



**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM**
Present: Shri.V.Vijaya Kumar, B.Sc., LLM, Presiding Officer.
(Friday the 08th day of October, 2021)

APPEAL No.439/2018
(Old No. ATA-749(7)2011)

Appellant

M/s. Hope Plantations
Kuduakarnam Estate
Peermade – 685 531

By Adv. Sajith .P.Warrier

Respondent

The Regional PF Commissioner
EPFO, Thirunakkara,
Kottayam -686 001

By Adv. Joy Thattil Itoop

This case coming up for final hearing on 08.07.2021
and this Tribunal-cum-Labour Court on 08.10.2021 passed the
following:

ORDER

Present appeal is filed from order
No.KR/KTM/396/7A/Enf-1(4)/2011/6056 dt. 30/08/2011
assessing dues in respect of non-enrolled employees U/s 7A of

EPF & MP Act, 1952 (hereinafter referred to as 'the Act'.) for the period from 09/2009 to 07/2010. The total dues assessed is Rs. 35,28,124/-.

2. The appellant is one of the units of Hope Plantations. The appellant is engaged in tea plantations and manufacturing of black tea sold in India through auction. Hope Plantations engaged around 2500 workers and the appellant alone engaged around 800 permanent workers. The respondent authority initiated action against the appellant alleging that the appellant failed to enroll temporary and casual workers. The appellant is not engaging any temporary or casual workers. The enrolled workers during their spare time, do extra work and payment for the same is made under the head " cash work and incentive plucking". Though the appellant pleaded that it is an overtime work done by enrolled workers, the respondent authority issued the impugned order, assessing the dues.

3. The respondent filed counter denying the above allegations. The appellant establishment is covered under the provisions of the

Act. It was reported that the appellant establishment did not remit the contribution from 09/2009 to 07/2010. Hence an enquiry was initiated U/s 7A of the Act. The Enforcement Officer was also directed to conduct an inspection of appellant establishment and submit the report. The Enforcement Officer submitted the reports dt.10/09/2010, 23/02/2011 and 09/03/2011. The copies of the reports were given to the appellant to offer their comments. In the report dt.10/09/2010 the Enforcement Officer has reported the regular dues for the permanent workers of the appellant establishment. In the reports dt. 23/02/2011 and 09/03/2011 the Enforcement Officer has reported the dues in respect of temporary employees and employees engaged through contractors. The report of the Enforcement Officer is produced as Exbt R1. The appellant filed their comments on the report of the Enforcement Officer. According to them, they hired workers from the floating population when there is crop increase and also pay overtime to their workers. They also paid incentives for plucking to those who worked after their regular duty hours. Since the casual workers are

not regular in nature the appellant contended that they are not liable to enroll those workers for provident fund contribution. Contractors are engaged for cutting, weeding, tea leaf lifting, shade pollarding, pruning works etc.. and they engaged the workers of the estate who were already enrolled to the fund. They are not collecting any provident fund from those workers. From the objection filed by the appellant it is clear that the appellant is only objecting the enrollment of temporary and casual workers who have been paid through vouchers and their expenses posted under head cash work, incentive plucking, Sunday work and wages paid to contractors. The written statement filed by the appellant before the respondent is produced as Exbt. R2. From the definition of employee under Sec 2(f) of the Act, it is very clear that any person who is employed in or in connection with the work directly or through a contractor is an employee. The Enforcement Officers who conducted the inspection collected the details of all the vouchers and identified the beneficiaries. A list of such workers who were not extended the membership was also annexed along

with the report. The appellant also took a view that the employees engaged through contractors are also not required to be enrolled to the fund.

4. The appellant establishment defaulted in remittance of regular provident fund contribution for the period from 09/2009 to 07/2010. The respondent therefore directed the Enforcement Officers to conduct an inspection of the appellant establishment and secure compliance. The Enforcement Officers during the inspection noticed that :

1) The appellant failed to remit contribution for regular employees for the period from 09/2009 to 07/2010.

2) They have not extended the provident fund benefits to the temporary employees who are accounted as cash work, incentive plucking and Sunday work.

5. The appellant has not remitted contribution in respect of contract workers engaged by them for cutting, weeding, tea leaf lifting, shade pollarding and pruning works.

The Enforcement Officers submitted separate report on all these heads stating that all these employees are required to be enrolled to the fund. The respondent authority therefore initiated an enquiry U/s 7A of the Act. The appellant establishment entered appearance and filed a written statement dt.22/07/2011 which is produced as Exbt R2. The appellant was also given copies of the reports. They offered their comment on the report vide Exbt R2. It was admitted in written statement of defence that the appellant engaged their workers and hired workers from floating population when the crop increases and paid overtime to their workers and wages to the hired workers. Incentives were also paid for the work done by the employees beyond their duty hours. The casual workers are not regular in nature and therefore the appellant is not liable to enroll those workers to the fund. It is also pointed out that the contract workers engaged by the appellant are also not required to be enrolled to the fund. The appellant also took a view that many of the contract workers are employees of the appellant who are already enrolled to the fund. As per Sec 2 (f) of the Act “ employee

means any person who is employed for wages in any kind of work manual or otherwise in or in connection with work of the establishment and who gets his wages directly or indirectly from the employer and includes any person :

1) Employed by or through a contractor in or in connection with the work of the establishment ;

2) ”

From the above definition it is very clear that any person who is employed for wages in or in connection with the work of the establishment and who gets his salary directly or indirectly from the employer is an employee under the provisions of the Act. It is also clear that any person employed by or through a contractor in or in connection with the work of the establishment is an employee of the establishment. A plain reading of the above definition and also the written statement, Exbt R2 filed by the appellant, it is clear that all these employees who are engaged as temporary workers or those who are engaged through contractors are employees of the appellant and therefore are required to be enrolled to the fund. The

appellant has taken a stand that some of these employees are regular employees of the appellant and are therefore already enrolled to the fund. The appellant also has taken a stand that payment made to such workers are overtime wage and therefore will not attract provident fund deduction. The appellant is the custodian of all the related records and it was upto him to produce the records to substantiate his claim that the payments made to the regular employees form part of overtime wages. After having availed the opportunity, the appellant cannot come up in appeal to plead that the payments made to some of the employees are overtime wages.

6. It is seen that the major chunk of the contribution assessed in the impugned order is the regular dues regarding which there is no dispute and the rest of the assessment is made on the basis of voucher payments wherein the employees are clearly identified.

7. 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