



सत्यमेव जयते

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

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

(Monday the 17th day of February, 2020)

Appeal No.248/2018

(Old No. A/KL-26/2017)

Appellant : M/s. Pioneer Cars (India) Pvt.Ltd
Thalassery,
Kannur -670105.

By Adv. K.K. Premalal

Respondent : The Assistant PF Commissioner
EPFO, Sub-Regional Office
Fort Road, Kannur - 670001

By Adv. K.C. Santhosh Kumar

This appeal came up for hearing on 22/01/2020 and this Industrial Tribunal cum Labour Court issued the following order on 17/02/2020.

ORDER

Present appeal is filed from order No. KR / KNR/18852/ENf 1 (1) /7A/2016-17/3728 dt. 18/01/2017, assessing dues U/s 7A of EPF & MP Act,1952 (hereinafter

referred to as 'the Act') in respect of non enrolled employees for the period from 10/2015 to 07/2016. The total dues assessed is 4,17,522/-.

2. Appellant establishment is engaged in the service and sale of automobile accessories. The appellant is regular in compliance. No contribution was paid on the stipend paid to the apprentices engaged under model standing orders. In view of the amendments brought in the ESIC Act, contribution in respect of apprentices are being paid in respect of ESIC Act. The appellant was given notice dt. 02/08/2016 stating that there is difference in number of employees enrolled under ESI and EPF. The notice is produced and marked as Annexure 1. The appellant sent a reply to the notice stating that the difference of employees is due to the fact that apprentices engaged under Model Standing Orders will not come within the definition of the employee under the Act. The reply given is produced and marked as Annexure 2. The respondent thereafter issued summons U/s 7A of the Act for determining the dues for the period from 11/2015 to 07/2016. A representative of the appellant appeared before the respondent

and submitted that in view of the decision in **RPFC Vs. Central Arecanut and Coca Marketing and Processing Co-Operative Ltd.**, 2006 (2) SCC 381 the trainees /apprentices are not employees U/s 2(f) of the Act. Without considering the above facts the respondent issued the impugned order.

3. Respondent filed counter denying the above allegations in the appeal memorandum. The Enforcement Officer attached to the office of the respondent during inspection reported that the appellant had belatedly enrolled 30 employees on various dates from 10/2015 onwards. Hence an enquiry under 7A was initiated. The representative of the appellant who appeared before the respondent admitted that some of the employees who have been enrolled as members of ESIC were not enrolled under Provident Fund Scheme. He also submitted that the wages reported by the Enforcement Officer is the wages reported by them to ESIC and assured to produce records to show in the correct wages. The enquiry was adjourned on various dates but there was no representation for the appellant. Finally the matter was posted on 05/01/2017 for which notice dt. 23/12/2016 was issued.

There was no representation for the appellant on 05/01/2017 as well. During the enquiry it was admitted that there is no separate scheme for trainees and all the alleged trainees are working as permanent employees. In fact there was no contention raised in the reply on 01/12/2016 that these employees are apprentices and wages paid to them are stipend. The appellant cannot raise the contention of trainees in this appeal since the same was not raised before the respondent in the 7A enquiry. The employees as defined Sec 2(f) of the Act includes any person engaged as an apprentice not being an apprentice engages under apprentices Act 1961 or under the standing order of the establishment. The 30 employees employed by the appellant were not engaged either under the Apprentices Act, 1961 or under the Standing Orders of the establishment. Hence they will come within the definition of employees U/s 2(f) of the Act. The dictum laid by the Hon'ble Supreme Court in **RPFC Vs Central Arecanut and Coca Marketing and Processing Co-Operative Ltd.,** (Supra) is not applicable to the present case as there is no training scheme and they were not paid stipend but only

wages as evidenced from the wages statement produced as Annexure R1. Had the employees been apprentices drawing stipend as claimed by the appellant, the amount drawn should have been in one or two slabs. The respondent denied the allegation of the appellant that the representative of the appellant pleaded before the respondent that the nonenrolled employees were only trainees.

4. The only contention raised by the learned Counsel for the appellant is that the non-enrolled employees were only trainee under Modal Standing Orders. According to him the decision of the Hon'ble Supreme Court in **RPFC Vs. Central Arecanut Coco Marketing and Processing Co-operative Ltd.**, (Supra) is squarely applicable to the facts of the present case. In the above case the Hon'ble Supreme Court was considering two issues, one whether Model Standing Order can be extended to an establishment coming under the Standing Orders Act, when the certification process is on and the second question considered was whether the trainees can be treated as learners and excluded U/s 2(f) of the Act. The facts of that case was entirely different from the present case.

In the above case the establishment was a Co-operative in public sector and was have being a training scheme which used to be notified every year by publication newspaper and after conducting interview some 20 trainees are selected for exclusive training. In that case the trainees paid fixed stipend during the period of training and they have no right to employment nor any obligation to accept any employment if offered by the employer. In the present case there is absolutely no mention regarding any training scheme and the Annexure R1 wages statement produced by the respondent will clearly show that the payment made to the so called employees are not stipend but only wages. It is relevant to point out that as per definition of the “employees” U/s 2(f) of the Act any person engaged as an apprentice is also an employee and only apprentice engaged under Apprentices Act, 1961 or the Standing Orders of the establishment are excluded. In the facts and circumstance of this case it is very difficult to accept the pleading of the learned Counsel for the appellant that the so called trainees will not come under the definition of sec 2(f). If at all it was the case, it was for the appellant to prove the

same before the respondent during the 7A enquiry. The appellant ought to have produced the scheme of training, the duration of training, the stipend paid and the order under which the trainees are engaged . The appellant attended the hearing on 01.12.2016 and assured to produce the records called for by the respondent on 16.12.2016, but failed to attend the hearing. The inquiry was further adjourned to 05.01.2017 and the appellant did not attend the enquiry. Having failed to prove before the authority U/s 7A of the Act, that the nonenrolled employees' were only learners under Model Standing Orders, the appellant cannot take such a plea in this appeal.

5. Considering all the above facts, pleadings and evidence, I am not inclined to interfere with the impugned order.

Hence the appeal is dismissed.

Sd/-

(V. Vijaya Kumar)
Presiding Officer