



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

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

(Tuesday the 11th day of January, 2022)

Appeal No. 458/2018
(Old No. ATA 607 (7) 2014)

Appellant : M/s. Lourdes Hospital
Pachalam
Kochi – 682 012

By M/s. Bechu Kurian & Co.

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

By Adv. Sajeev Kumar K. Gopal

This appeal came up for hearing on 20/09/2021 and this Industrial Tribunal cum Labour Court issued the following order on 11/01/2022.

ORDER

2. Present appeal is filed from Order No. KR/KCH/3274/Enf-1(3)/2014/2967dt. 26.06.2014 assessing dues U/s 7A of EPF & MP Act, 1952 (hereinafter referred to as 'the Act') in respect of one non-enrolled employee for the period from 08/2006 to 12/2009. The total dues assessed is Rs. 65,468/-

2. The appellant is a charitable society registered under Travancore Cochin Literary, Scientific and Charitable Societies Registration Act 1995. The appellant hospital is a unit of Lourdes Society for Health Care and Research. A true copy of the registration certificate is produced and marked as Annexure A1. One Shri. Eldho Kuriakose, Optician joined the appellant hospital on 15/11/2002 and was extended provident fund from the same day under provident fund No. KR/KCH/3274/924. Due to legal objection from the auditors, the appellant decided to wind up the existing optical shop and relieve the employees. The appellant closed the optical shop on 31/07/2006. Shri Eldho Kuriakose was also relieved along with other employees working in the optical shop. His benefits also were settled and the appellant filed Form No.10 for the month of July 2006 before the respondent authority. A true copy of Form No.10 is produced and marked as Annexure A2. Shri. Eldho Kuriakose submitted his Form 19 and 10 C for withdrawal of his provident fund accumulations and he received an amount of Rs.58,390 from the respondent 's office in the month of November 2006. Subsequently from 01/08/2006 to 30/06/2009 Shri. Eldho

Kuriakose joined another institution named Patients Welfare Society registered under the Charitable Societies Act. The true copy of the registration of Patients Welfare Society is produced and marked as Annexure A3. Shri Eldho Kuriakose acknowledged the confirmation letter from Patients Welfare Society. True copy of the confirmation letter is produced and marked as Annexure A4. Shri Eldho Kuriakose rejoined the appellant hospital on a salary of Rs.7000/- on 01/07/2009. Since he was drawing a salary of Rs.7000/- he is an excluded employee and there he was not enrolled to the fund. Later his salary was increased to Rs.8500/-. Though he was an excluded employee, on the request of Shri Eldho Kuriakose, he was extended the benefit of provident fund with effect from 01/01/2010 and he was allotted provident fund No. **KR / KCH / 3274 / 3034**. Shri Eldho Kuriakose was suspended from the service and disciplinary action was against him for some fraud committed by him and also on other charges against him. Later he was terminated from service with effect from 01/01/2010. A true copy of the termination letter is produced and marked as Annexure A5. Shri.Eldo Kuriakose filed a

complaint dt. 26/06/2012 before the respondent authority seeking benefits under the Act from 01/07/2006 to 30/06/2009. A true copy of the complaint and English translation is produced and marked as Annexure A6. An Enforcement Officer of the respondent authority inspected the records of the appellant and submitted a report that Eldo Kuriakose was working in another institution. True copy of the report is produced and marked as Annexure A7. After hearing the parties concerned the respondent authority issued the impugned order which is produced and marked as Annexure A8. The appellant remitted the contribution in respect of Shri Eldho Kuriakose till 31/07/2006. The respondent authority assessed the dues from August 2006 to December 2009 in respect of Shri Eldo Kuriakose when he was working in another establishment. As per sec 2(f) of EPF Scheme an employee who has withdrawn the full amount of accumulation as per Clause (a) of (c) of Sub Para 69 (1) is an excluded employee. The respondent authority ignored the finding of the Enforcement Officer that Shri Eldho Kuriakose is an excluded employee since he has withdrawn his provident fund accumulation.

3. Respondent filed counter denying the above allegations. The appellant establishment is covered under the provisions of the Act with effect from 31/08/1973. The respondent received a complaint dt. 26/06/2012 from Shri Eldho Kuriakose regarding non-remittance of provident fund dues. Based on this complaint the respondent authority initiated an enquiry vide notice dt. 25/02/2014. The salary of Shri Eldho Kuriakose while working in the appellant hospital and in Patients Welfare Society was basic Rs.5100/-, TA Rs.255/- and from 08/2006 onwards basic was Rs.5100/- and HRA was Rs.255/- per month. There was no interruption in service and no change in gross salary. Hence the complainant Shri. Eldho Kuriakose is entitled to continue his membership at Patients Welfare Society again from 07/2009 to 11/2010. The complainant was transferred to the appellant hospital and extended provident fund benefits under another number. However the appellant extended provident fund benefits only from 01/01/2010 to 31/11/2010. The claim of the appellant that the complainant, Shri. Eldho Kuriakose is an excluded employee is not correct. Patients Welfare Society is a unit of the appellant hospital and the

society is working from the premises of the appellant hospital. In the Annexure A7 inspection report dt. 04/01/2013, it is clearly reported that the complainant was working in the optical shop till 31/07/2006. Patients Welfare Society was formed in 2006 and on 01/08/2006 the optical shop has handed over to the society. All the furniture, facilities, stock and employees were handed over to the society. There was practically no change in the functioning, except for the change in name from optical shop to “Visual Aid Centre” and the take over was as a going concern. Again the employees of “Visual Aid Centre” was absorbed by the hospital with effect from 01/07/2009. For all practical purposes the society and optical shop are part and parcel of the appellant hospital. The report of the Enforcement Officer clearly states that Patients Welfare Society is a unit of the appellant establishment and is not a separate entity. The Annexure A4 confirmation letter produced by the appellant would show that the complainant is not an excluded employee as the salary is within the statutory limit.

4. One of the ex employee of the appellant establishment filed Annexure A6 complaint before the respondent authority that he was not extended the benefit of provident fund for the period from 08/2006 to 01/01/2010 He was extended the benefit of provident fund from 11/2002 to 07/2006 and subsequently from 01/01/2010 to 30/11/2010. The complainant Shri. Eldho Kuriakose therefore requested the respondent authority to initiate action for getting his provident fund contribution remitted into his account. The respondent authority conducted an investigation through an Enforcement Officer. On the basis of the report of the Enforcement Officer he initiated an enquiry U/s 7A of the Act. In the 7A enquiry the appellant took a view that the complainant was working in the optical shop of the appellant establishment with effect from 15/11/2002 to 31/07/2006. Thereafter his services were terminated and his entitlements were also settled. The complainant also submitted Form 19 and Form 10C for settlement of his provident fund account. The respondent's office also settled the provident fund. From 01/08/2006 the complainant joined another institution called Patients Welfare Society. The complainant was again appointed in

the appellant hospital from 01/07/2009 and since his gross salary was Rs.7000/-, being an excluded employee he was not given the benefit of provident fund. However on his request he was enrolled again with effect from 01/01/2010 though he was an excluded employee. Later his services were terminated after disciplinary action w.e.f 01/12/2010. According to the learned Counsel for the appellant, service of the complainant with Patients Welfare Society which is a separate society registered under the Charitable Societies Act cannot be linked to his service with the appellant establishment. Further the learned Counsel for the appellant also contended that the appellant is a excluded employee since his provident fund benefit are already settled by the office of the respondent in November 2006. According to the learned Counsel for the respondent the transfer of the optical shop to the Patients Welfare Society and later to the appellant establishment are all internal arrangements to deprive the employee of his provident fund benefits. According to him the claim of the appellant that Patients Welfare Society is an independent unit has no basis in evidence. Patients Welfare

Society is also working from within the premises of the appellant establishment.

5. The issues to be decided in the appeal are

- 1) Whether Patients Welfare Society is part and parcel of the appellant establishment ?
- 2) Whether complainant Shri Eldho Kuriakose is an excluded employee as per Para 2 (f) of the EPF Scheme ?

With regard to the first issue as to whether Patient Welfare Society can be treated as part and parcel of the appellant establishment is not at all answered by the respondent authority in the impugned order. The respondent authority has presumed that Patients Welfare Society is also part and parcel of the appellant establishment. It is seen from Annexure A7 report dt. 04/01/2013 of the Enforcement Officer that he has strongly recommended clubbing of the Patient Welfare Society with the appellant establishment. Though he could not collect any details of financial and other transactions except the registration

certificate of the Patients Welfare Society. The respondent authority ought to have collected the required information and rendered a clear finding whether the Patients Welfare Society is part and parcel of the appellant establishment before the assessment dues.

6. The next issue is whether the complainant can be treated as an excluded employee since he has already settled his provident fund account with the appellant establishment. As per Sec 2(f) of the EPF Scheme, an excluded employee means an employee who, having been a member of fund withdrew the full amount of accumulation in the fund under Clause (a) or Clause (c) of sub Para 1 of Para 69. As per Para 69 (1) (a) a member may withdraw the full amount standing in his credit in the fund on retirement from the service after attaining the age of 55 years. As per Para 69(1) (c) a member may withdraw the full amount standing to his credit in the fund immediately before migration from India for permanent settlement abroad or for taking employment abroad. It is clear from the above provisions that the claim of the appellant that the complainant is an excluded

employee under Para 2(f) of the Scheme is not correct. It is seen that the complainant Shri. Eldho Kuriakose was appointed Patient Welfare Society taking his retirement age as 55 years. As per Para 69 (2) an employee can withdraw his amount available in provident fund with the approval of the Commissioner. As per 69 (5) any member who withdraws the amount due to him under sub Para 2 shall on obtaining re-employment in a factory or other establishment to which the scheme applies, will have to be given fresh membership. Hence it is clear that when the complainant rejoined, the question whether he is eligible to be enrolled is required to be decided on the basis of the evidence available. The impugned order is completely silent on this point, though in the written statement filed by the respondent it is stated that as per the confirmation letter the appellant is eligible to be enrolled to the fund.

7. The respondent authority will have to answer the above two issues clearly before quantifying the dues in respect of the complainant. The clubbing of the appellant establishment and the Patient Welfare Society is to be examined in the light of

various tests evolved by the Hon'ble Supreme Court as well as High Courts. The eligibility to be enrolled is to be decided on the basis of the evidence available and to be produced by the appellant establishment .

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

Hence the appeal is allowed the impugned order is set aside and the matter is remitted back to the respondent to re-decide the issues before quantifying the dues. Taking into the account the delay that has already occurred, the respondent is directed to finalize the enquiry within a period of 6 months from the date of receipt of this order after issuing notice to the appellant .

Sd/~

(V. Vijaya Kumar)
Presiding Officer