



सत्यमेव जयते

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

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

(Wednesday the 17th day of November, 2021)

Appeal No.410/2018
(Old No. ATA-619(7)/2011)

Appellant : M/s. Detective and Security Services,
T.C/9/2040 "Sreesanth"
Kochar Road, Sasthamangalam
Thiruvananthapuram - 695010

By Adv. N. Anil Kumar

Respondents : 1. The Assistant PF Commissioner
EPFO, Regional Office
Pattom, Trivandrum -695004.

By Adv. Nita. N.S

2. M/s. Terumo Penpol
Puliyarakonam,
Thiruvananthapuram- 695003

By Adv. Vikram Ramakrishnan

3. M/s. Skol Breweries Ltd.,
Kombanaparakadavu, Poolani,
Meloor P.O, Chalakudi
Ernakulam-680 311.

This appeal came up for hearing on 03/08/2021 and this Industrial Tribunal cum Labour Court issued the following order on 17/11/2021.

ORDER

Present appeal is filed from Order No. KR / KR / 16730 / Enf-1(4) / 2011 / 4316 dt. 23.06.2011 assessing damages U/s 7A of EPF & MP Act, 1952 (hereinafter referred as 'the Act'.) on evaded wages for the period from 12/2007 to 02/2011. The total dues assessed is Rs. 6,35,466/-.

2. The appellant is a service provider supplying manpower and security guards. An Enforcement Officer of respondent's office conducted an inspection and reported that the contribution in respect of security guards supplied to: 1) M/s Terumo Penpol and 2) Skol Breweries, Chalakudy were not paid on actual wages. The respondent authority initiated an enquiry U/s 7A of the Act. Notices were issued to the principal employer as well as to the appellant. M/s Skol Breweries did not attend the hearing. The appellant remitted the provident fund contribution as per the direction given by the principal employers. The

appellant provided all the details regarding the remittances made against the security guards deployed at M/s Terumo Penpol and Skol Breweries. As per the first respondent authority, the appellant has bifurcated the wages into various components such as Basic + DA, HRA, Conveyance Allowance, EFA and OT and the contribution is remitted only for the basic salary. It was brought to the notice of 1st respondent authority that the splitting of salary was done by the principal employers themselves and appellant was given separate service charges only. The 2nd respondent regularly bifurcated the salary into different components and the appellant was given the computer data or split up salary of the employees for remitting the subscription. The computer data sheet of salary given by the 2nd respondent for the month of January 2008 is produced and marked as Annexure 2 series. It can be seen from Annexure 2 series that the basic salary of the employees was Rs.2400/-. The communication of the appellant dt.23/07/2011 addressed to the 3rd respondent is produced and marked as Annexure 3. The copies of chalans for the period from 02/2008 to 03/2011 is produced and marked as Annexure 4 series. Ignoring the contentions of the appellant the 1st respondent issued the impugned order. The principal employers M/s Terumo Penpol and M/s Skol Breweries

were also made jointly and severally responsible for the payment of their respective dues. The 1st respondent authority went wrong in fixing the liability upon the appellant. The 2nd and 3rd respondent respectively are the employers and they are liable to remit their contribution. The 1st respondent authority ought to have noticed that the appellant is not the employer for the employees deployed at the locations of 2nd and 3rd respondents. The 1st respondent ought to have noticed that the appellant is only a service provider who acted upon the direction of the principal employers concerned.

3. Respondent filed counter denying the above allegations. The appellant establishment is providing manpower to various agencies such as the 2nd and 3rd respondent on contract basis. During the inspection it was noticed that the appellant has bifurcated the wages into various components such as Basic + DA, HRA, Conveyance Allowance, EFA and OT and contributions were remitted only for basic and DA. The salary register showed that the appellant had not remitted contribution on the actual wages paid to the employees. On the basis of the report of the Enforcement Officer, an enquiry U/s 7A of the Act was initiated. During

the course of the enquiry, on the basis of the records produced by the appellant, it was noticed that the wages paid to the employees deployed at the premises of the 2nd respondent was split into Basic, OT and Efficiency allowance and provident fund is paid only on the basic. Similarly in the case of 3rd respondent, it is seen that the wages has been split into Basic, HRA and PF contribution is paid at flat rate of 144 /- without any basis. From the records produced in the enquiry, it is clear that there was cleared evasion of wages on which provident fund contribution is paid. With regard to the 3rd respondent the contribution remitted was not on the basis of any provisions, but at the flat rate of Rs.144/-. The representative of the 2nd respondent submitted that the principal employer is not aware of the evasion of provident fund dues and the responsibility for remitting the contribution was with the appellant establishment. The 2nd respondent was paid an amount of Rs.3075/- for security guards for 8 hours duty. The representative of the appellant submitted that the splitting of salary is done by the 2nd respondent and the service charges are paid to him as per the agreement. A plain reading of the definition of basic wages as per Sec 2(b) and Sec 6 would clearly show that the appellant is required to remit contribution on all

emoluments earned by the employee, excluding certain specific allowances. During the enquiry it was noticed that the evaded wages except HRA and OT will come within the definition of basic wages. The liability to remit contribution is with the appellant. However the 2nd and 3rd respondent cannot escape the liability as per Sec 8A in the event of any default by the appellant establishment.

4. The 2nd respondent entered appearance and filed counter affidavit. The 1st respondent sought to enforce the impugned order on the 2nd respondent, being the principal employer. Aggrieved by the action of the 1st respondent, the 2nd respondent preferred appeal being ATA No. 737 (7) 2011 before the Hon'ble EPF Appellate Tribunal. The Hon'ble Tribunal by its order dt. 04/04/2013 dismissed the appeal of the 2nd respondent. The 2nd respondent filed Writ Petition W.P. (C). No. 30510/2013 before the Hon'ble High Court of Kerala challenging the impugned order on multiple grounds. The Hon'ble High Court by its order dt.11/12/2013 granted interim stay of the order of the 1st respondent subject to remittance of 50% of the total demand. The 2nd respondent remitted 50% of the total demand. The writ petition is still pending for

final disposal. The 1st respondent in the impugned order failed to consider the definition of basic wages and also the exclusion clause wherein allowances given by the 2nd respondent like Efficiency allowance, overtime allowance etc will not fall under the definition of basic wages. The 1st respondent passed the impugned order without giving the 2nd respondent a proper opportunity for being heard.

5. The 3rd respondent did not enter appearance and therefore remained ex parte.

6. The 1st respondent initiated an enquiry U/s 7A of the Act on the basis of the report filed by the Enforcement Officer that the appellant establishment is bifurcating wages into various allowances and thereby evading provident fund contribution. The principal employers, 2nd and 3rd respondents, were also summoned in the enquiry. Though the issue involved was with regard to bifurcation of wages, the appellant in this appeal basically challenged their liability to remit the contribution. According to the learned Counsel for the appellant, the principal employers are the real employers of the security guards deployed at their premises and they should be held responsible for evasion, if any, in

remittance of contribution. According to the learned Counsel for the appellant the bifurcation is done by the 2nd and 3rd respondent and the calculation sheets are given to him and he remitted the contribution accordingly. According to the 2nd respondent they are not in any way responsible for the bifurcation of wages as they were paying the appellant as per the terms of contract and the wages were paid by the appellant to its employees. With regard to the 3rd respondent it is seen that the contribution are paid at a flat rate of Rs.144/- and is not based on any provisions of the Act and Schemes. The learned Counsel for the 1st respondent submitted that the allowances such as HRA and overtime are excluded as per Sec 2 (b) (2) and therefore the same is excluded from the assessment. The learned Counsel for the 1st respondent also submitted that after the impugned order is issued the dues payable by the 3rd respondent, M/s Skol Breweries amounting to Rs.1,78,911/- had already been paid.

7. The learned Counsel for second respondent submitted that, they filed an appeal against the impugned order before the EPF Appellate Tribunal, New Delhi as ATA No. 737(7)/2011 and the Hon'ble

Tribunal vide its order dt. 04/04/2013 dismissed the appeal. Aggrieved by the said order, the 2nd respondent challenged the order before the Hon'ble High Court of Kerala in W.P. (C) No. 30510/2013. The Hon'ble High Court vide its order dt. 11.12.2013 admitted the appeal subject to the condition that the 2nd respondent shall remit 50% of the total demand. The 2nd respondent remitted the 50% of the total demand as directed by the Hon'ble High Court and the matter is still pending. According to the learned Counsel for the 2nd respondent they are aggrieved by the fact that the definition of basic wages under Sec 2 (b) admits certain exclusions and the allowances paid to the security guards deployed at their premises comes within the excluded allowances. Since the issue is pending before the Hon'ble High Court, it is not proper to commend on the views expressed by the 2nd respondent in this appeal.

8. It is seen that as per the impugned order, assessment on evaded wages is done in respect of M/s Skol Breweries and M/s. Terumo Penpol Pvt. Ltd. It is admitted by the learned Counsel for the appellant as well as the 1st respondent that an amount of Rs.1,78,911/- assessed against M/s. Skol Breweries had already been remitted through

the appellant establishment. Copy of the challans for having remitted the same had also produced in this appeal. The dispute regarding the evasion of wages with regard to the security guards deployed at M/s. Terumo Penpol Pvt. Ltd is pending before the Hon'ble High Court of Kerala in W.P. (C) No. 30510/2013. Further in this appeal, rather than the bifurcation of wages, the liability of the appellant to remit the contribution was challenged. As already pointed out the liability with regard to M/s Skol Breweries is already cleared and the liability with regard to M/s Terumo Penpol is pending before the Hon'ble High Court of Kerala.

9. 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