



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

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

(Monday the 08th day of March , 2021)

**Appeal No.538/2019**

(Old No. ATA 470 (7) 2010)

Appellant : M/s. Devaswom Board College,  
Keezhoor P.O., Vaikom  
Kottayam – 686 605

By Adv. C.M.Stephen

Respondent : The Assisstant PF Commissioner  
EPFO, Sub-Regional Office  
C.M.S College Road,  
Kottayam – 686 001.

By Adv. Joy Thattil Ittoop

This appeal came up for hearing on 06/01/2021 and this Industrial Tribunal cum Labour Court issued the following order on 08/03/2021.

**ORDER**

Present appeal is filed from Order No. KR / KTM / 20444 / Cash / PD / 2010 / 4924 dt. 05/07/2010 assessing damages U/s 14B of EPF & MP Act, 1952 (hereinafter referred to as 'the Act') for belated remittance of contribution for the period from 01/2005 to 12/2008. The total damages assessed is Rs. 9,22,882/-. The interest

demanded U/s 7Q of the Act for the same period is also being challenged in this appeal.

2. The appellant is a Self Financed Educational Institution affiliated to MG University. The appellant establishment is sponsored by Travancore Devaswom Board and apart from sponsorship they have no supervision or control over its administration or proceedings. The appellant was established in the year 2004 and never had the staff strength of more than 19 employees till 1.8.2005. This includes trainees, re-employed pensioners, guest lecturers and casual employees. Even today the employment strength is less than 20 if the above category of employees are excluded and therefore the appellant establishment was not coverable under the provisions of the Act. While so the respondent issued Annexure A2 notice without properly verifying the employment strength of the appellant establishment. The appellant did not start compliance as required under Annexure A2 since the appellant was not coverable under the provisions of the Act. However the managing committee of the appellant agreed to comply with the provisions of the Act for their regular employees

from a prospective date. However as per the subsequent proceedings issued by the respondent, the appellant was compelled to remit contribution for all the employees w.e.f 01/01/2005. The respondent issued a notice dt. 09/12/2009 alleging delay in remittance of contribution. The notice is produced and marked as Annexure A3. The appellant was also offered an opportunity for personal hearing. The appellant filed an objection dated 20/5/2010 which is produced and marked as Exbt A4. The respondent issued the impugned orders without considering the submissions in Annexure A4. The coverage of the appellant establishment from a retrospective date is illegal. However the appellant was not liable for remitting contribution, damages and interest for the retrospective period.

3. The respondent filed counter denying the above allegations. The appellant establishment is covered under the provisions of the Act w.e.f 01/01/2005 and therefore the appellant is liable to pay contribution U/s 6 of the Act in time. The appellant establishment was covered from 01/01/2005 as the employment strength reached more than 19 as on that date. The copy of the

wage register for the month of January 2005 is produced and marked as Exbt R1. The appellant did not raise any objection regarding the coverage and hence there was no occasion for the respondent to decide the applicability U/s 7A of the Act. For the purpose of coverage the total strength of the appellant establishment is taken into account. Since there was delay in remittance of contribution by the appellant for the period from 01/2005 to 12/2008, a notice was issued to the appellant to show cause why damages U/s 14B shall not be assessed for belated remittance of contribution. The appellant was also given an opportunity for personal hearing. A representative of the appellant attended the hearing and filed a written statement. After considering the submissions made, the respondent issued the impugned order. The appellant never raised any dispute before the respondent regarding coverage of the appellant establishment as it is an admitted fact that the appellant was employing more than 20 employees as on 01/01/2005.

4. The main case of the appellant is that the appellant establishment is not coverable under the provisions of the Act w.e.f 01/2005 as the employment strength never reached 20 during that point of time. The respondent filed a copy of the salary register of the appellant establishment as on 01/2005 to substantiate their claim that the appellant employed more than 20 persons as on that date. The emphasis of the appellant is on the coverage where as this appeal is filed from orders issued U/s 14B and Sec.7Q of the Act. Had there been any dispute regarding coverage, the same ought to have been taken up U/s 7A of the Act, when Annexure A2 coverage memo was issued to the appellant on 06/01/2009. Having failed to do so the appellant cannot dispute the coverage in a proceedings U/s 14B of the Act. The only valid ground raised in this appeal is with regard to the retrospective coverage of the appellant establishment. It is seen that the appellant establishment is covered under the provisions of the Act as per Annexure A2 coverage memo dated 06/01/2009 w.e.f 01/01/2005. It is seen from the pleading that the appellant establishment was under a bonafide impression that they

are not coverable under the provisions of the Act in view of the fact that the regular employment strength never reached 20. Hence it is possible that the appellant never deducted the employees' share of the contribution from the employees' salary during period from 01/2005 to 12/2008. It is not, therefore, possible to accept the plea of the learned Counsel for the respondent that there is violation of the provisions of the Act in belated remittance of contribution and therefore there is an element of mensrea in such an action by the appellant. In the facts and circumstances of this case no mensrea can be attributed in belated remittance of contribution. However the fact remains that the appellant is liable to remit the contribution from the due date when the employment strength reached 20 including the contract employees/casual employees. However the appellant is entitled for some relief considering the fact that the appellant establishment is covered retrospectively in 2009 w.e.f 01/2005.

5. Considering all the facts, circumstance, evidence and pleadings in this appeal, I am inclined to hold that

interest of justice will be met, if the appellant is directed to remit 70% of the damages assessed U/s 14B of the Act.

6. The learned Counsel for the respondent submitted that no appeal is maintainable against an order issued U/s 7Q of the Act. On perusal of Sec 7(I) of the Act, it is seen that there is no provision to challenge an order issued U/s 7Q of the Act. The Hon'ble Supreme Court of India in ***Arcot Textile Mills Vs RPFC***, AIR 2014 SC 295 held that no appeal is maintainable from an order issued U/s 7Q of the Act. The Hon'ble High Court of Kerala in ***District Nirmithi Kendra Vs EPFO***, W.P(C) No. 234/2012 also held that an appeal against 7Q order is not maintainable.

Hence the appeal is partially allowed, and the impugned order is modified and the appellant is directed to remit 70% of the damages assessed U/s 14B of the Act. The appeal filed against Sec 7Q order is dismissed as not maintainable.

Sd/-

**(V.Vijaya Kumar )**  
Presiding Officer