



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

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

(Monday the 7th day of March, 2022)

APPEAL No.331/2019

(Old No. ATA-1081(7)2015)

Appellant : M/s. Socio Economic Unit Foundation
Deepa.T.C.11/878, MRA-19
Manjadivila Road, Nanthancode
Thiruvananthapuram - 695003

By Adv. Ajith S. Nair

Respondent : The Assistant PF Commissioner
EPFO, Pattom
Thiruvananthapuram- 695 004.

By Adv. Ajoy. P.B

This case coming up for final hearing on
01/12/2021 and this Tribunal-cum-Labour Court on
07/03/2022 passed the following:

ORDER

Present appeal is filed from order No. KR/12910/Enf-
2(2)/2015/3228 dt. 31/07/2015 issued U/s 7B(1) of EPF &
MP Act, 1952 (hereinafter referred to as 'the Act'.)

2. The appellant is a Society registered under Societies Registration Act. The appellant establishment was brought under the provisions of the Act with effect from 01/07/1996. The appellant establishment is regular in compliance. The appellant is engaged in social activities. Based on the projects received from government, the appellant may engage personal for short duration for the implementation of the projects. They were not brought under the coverage of EPF. The regular employees whose names are born out in the attendance alone is enrolled in the provident fund. The Finance Officer of the appellant society was responsible for compliance under the Act. She was involved in various financial irregularities and therefore dismissed from service. The Finance Officer instigated respondent two and three, who were employees of the appellant society and covered under the provisions of the Act, to claim provident fund benefit from a prior date. The 2nd respondent claimed that he was engaged from 07/01/2004 and he was provided provident fund only from 03/10/2011. Respondent No.3, another employee claimed that he was engaged from April 1994 and he was provided provident fund only from 2006. It is pointed out that Respondent 2 & 3 are extended provident fund benefits from the date of their regular appointment and they were never regularly engaged prior to

that, except for some project works. The respondent 2 & 3 filed complaints with respondent No.1. The Enforcement Officer of the respondent organization issued a letter to the appellant informing about the complaints and requesting for production of attendance register, wage register etc. with respect to the said employees. A copy of the said letter is produced and marked as Annexure A3. The appellant could not produce the relevant records since the same was destroyed by the Finance Officer. The Enforcement Officer thereafter conducted an inspection of the appellant establishment on 10/11/2014 and issued an inspection report to the appellant. In the inspection report it was stated that the contribution in respect of these two employees were not remitted by the appellant. A copy of the inspection report is produced and marked as Annexure A4. The appellant vide reply dt.18/11/2014 informed the Enforcement Officer that the records could not be produced and sought sometime. A copy of the letter dt.18/11/2014 is produced and marked as Annexure A5. The appellant thereafter submitted the details regarding respondent 2 & 3 to the Enforcement Officer vide letter dt. 05/01/2015. A copy of the letter dt.05/01/2015 is produced and marked as Annexure A6. The Enforcement Officer vide letter dt.15/01/2015 informed the appellant that

respondents 2&3 produced various documents substantiating their claim regarding their engagement. Copy of the said letter is produced and marked as Annexure A7. Thereafter the Enforcement Officer issued a notice dt.10/02/2015 directing the appellant to remit an amount of Rs.2,17,873/-. A copy of the letter dt.10/02/2015 is produced and marked as Annexure A8. The appellant filed a reply. Thereafter the appellant received a notice from the respondent authority issued U/s 7A of the Act, a copy of which is marked as Annexure A10. The appellant gave a detailed reply dt.19/03/2015, a copy of which is produced and marked as Annexure A11. Ignoring the contentions of the appellant, the respondent issued the order U/s 7A of the Act. The review filed by the appellant U/s 7B of the Act was rejected by the 1st respondent authority, from which this appeal is preferred.

3. The respondent filed counter denying the above allegations. The respondent raised two preliminary objections. As per Sec 7(I) of the Act, an appeal before the Tribunal lies against a notification issued by the Central Government or an order passed by the Central Government or any other authority under the proviso of Sub Sec 3 or Sub 4 of Sec 1 or Sec 3 or Sub Sec 1 of Sec 7A or Sec 7B, **except an order rejecting an application for**

review referred in Sub Sec 5 or Sec 7C or Sec 14B. The present appeal is filed from an order rejecting a review application U/s 7B of the Act and therefore the appeal is not maintainable. The respondent also raised an issue regarding limitation. The impugned order U/s 7B was issued on 31/07/2015 and the appeal has been filed on 14/09/2015 after the period of 60 days as prescribed under rule 7(2) of Employees Provident Fund Appellate Tribunal (Procedure) Rules 1997.

4. The 1st respondent received complaints from 2 employees regarding denial of provident fund benefits from 01/2004 to 09/2011 and 04/1994 to 03/2006 respectively. On the basis of an inspection conducted through an Enforcement Officer the respondent initiated an enquiry U/s 7A of the Act. The appellant failed to produce the records called for by the Enforcement Officer as well as the first respondent claiming that those relevant documents were destroyed by the Finance Officer who was dismissed from service of the appellant establishment. However the appellant produced the appointment order dt.01/01/2003 in respect of B. Jayachandran and 10/10/2011 in respect of Shri.Aneesh K.R, the 2nd and 3rd respondent respectively. According to the appellant, Shri.B.Jayachandran

was appointed on 01/01/2003, but he left the service in January 2003 itself. Thereafter he was appointed as Technical Associate as per order dt.31/03/2006 and he was enrolled to provident fund from that date. According to the appellant, Shri. Aneesh was appointed vide order dt.10/10/2011 and he was given the benefit of provident fund from that date. As per Sec 2(f) any person who is employed for wages in any kind of work in or in connection with the work of the establishment and who gets his wages directly or indirectly from the employer, is an 'employee'. As per Para 26(2) every employee is entitled and required to become a member of the fund from the date of joining the establishment. Though the appellant failed to produce any documents to substantiate their claim, the 2nd and 3rd respondent produced adequate documentary evidence to support their claim to be enrolled to provident fund from their date of original appointment. It is clear from the two appointment orders produced by the appellant that they pertain to the regular appointment of respondent 2 and 3 and these two employees were working with the appellant on temporary basis from a prior date.

5. The main contention of the learned Counsel for the appellant is that the appeal is not maintainable in view of Sec 7(I) of the Act. In the present case the 1st respondent issued an order dt.23/06/2015 U/s 7A of the Act deciding the eligibility of respondent 2 & respondent 3 to be enrolled to provident fund benefits from a prior date of enrolment and also quantified the dues. The appellant did not prefer any appeal from the said order. The appellant filed a review application U/s 7B of the Act which was rejected by the respondent authority by the impugned order dt.31/07/2015. It is seen that the present appeal is preferred from the said order rejecting the Sec 7B review application. As per Sec 7(I) of the Act,

“7(I) Appeals to the Tribunal – 1) Any person aggrieved by a notification issued by the Central Government or order passed by the Central Government or any authority under the proviso Sub Sec 3 , Sub Sec 4 of Sec1 or Sec 3 or Sub Sec 1 of Sec 7A or Sec 7B (except for an order rejecting an application for review referred to in Sub Sec 5 thereof) or Sec 7C or Sec 14 B may

prefer an appeal to a Tribunal against such order.

As per sec 7B (5) ;

No appeal shall lie against an order of the officer rejecting an application for review, but an appeal under this Act will lie against an order passed under the review as if the order passed under review were the original order passed by him U/s 7A”.

From a combined reading of Sec 7(I) and Sec 7B (5) of the Act, it is clear that no appeal is maintainable from an order rejecting a review application U/s 7B of the Act. Since the present appeal is filed from an order rejecting the review application U/s 7B, the appeal is not maintainable.

6. It is seen that the 1st respondent also raised a contention regarding the limitation. It is seen that the appeal is filed within 60 days of the rejection of the Sec 7B review application and therefore the appeal is not hit by limitation.

7. It is seen that the enquiry U/s 7A is initiated on the basis of two complaints received from two employees of the appellant that they were not enrolled to the fund from the due date of eligibility. They were enrolled to the fund from a

subsequent date after their services were regularized. An Enforcement Officer was deputed to investigate the matter. The complaints, respondent 2 & 3 produced adequate evidence to support their case that they were employed by the appellant establishment much prior to their date of enrollment. However the appellant failed to produce any documents other than the appointment of the two employees on regular basis. The claim of the appellant was that the records were destroyed by the Finance Officer. Later in the enquiry initiated also the appellant failed to produce any documents to substantiate their claim that respondent 2 and 3 were enrolled to the fund from their date of eligibility. As per Para 26 (2) of EPF Scheme, the appellant is required to enroll all the employees from their date of engagement whether on regular or temporary basis, if they are working in or in connection with the work of the establishment. In the appeal memorandum at Para 6.2 itself the appellant pointed out that the employees who are engaged for projects are not enrolled to provident fund and only the regular employees are given the benefit of social security. Hence it is clear that the appellant establishment failed to enroll respondent 2 & 3 from the date of eligibility.

8. 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 as not maintainable. As pointed out in the previous paras, the appeal does not merit consideration on facts as well.

Sd/-
(V. Vijaya Kumar)
Presiding Officer