage month of April and May 2015. The respondent authority misconstrued and generalized the above admission while holding that the appellant admitted the liability reported by the Enforcement Officer. The Enforcement Officer submitted her revised report on 13/06/2016 after conclusion of the enquiry on 20/05/2016.

3. The respondent filed counter denying the above allegations. The appellant establishment is covered under the provisions of the Act. An Enforcement Officer of the respondent organization during

her inspection of the appellant establishment found that the appellant establishment is violating the provisions of the Act by not remitting the regular contribution by not enrolling 19 eligible employees and evasion of wages. The respondent authority initiated an enquiry vide summons dt. 20/01/2016. Representative of the appellant attended the hearing. A copy of the report of the Enforcement Officer were handed over to the representative. The appellant did not dispute the dues proposed by the Enforcement Officer. The representative only pointed out that there was a duplication in names in the list of 19 non-enrolled employees at Serial No.5 and 12 in the list which was considered by the respondent authority by deleting one of the names. The respondent authority did not get into the details of the assessment as the representative of the appellant did not raise any dispute regarding the assessment of dues. The claim of the appellant that they disputed the enrollment of 18 employees is not at all correct. The appellant ought to have raised the demand for cross examining the Enforcement Officer who conducted the inspection of the appellant establishment, at the time of the enquiry U/s 7A of the Act. Having failed to do so, the appellant cannot come up in appeal and plead that they were not given an opportunity for cross examining the Enforcement Officer. Multiple adjournment were granted to the

appellant on their request. However they failed to raise any contentions raised in this appeal and therefore the appeal is to be rejected on that ground alone.

4. An Enforcement Officer of the respondent organization inspected the appellant establishment and reported that they failed to comply with regard to the regular dues for the month of April and May 2015. It was also reported that the appellant failed to enroll 19 employees to provident fund membership. It was further reported that there was evasion of wages while calculating the provident fund liability. Since the appellant establishment failed to comply, an enquiry U/s 7A of the Act was initiated. Representatives of the appellant attended the hearing on various dates. It is clear from the proceedings that the representatives of the appellant did not raise any dispute regarding the report of the Enforcement Officer. It is specifically stated in the impugned order that “There is no dispute as to the dues in question which have been reported by the Enforcement Officer vide her report dt. 29/10/2015”. The respondent authority therefore issued the impugned order.

5. In this appeal the learned Counsel for the appellant pointed out that there is no dispute regarding the regular

provident fund dues assessed as per the impugned order for the month of April and May 2015 and the same had already been remitted. With regard to the non-enrolled employees, the learned Counsel for the appellant submitted that the 7 non-enrolled employees are excluded employees since they are aged above 60 years and retired from state government service and drawing pension. The learned Counsel for the respondent pointed out that no such claim was raised before the respondent authority. As per Sec 2(f) of EPF Scheme an excluded employee means an employee who, having been a member of the fund, withdrew the full amount of his accumulation in his fund under Clause (a) or (c) of sub Paragraph 1 of paragraph 69. As per Para 69 1(a) a member may withdraw the full amount standing to his credit in the fund on retirement from service after at the age of 55 years. As per Para 69 (1) (c) a member may withdraw the full amount standing to its credit in the fund immediately before migration from India for settlement abroad or for taking employment abroad. In the present case it is plead by the learned Counsel for the appellant that the 7 employees retired from government on attaining the age of superannuation. It is therefore clear that these 7 employees will not come within the definition of excluded employee and therefore will have to be enrolled to the fund along with the other non-enrolled

employees, from the date of eligibility. It is also pointed out that there is no age limit for enrolling a person to provident fund benefits. It is also seen that there was duplication in name which was deleted by the respondent authority himself while issuing the impugned order.

6. According to the learned Counsel for the appellant the dues of the non-enrolled employees are calculated on gross wages and not on basic wages and DA as stipulated in the provisions of the Act and Schemes. The definition of basic wages is wide enough to accommodate allowances which are specifically not excluded U/s 2(b)(2) of the Act. However it is an issue based on facts which ought to have been raised before the respondent authority during the Sec 7A proceedings. Such an issue was neither raised nor decided by the respondent authority.

7. The third issue raised by the learned Counsel for the appellant is with regard to dues on evasion of wages. The impugned order is not at all clear on this point. The counter filed by the respondent authority also is silent on this aspect. As rightly pointed out by the learned Counsel for the appellant the impugned order is completely non-speaking on this aspect. Probably the respondent authority accepted the report of the Enforcement

Officer in view of the fact that no objection was raised by the representative of the appellant during the enquiry U/s 7A. In view of the above it is not possible to sustain the assessment of dues on evaded wages as per the impugned order.

8. Considering the facts, circumstances pleadings and evidence in this appeal, I am inclined to hold that; 1) The assessment of regular dues and the assessment of dues in respect of non - enrolled employees can be legally sustained. However the assessment of dues on evasion of wages is not supported by any evidence or clarification and therefore the same cannot be sustained.

Hence the appeal is partially allowed setting aside the assessment of dues on evaded wages. However the assessment of regular dues and dues on non-enrolled employees is upheld.

Sd/-

(V. Vijaya Kumar)
Presiding Officer