



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

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

(Tuesday the 18th day of January, 2022)

APPEAL No.416/2019
(Old No.ATA 531(7) 2016)

Appellant : Mount Estate
Mount P.O (RBT)
Bathel Plantations Ltd
Vandiperiyar
Idukki – 685533

By Adv. V.B. Hari Narayan

Respondent : The Assistant PF Commissioner
EPFO, Thirunakkara,
Kottayam -686 001

By Adv. Joy Thattil Ittoop

This case coming up for final hearing on 11.10.2021 and this Tribunal-cum-Labour Court on 18.01.2022 passed the following:

ORDER

Present appeal is filed from order No KR/KTM/3110/Enf-1(3)/2016/19464 dt. 04/03/2016 assessing regular dues U/s 7A of EPF & MP Act, 1952 (hereinafter referred to as 'the Act'.) for the period from

04/2013 to 02/2015 and also dues with respect to non-enrolled employees for the period from 12/2011 to 02/2015. The total dues assessed is Rs. 29,29,939/-.

2. The appellant is one of the 3 estates of Bethel Plantations around 200 permanent workers are engaged. Due to financial constrains and loss from 2000 onwards, the estate was remaining closed from 31/01/2002 to 07/03/2011. During this period several workers left employment and their claim were settled. The respondent authority took coercive action and recovered the balance outstanding dues. The respondent authority initiated an enquiry U/s 7A of the Act for the default period 12/2007 to 02/2015. The Enforcement Officer reported the dues and the same was admitted by the appellant. The Enforcement Officer further furnished details of 33 retired employees for whom contribution was not paid. These 33 employees got their provident fund already settled and are therefore excluded employees. Without considering the submissions of the representative of the appellant that these 33 employees rejoined the appellant estate after settling their provident fund claims and therefore they are

excluded employees, the respondent authority issued the impugned order assessing dues in respect of those employees.

3. Respondent filed counter denying the above allegations. The appellant is an establishment covered under the provisions of the Act and is engaged in tea plantation business. In the year 2011 the appellant entered into a lease agreement with RBT Ltd which owns the tea estate. After leasing the estates the appellant started operation from 2011 onwards. The appellant committed default in regular dues and also by non-enrolling 33 employees for the period 12/2011 to 02/2015. The appellant admitted the regular default but disputed the contribution in respect of 33 employees who re-joined the appellant establishment after settlement of their provident fund account. According to the appellant, they are excluded employees under Para 2(f) (i) of EPF Scheme 1952. After considering the pleadings of the appellant the respondent authority rejected the same for the reason that all the 33 employees re-joined the appellant establishment before their provident fund account is settled in full and

thus do not fall under the category of excluded employees. The list of 33 employees who had settled their provident fund account partly, with the date of part payment and date of final settlement, is enclosed and marked as Annexure R1. From the list it can be seen that the claim of these 33 employees were not fully settled even during the period of enquiry and continued to be provident fund members during the relevant point of time. The provident fund accounts of these members were settled only during 2013 to 2016. It is also seen that the appellant had paid salaries to these 33 employees. Copy of the salary details is enclosed herewith and marked as Annexure R2. The definition of excluded employee as per Para 2(f) of EPF Scheme is, an employee who have been a member of the fund and who, withdrew the full amount of accumulations in the fund under Clause (a) or (c) of sub paragraph (1) of paragraph 69. As per Para 69 of the EPF Scheme a member may withdraw the full amount standing to his credit

- a) On retirement from service after attaining the age of 55 years and
- b)

c) Immediately before migration from India for permanent settlement abroad or for taking employment abroad.

As per paragraph 26A of the Scheme, a member of the fund shall continue to be a member until he withdraws under paragraph 69 the amount standing to his credit in the Fund. There are two conditions for treating an employee as a excluded employee. First he should retire from service after attaining 55/58 years and second, he should withdraw full amount of accumulations in the Fund. The 33 employees re-engaged by the appellant did not withdraw the provident fund accumulations in full as per para 69(1) of the Scheme. Therefore all the employees are required to be enrolled to the fund.

4. The appellant establishment defaulted in remittance of regular contribution for the period 04/2013 to 02/2015. The appellant also failed to enroll 33 employees to provident fund membership. The respondent initiated an enquiry U/s 7A of the Act. A representative of the appellant attended the enquiry and admitted the liability of regular dues. However he disputed the

eligibility of 33 employees to be enrolled to the fund as the provident claims of these employees were already settled. During the course of hearing of this appeal, the learned Counsel for the appellant submitted that the regular dues as per the impugned order had already been remitted by the appellant establishment. Hence the present dispute is confined to assessment of dues in respect of 33 non-enrolled employees. According to the learned Counsel for the appellant, all these 33 employees retired from the service of the appellant and their provident fund account is already settled. According to the learned Counsel for the appellant belated settlement of provident fund account cannot be treated as a ground to accept the proposition that these 33 employees are continuing as members of fund. According to the Counsel for the appellant, even going by Annexure R1, it is clear that all these employees had completed their age of superannuation prior to 2011, and therefore they are all excluded employees. He further pointed out that as per Para 69(1) (a) of EPF Scheme a member who withdrew the full amount standing to his credit in the fund on retirement after attaining the age of

55 years is an excluded employee. All these 33 employees attained the age of superannuation prior to 2011 but withdraw the provident fund contribution only during subsequent years on account of the financial difficulties faced by the appellant establishment. He further stated that on a combined reading of Para 69 and 2(f) of EPF Scheme it is clear that once an employee attains the age of superannuation he ceases to be member of the fund and merely because there was delay in withdrawal of the accumulation will not give him the character of a member. The above claims of the learned Counsel for the appellant was strongly objected to by the learned Counsel for the respondent. According to him there are 2 conditions for treating an employee as excluded employee. First he should retire from the service after attaining the age of 55 years and Second, he should withdraw the full amount of accumulation in the fund. Since these 33 employees do not satisfy the above conditions they cannot be treated as excluded employees for the purpose of the Act and Schemes.

5. The relevant provisions for deciding the above issues are Para 2(f), Para 69 and Para 26A of EPF Scheme.

According to **Para 2(f)**

“ Excluded employee means i) An employee who, having been a member of fund, withdrew the full amount of his accumulation in the fund under clause (a) or (c) of sub Paragraph 1 of Paragraph 69. ii) An employee whose pay at the time, he is otherwise entitled to become a member of a fund exceeds Rs. 6500/- / 15000/- per month.

Para 69(1) Circumstances in which accumulations to the fund are payable to a member. A member may withdraw the full amount standing to its credits in the fund

- a) On retirement from service after attaining the age of 55 /58 years.
- b)
- c) Immediately before migration from India for permanent settlement abroad or for taking employment abroad.

Para 26 A. Retention of membership

A member of the fund shall continue to be a member until he withdraws under Para 69 the amounts standing to his 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 Para 27A.

A combined reading of the above provisions would show that a member will continue to be a member till he withdraws his provident fund accumulation in full on retirement from service after attaining the age of 55 years. An employee who withdrew his full amount of accumulation in the fund on attaining the age of 55 years is treated as an excluded employee U/s 2(f) of the scheme. From Annexure R1 statement it is seen that the 33 employees left the service of the establishment during the period 31/08/2001 to 31/08/2003. There are 2-3 employees are left subsequently as well. The year of birth of these 33 employees are also furnished in Annexure R1. It is clear that none of the employees attained the age of superannuation on the date of leaving service. Thereafter

since the appellant establishment remained closed these employees submitted their application for withdrawal of the provident fund accumulation. Even on the date of the part settlement none of the employees attained the age of 55 years. The estate re-opened in the year 2011 and all these employees rejoined the appellant establishment. The claim of the learned Counsel for the appellant is that since all these 33 employees applied for settlement during 2003-2004 and since all them attained the age of 55 years at the time of rejoining the appellant establishment in 2011, all these employees will have to be treated as excluded employees. I am not in a position to agree with the stand taken by the learned Counsel for the appellant. Admittedly the claim of these 33 employees were not fully settled at the time of them rejoining the appellant establishment. The definition of excluded employee U/s 2(f) is very specific that 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) of Para 69(1). It is admitted by the learned Counsel for the appellant that the final settlement of the claims of these 33

employees who rejoined the appellant establishment was done during 2013-2014 and the employees rejoined the appellant establishment in the year 2011 itself. Hence according to Para 26A of the Scheme, all these employees retained their membership as on date of rejoining the appellant establishment and therefore the appellant is liable to enroll all the 33 employees to the fund and remit the contribution as assessed in the impugned order.

6. 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.

Sd/-

(V. Vijaya Kumar)
Presiding Officer