



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

सत्यमेव जयते

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

(Tuesday the 11th day of January, 2022)

APPEAL No.526/2019
(Old No. ATA No. 803(7) 2009)

Appellant

M/s. Gokul Rubber & Tea Plantations Ltd.,
P.B. No. 80, Perinthalmanna
Malappuram District
Kerala – 679 322

By Adv. P. B Sajith

Respondent

1. The Regional PF Commissioner
EPFO, Sub-Regional Office
Eranshipalam P.O
Kozhikode-673 006.

By Adv. Dr. Abraham Meachinkara

2. The Secretary,
Plantation Labour Union (CITU)
Perinthalmanna Taluk,
P.O. Perinthalmanna
Malappuram – 679 322.

This case coming up for final hearing on 26/07/2021
and this Tribunal-cum-Labour Court on 11/01/2022 passed
the following:

ORDER

Present appeal is filed from Order No. KR/KK/532/2581/3272/3358/Enf-3(1)/2009/2897 dt. 18/09/2009 deciding the eligibility of 43 employees to be enrolled to the fund under Para 26 B of EPF Scheme of 1952 read with Sec 7A of EPF & MP Act, 1952 (hereinafter referred to as 'the Act') .

2. The appellant is a company incorporated under the provisions of Companies' Act and being a plantation is registered under the Plantation Labour Act. The appellant is covered under the provisions of the Act. The appellant is an independent entity. Based on the various demands of the 2nd respondent union, an industrial dispute was raised and a conciliation proceeding was initiated before the District Labour Officer, Malappuram. The conciliation proceeding ended up in a settlement dt. 08/06/2006. Four separate memorandums of settlements were executed on the same date with respect to four plantations. One among them is the appellant plantation. Out of the several demands, one demand related to confirmation of two employees shown in the deed of settlement. As per the

settlement it was mutually agreed to confirm the service of the employees with effect from 01/05/2006. In the meanwhile the respondent initiated an enquiry U/s 7A read with Para 26B of EPF Scheme, on the basis of a complaint of the union that 47 employees included in the list were not enrolled by 4 plantations, the appellant being one among them. The Enforcement Officer of the respondent authority was deputed to investigate the complaint. It was pointed to the Enforcement Officer that the employees were not working in the appellant plantation whereas they are intermittently working in a coconut farm named Thayyil plantations jointly owned by few landlords, some of them are relatives of the Directors of the appellant company. On the basis of the tripartite settlement, the appellant enrolled all these employees with effect from 01/04/2006. The Enforcement Officer concerned collected some fictitious dates from the employees and trade union and reported that the employees are required to be enrolled from the dates as declared by the employees and trade union. Since the eligibility to enroll prior to 01/04/2006 was disputed, the respondent authority

initiated an enquiry under Para 26B of the EPF Scheme read with Sec 7A of the Act. The 2nd respondent, the Secretary of the union took a stand that the appellant establishment is having all the details regarding the employment of the employees and the wages paid to them. The appellant disputed the claim of the union. After elaborate consideration and evidence adduced on either side, the respondent authority issued the impugned order directing the appellant to enroll the employees from the respective dates indicated in the said order. The sole reason on the basis of which the respondent has taken such a decision is the existence of the labour dispute in relation to service of those employees. The respondent authority went wrong in assuming that all four plantations are owned by M/s Young India Group of Estates. All the four estates are independent with separated registration and separate management. The 1st respondent authority ought to have directed the union to prove the service of the employees with appellant instead of directing the appellant establishment to substantiate the claim.

3. The respondent filed counter denying the above allegations. The 1st respondent raised a preliminary objection that a decision and an order issued under Para 26 B of EPF Scheme cannot be challenged in an appeal U/s 7(I) of the Act. Sec 7(I) of the Employees Provident Fund and Miscellaneous Provisions Act specifies the types of orders which can be challenged before this Tribunal. Since an order issued under Para 26B is not included U/s 7(I), the appeal is not maintainable. The heading of the impugned order refers to Sec 7A only for the limited purpose and scope of Sec 7A(2) for enforcing attendance and examination of witnesses, production of documents and receiving evidence on affidavit.

4. The impugned order is issued U/s 7A of the Act read with Para 26 B of EPF Scheme. Any dispute regarding eligibility to be enrolled to the fund can be decided under Para 26B of EPF Scheme by the Regional PF Commissioner and the decision of the Commissioner is final. Rightly or wrongly the 1st respondent authority has invoked the jurisdiction U/s 7A of the Act. According to the learned Counsel for the 1st respondent Sec 7A

is invoked only for the limited purpose of taking evidence and ensuring the presence of witnesses. However having invoked the jurisdiction U/s 7A, the appeal cannot be held to be not maintainable.

5. There was a dispute between the Union and the Management of 4 estates including the appellant regarding the enrollment of 46 employees employed in all the 4 estates. The union raised an industrial dispute and as per Annexure A3 tripartite settlement before the District Labour Officer, Malappuram it was decided to regularize these employees with effect from 01/05/2006. The appellant employed 2 employees out of the list of 46 employees and they were enrolled to the fund with effect from 01/05/2006. The union there after filed a complaint before the respondent authority that these employees were not enrolled from the date of eligibility. The respondent authority therefore initiated an enquiry U/s 7A of the Act read with Para 26B of EPF Scheme. An Enforcement Officer of the respondent authority was also deputed to investigate into the complaint. The Enforcement Officer could

not lay his hands on any documentary proof to substantiate the claim of the union. However he took a statement from the union and the union furnished the name and the date of joining of the employees. The appellant took a stand that for all employees, the management is issuing wage slips and it is for the employees and the union to prove their date of employment with the appellant estate. The learned Counsel for the appellant relied on the decision of the Hon'ble Supreme Court of India in **Chairman, Oil and Natural Gas Corporation Vs Shyamal Chandra Bhowmik**, 2005 (8) Supreme 213 and **Krishna Bhagya Jan Nigam Ltd Vs Muhammed Raffi**, 2006 (6) Supreme 653 to argue that the burden of proving the service details are with the employees and union and not with the appellant management. The learned Counsel for the 1st respondent pointed out that the industrial dispute itself was finalized on 08/06/2006 and therefore it is clear that employees were working with the appellant estate prior to that date and since the appellant failed to produce any document before the respondent authority, he accepted the statement with date of

joining given by the union. The learned Counsel for the appellant pointed out that the impugned order is against four estates including the appellant. The other estates are Pandallur Plantations Pvt. Ltd., 2. Balanoor Plantations & Industries Ltd and 3. Bhadra Coffee Estates Ltd and the impugned order is a common order in respect of all the above four plantations. According to the learned Counsel for the appellant the other estates moved the EPF Appellate Tribunal, New Delhi and all the appeals were rejected by the Tribunal. Those estates moved the Hon'ble High Court of Kerala in W.P.(C) No. 16252/2011, W.P.(C) No.16267/2011 and W.P.(C) No. 16263/2011 against the decision of the 1st respondent as well as the EPF Appellate Tribunal. The Hon'ble High Court of Kerala vide its judgment dt. 04/08/2017 allowed the Writ Petitions and set aside the order of the 1st respondent as well as the EPF Appellate Tribunal, New Delhi. On a perusal of the judgment of the Hon'ble High Court there is a clear finding by the Hon'ble High Court with regard to the issue raised in this appeal. The Hon'ble High Court held that:

“ In my view, in such a situation, it was not opened to the 1st respondent to rely merely on the uncorroborated statement of the union representatives, without any further materials in the form of oral testimony of the other workers in the establishment, to come to the conclusion that the workers in the question had been employed on various dates between 1996 & 2002 in the establishments under the management of the petitioners. It is brought to my notice that with effect from 01/04/2006, the petitioners are making the required contribution under the EPF and MP Act in respect of aforesaid 43 workers. That being the case, and in the absence of anything to indicate that the workers in question had been engaged prior to 01/04/2006, in the various establishments under the management of the petitioners herein, I am of the view that the ends of justice would require me to quash Exbt P3 and P6 orders of the 1st and 2nd

respondent respectively, to the extent they hold that the petitioners herein would be required to make contribution in respect of the aforesaid 43 workers, under EPF and MP Act for the period prior to 01/04/2006”.

Exbt P3 referred in the above judgment is the impugned order in this appeal and Exbt P6 is the order issued by EPF Appellate Tribunal in appeal. The learned Counsel for the 1st respondent submitted that the respondent organization filed appeal from the above judgments. The learned Counsel for the respondent was allowed to produce judgments, if any, or proof of having filed the appeal. No judgment or proof of having filed the appeal is produced. Hence the question regarding the eligibility of the employees to be enrolled to the fund from a date prior to 01/04/2006 is concluded by the above decision of the Hon'ble High Court of Kerala.

6. Considering the facts, circumstances pleadings and evidence in this appeal I am not inclined to uphold the impugned order

Hence the appeal is allowed and the impugned order is set aside.

Sd/~

(V.Vijaya Kumar)
Presiding Officer