



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

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

(Monday the 27th day of December, 2021)

APPEAL No.493/2019
(Old No. ATA 514(7)2016)

Appellant : M/s. Alzhemers & Related Disorders
Society of India (ARDSI)
Guruvayoor Road, Kunnankulam,
Trichur - 680503

By Adv. P. Ramakrishnan

Respondent : The Assistant PF Commissioner
EPFO, Sub Regional Office
Kochi -682017

By Adv. Thomas Mathew Nellimmoottil

This case coming up for final hearing on 27/07/2021
and this Tribunal-cum-Labour Court on 27/12/2021 passed the
following:

ORDER

Present appeal is filed from order No. KR / KC / 29186/ Enf-
IV(1) / 2016 / 17768 dt. 02/03/2016 assessing dues U/s 7A of EPF
& MP Act, 1952 (hereinafter referred to as 'the Act'.) on non-

enrolled employees and evaded wages for the period from 09/2014 to 01/2015. Total dues assessed is Rs.2,18,779/-.

2. The appellant is charitable society registered under Travancore Cochin Literary, Scientific and Charitable Societies Registration Act 1955. The appellant was brought under the purview of the Act with effect from 2011. The appellant was regular in compliance. An Enforcement Officer inspected the appellant establishment and reported that 5 employees are not enrolled to provident fund and there is evasion in compliance. The appellant received a notice dt. 11/03/2015 from the respondent U/s 7A of the Act and fixing the enquiry on 21/05/2015. Subsequently the enquiry was adjourned to 04/08/2015. A representative of the appellant attended the hearing and filed a reply dt. 27/07/2015. A copy of the said reply is produced and marked as Annexure A1. The representative of the appellant specifically made a plea that the calculation of wages for the care staff, taking basic wages as Rs.15000/-when the actual salary of the employees employed by the appellant establishment was much below Rs.15000/- is not correct. The appellant also produced the wage register, the audited balance sheet and all other supporting documents to substantiate their contention before the respondent. The records maintained by the

appellant are being audited from time to time. The salary of the project officer who is the head of a particular centre was only Rs.10000/- to 12000/- month. The salary of the subordinate staff are below the salary of the Project Officer. Without considering the documents produced and the written submission made by the appellant the respondent issued the impugned order which is produced and marked as Annexure A2. The respondent has mechanically fixed liability on the appellant establishment by taking the wages as Rs.15000/- for all the employees considering the fact that they had worked for 26 days in a month. The finding of the respondent that 5 employees were not enrolled to the fund from September 2014 is not correct. The appellant establishment produced the ECR evidencing the fact that the employees were enrolled under the Act and Scheme from their date of joining.

3. The respondent filed counter denying the above allegations. Appellant establishment is covered under the provisions of the Act. On the basis of a complaint dt. 16/01/2013 from the employees of the establishment, an Enforcement Officer who is an Inspector appointed U/s 13 of the Act was directed to investigate the complaint. The Enforcement Officer reported that the appellant establishment is coverable under the provisions of the Act. Therefore

the appellant establishment is covered w.e.f 01/05/2011. On 15/01/2015 the respondent received another complaint stating that there is a possibility of preponing the coverage and there is evasion of wages by the appellant establishment. Hence the Enforcement Officer was again directed to investigate the complaint. The Enforcement Officer after investigation reported that 5 eligible employees were not enrolled to the fund. He further reported that 28 employees were enrolled belatedly. Further he also reported that the remittance of contribution is not made on actual salary. The respondent therefore initiated an enquiry U/s 7A of the Act vide summons dt.11/03/2015 and giving an opportunity to the appellant to produce the records on 21/05/2015. A representative of the appellant attended the hearing and produced the records. As per the wage register submitted by the appellant, the attendance of the employees are seen reduced from 09/2014. Prior to 09/2014 the attendance of the employees varied from 24 to 26 days. From 09/2014 onwards the attendance varies from 06 to 10 days. Government of India vide notification dt. 22/08/2014 enhanced the wage limit from Rs.6500/-to 15000/-. The appellant establishment, to circumvent the additional contribution, reduced the number of working days and remitted contribution on the reduced wages. It was also seen that the salary of the employees is split into

travelling allowance and OT. Though the number of working days are reduced from 26 days to 10 days the travelling allowance and OT paid to the employees are paid in full. Accordingly the respondent authority calculated wages on 26 days and assessed the dues. The evidence produced by the appellant is very clear indication that the appellant establishment is engaged in subterfuge of wages to evade statutory wages. As an example for the month of August 2014 Smt. Annie Xavier worked for 25 days and no OT and TA are paid. On September 2014 she worked for 8 days and her OT and TA are shown as Rs.1250/- and Rs.600/- respectively. The appellant could not explain the above figures inspite of specific query during the course of the enquiry. The appellant never disputed the non- enrollment or produced any records at the time of 7A enquiry. An issue which is not raised during the 7A enquiry cannot be subsequently raised in the appeal. In **Ess Dee Carpet Enterprises Vs Union of India**, 1985 LIC 1116 Hon'ble High Court of Rajasthan held that the question of fact not raised before the RPFC in the enquiry U/s 7A cannot be raised in the writ petition.

4. The respondent authority received a complaint from the employees of the appellant establishment alleging that the appellant establishment is not extending social security benefits to its

employees inspite of the fact that the statutory requirements for coverage are met by the appellant establishment. The respondent deputed an Enforcement Officer to investigate the complaint and found that the appellant establishment is coverable w.e.f 01/05/2011. The respondent therefore covered the establishment under the provisions of the Act. There after the respondent received another complaint on 15/01/2015 alleging that there is a possibility of preponing the coverage. The complaint also stated that there is evasion of wages there by reducing the provident fund contribution. An Enforcement Officer was again deputed to investigate into the complaint. The Enforcement Officer noticed that 5 employees were not enrolled to the fund and 28 employees were enrolled belatedly. It was also reported that contribution is not paid on actual wages. The respondent therefore initiated an enquiry U/s 7A of the Act. A representative of the appellant attended the hearing and produced the records called for. The appellant did not raised any serious objection regarding the non- enrolment of employees before the respondent authority. The appellant raised serious objections regarding the calculation of dues on evaded wages. On verification of the documents produced by the appellant before the respondent authority, he found that the records were maintained properly till August 2014. From September 2014 he

found that there is manipulation in the wage register and attendance registers produced by the appellant establishment, after the statutory wage limit is enhanced from Rs.6500/- to 15000/- w.e.f 01/09/2014. The appellant changed not only the wage structure also reduced the attendance of the employees. Having found that it is a clear case of subterfuge, the respondent authority issued the impugned order holding that the appellant is liable to remit contribution on complete wages.

5. In this appeal the learned Counsel for the appellant contested even the assessment in respect of non enrolled employees. According to him all the non enrolled employees are already enrolled to the fund from their due date of their eligibility. However no documents or evidence is produced to substantiate their claim.

6. The 2nd issue raised by the learned Counsel is with regard to the assessment of evaded wages. The learned Counsel for the respondent took this Tribunal through examples to substantiate his case that the appellant manipulated the records in such a way that the provident fund liability is reduced to the minimum. The statutory limit of wages is enhanced from Rs. 6500/- to 15000/- w.e.f 01/09/2014. Upto August 2014 the appellant maintained the records properly and the average attendance for the employees

varied from 24 to 26 days per month. From September 2014, after the wage limit is enhanced to Rs.15000/-, suddenly the average attendance is reduced to 6 to 10 days and 2 components such as TA and OT are added to the wages structure. The learned Counsel for the respondent explained the subterfuge with one example. Smt. Annie Xavier is an employee of the appellant establishment. In the month of August 2014 she worked for 25 days and there was no OT or TA component in her salary. In September 2014 she worked for 8 days and the salary is split into Rs. 1250/- being OT and Rs.600/- as TA. According to the learned Counsel for the respondent the appellant was given an opportunity to explain the details and reasons for reducing the attendance and splitting the salary. The appellant could not explain the same. The respondent authority therefore calculated the wages for 26 days on complete wages and issued the impugned order. This is the clear case of manipulation by any employer for denying social security benefits to its employees. Any accommodation given to the appellant in the circumstances explained above, will lead to unwarranted complexities while enforcing the provisions of the Act. Though the learned Counsel for the appellant challenged the calculation of wages by the respondent authority he failed to explain as to why the attendance of the employees are reduced, if not for reducing the social security

contribution to its employees. The learned Counsel for the appellant could not explain the reasons for splitting the salary and introducing the allowances w.e.f September 2014 after enhancement of wage sealing to Rs.15000/-. He only tried to argue that OT is excluded U/s 2(b) of the Act. In the normal circumstances the argument of the Counsel for the appellant would have been accepted. However in the present circumstances it is not possible to accept the claim of the appellant the since splitting up of wages is done clearly with an idea of reducing the provident fund, liability.

7. Considering the facts, circumstances and pleadings in this appeal, I am not inclined to interfere with the impugned order.

Hence the appeal is dismissed.

Sd/~

(V. Vijaya Kumar)
Presiding Officer