



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

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

(Friday the 6th day of May, 2022)

APPEAL No.793/2019

Appellant

Saraswathi Vidyamandiram
(EM) High School,
PO Kottooli
Kozhikode – 673 016

By Adv. K.Hemachandran
Adv. C. Anilkumar

Respondent

The Assistant PF Commissioner
EPFO, Sub-Regional Office
Eranhipalam P.O
Kozhikode-673 006.

By Adv.Dr. Abraham P Meachinkara

This case coming up for final hearing on 04/05/2022
and this Tribunal-cum-Labour Court on 06/05/2022 passed
the following:

ORDER

Present appeal is filed from Order No. KR / KKD /
1499833 / Enf-1(2) / 2018-19 / 3006 dt. 23/08/2019

confirming the coverage of the appellant establishment with effect from 01/06/2013.

2. The appellant is an Education Institution affiliated to Bharathiya Vidya Niketan, a charitable organization. At the time when the school was started, it was unaided and unrecognized. In 2015 the management got recognition from the government and continued as an unaided school. The school availed the services of well wishes and retired personnel who volunteered to render honorary service to the institution out of their own free will. Though the number of employees drawing salary were below 20, the appellant voluntarily implemented EPF Scheme with effect from July 2016. In the year 2017 an Enforcement Officer of the respondent conducted an inspection of this school and noted that during June and August 2013, 20 persons were found working inclusive of those who rendered voluntarily service. In pursuance of the report of the Enforcement Officer, the respondent initiated an enquiry U/s 7A of the Act. A copy of the said notice is produced and marked as Annexure A1. The appellant disputed the preponement and filed a detailed written reply dt.05/03/2019, a copy of which is produced and marked as Annexure A2. It was specifically pleaded that the number of employees employed for

salaries/wages do not exceed 11/12 during June 2013 in March 2014. In the year 2014-2015 the number enhanced to 14/15. During the year 2015-2016 the number of employees enhanced to 18. In June 2015, the appellant had no occasion to engage honorary persons to render service. Well wishers of the institution who rendered service free of cost, out of their own free will and desire cannot be counted as an employee. Definition of 'employee' defined U/s 2(f) provides that persons must be employed for wages. The declaration executed by five persons at the time of hearing is produced as Annexure A6 series. The Photostat copy of the attendance register for the relevant period is produced and marked as Annexure A7. The gratuitous payments were made during Onam and also on special occasions. The observation of the respondent authority that requirement of payment of wages or any other kind of remuneration is not necessary for attracting the provisions of the Act and Schemes is not correct. The appellant filed a review application vide Annexure A4. The review application is not taken up for hearing so far. A person working on honorarium basis is not an employee and only rendering service for which payment is made as a token of gratitude. The Hon'ble High Court of Delhi in 1998 LC 513 considered the

question whether with three partners who were drawing wages can be counted for the purpose of coverage under ESIC Act. The Hon'ble High Court held that the partners, though working regularly for wages could not be treated as persons employed.

3. The respondent filed counter denying the above allegations. The appellant establishment registered voluntarily under the provisions of the Act, invoking the facility of online registration of establishments with provident fund code No. KR / KKD/1499833 with effect from 01/06/2016. The Area Enforcement Officer after verification of the records reported that the establishment engaged 20 persons as on 01/06/2013. He also submitted documents to support his claim. The competent authority preponed the coverage from 01/06/2016 to 01/06/2013 vide notice dt.19/3/2018. The appellant challenged the preponement of coverage vide their representation dt. 05/10/2019. Hence an enquiry U/s 7A was initiated. The contentions of the appellant was that the persons employed on free service cannot be counted for the purpose of coverage. The respondent authority held that as per Sec 1(3)(b), the persons engaged on free service also will be counted for the purpose of coverage under the provisions of the Act. After hearing the parties

the respondent authority issued the impugned order, preponing the coverage to 01/06/2013. The representative of the appellant admitted during the course of hearing that they engaged some persons on honorary basis in addition to regular employees. For the purpose of attracting the provisions of Act, the requirement of payment of wages or any kind of remuneration is not necessary. As per Sec 1(3)(b) of the Act “ Subject to the provisions contained in Sec 16, it applies :-

a).....

b) To any other establishment employing twenty or more persons or class of such establishments which the Central Government may, by notification in the Official Gazette, specify in this behalf. ”

4. It may be noted the words used in this section is “twenty or more persons” and not twenty or more employees.” The difference between the “persons” and employees is very clear. On examining the Muster Roll of the establishment for the month of June 2013 as well as the Wage Statement given by the appellant revealed that the appellant employed twenty “persons” on 01/06/2013.

5. The appellant establishment registered themselves the online portal of Employees Provident Fund Organization for coverage with effect from July 2016. The Enforcement Officer who inspected the appellant establishment for verification of the data furnished for online verification, found that the appellant establishment engaged 20 persons as on 01/06/2013 and therefore the appellant establishment is statutorily coverable with effect from 01/06/2013. The appellant establishment disputed the coverage. Hence the matter was taken up U/s 7A of the Act and after considering the documents produced by the appellant, the respondent authority came to the conclusion that the appellant was engaging 20 persons as on 01/06/2013 which includes five persons working on voluntary basis without any salary or wages. According to the learned Counsel for the appellant a combined reading Sec.1(3)(b) and 2(f) indicate that only employees drawing wages/salary can be counted for the purpose of coverage. According to the learned Counsel for the respondent the wording as per Sec 1(3)(b) is very clear that for the purpose of coverage the requirement is engagement of twenty “persons” and not twenty employees.

As per sec 1(3)(b)

“ Subject to the provisions contained in Sec16, it applies

a)

b) To any other establishment employing twenty or more persons or class of such establishments which the Central Government may, by notification in the Official Gazette, specify in this behalf ” .

6. As per Sec2(f) an employee means any person who is employed for wages in or in connection with the work of the establishment and who gets his wages directly or indirectly from the employer. The legislative intention is very clear with regard to the coverage U/s 1(3)(b) and Sec 2(f) regarding the definition of employee. As per Sec 1(3)(b) it need not necessarily imply that all the twenty persons employed by an establishment should satisfy the requirement of the definition of the employee U/s 2 (f) of the Act. It is sufficient if the establishment is engaging twenty or more persons as a clear distinction is made in Sec 1(3)(b) and also in Sec 6 of the Act where the contributions payable under the Act and Schemes are provided. An establishment can employ persons

on honorary basis or excluded employees who need not pay contribution on the honorarium or the salary that they received. However as per Sec 1(3)(b) they can be counted for the purpose of coverage.

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