



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

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

(Wednesday the 15th day of September, 2021)

APPEAL No.56/2020

Appellant

M/s. TDB Central School,
Kadakkal,
Kottarakkara,
Kollam – 691 536.

Adv.C.M.Stephen

Respondent

The Assistant PF Commissioner
EPFO, Regional Office,
Parameswar Nagar,
Kollam - 691 001.

Adv. Pirappancode V.S.Sudheer &
Adv. Megha.A

This case coming up for final hearing on
14/09/2021 and this Tribunal-cum-Labour Court on
15/09/2021 passed the following:

O R D E R

Present appeal is filed from order No. KR / KML/
Enf.I(4)/ 25017A / Area 5/ 2019 / 1359A dt.13/03/2020
assessing dues U/s 7A of EPF and MP Act, 1952 (hereinafter

referred to as 'the Act') for the period 03/2008 to 12/2012. The total dues assessed is Rs.17,62,610/-

2. The appellant establishment is an English medium school and is an independent entity. The appellant establishment was brought under the purview of the Act U/s 2A with retrospective effect from 18/06/2003 on the basis of notice dt.08/02/2008. The employees strength of appellant establishment was below 20. The coverage memo issued by the respondent is produced as Annexure A2. Since the appellant disputed the coverage memo the respondent initiated an enquiry U/s 7A of the Act. A true copy of the order U/s 7A is produced and marked as Annexure A3. The appellant challenged the A2 notice and Annexure A3 proceedings before the EPF Appellate Tribunal as ATA No.616(7)2008. Subsequently the matter was transferred to CGIT, Ernakulam and when the matter was pending, the respondent initiated action for assessment of dues. When the matter was brought to the notice of the respondent regarding the prudence of appeal before the EPF Appellate Tribunal, the respondent kept the proceedings in abeyance. The impugned order issued by the respondent in violation of principles of natural justice. The appellant was denied an

opportunity for filing a counter statement and also to adduce evidence. The coverage memo issued by the respondent by clubbing Travancore Devaswom Board Schools at Kadakkal, Chakkuvally and Vettikavala as an integrated whole U/s 1(3)(b) read with Sec.2A is bad in Law. The schools independently run by the respective Principals without a common ownership. The appellant is having separate registration under Central Board of Secondary Education and upto 2012 the employee strength was below 20.

3. The respondent filed counter denying the above allegations. The appellant establishment at Kadakkal, Kollam was brought under the purview of the EPF & MP Act w.e.f.18/06/2003 along with two other schools run by Travancore Devaswom Board at Chakkuvally and Vettikavala. On the request of the appellant, separate code number was issued to the appellant establishment for administrative convenience. Travancore Devaswom Board Central Schools, Chakkuvally, Kadakkal and Vettikavala, Kollam are run by Travancore Devaswom Board and are covered under the provision of the Act. The appellant challenged the coverage before the EPF appellate Tribunal in ATA No.615(7)2008. The

EPF Appellate Tribunal vide its order dt.02/09/2011 dismissed the appeal filed by the establishment on the finding that there is no exception from the applicability of the Act which is run by the religious trust and the appellant failed to produce the employment strength before the 7A authority or in the appeal. A copy of order in ATA No.615(7)2008 is produced and marked as Exbt.R1. Hence dispute regarding the applicability and the assessment for the period from 06/2003 to 02/2008 was finally resolved. Another appeal No.431/2018 (ATA 512(7)2011) filed by Travancore Devaswom Board Central School, Vettikavala was also dismissed by this Hon'ble CGIT vide order dt.28/06/2019. A copy of order of CGIT, Ernakulam dt.28/06/2019 is produced and marked as Exbt.R2. Simultaneously the appellant M/s.Travancore Devaswom Board School, Kadakkal also filed an appeal before the EPF Appellate Tribunal, New Delhi in ATA No. 616(7)2008 against the applicability of the Act for the period from 06/2003 to 01/2008. The EPF Appellate Tribunal, New Delhi vide order dt.16/03/2011 dismissed the appeal for default. The respondent recovered the assessed amount from 06/2003 to 01/2008. The appellant filed a review petition which was allowed by the EPF Appellate Tribunal and the appeal is

transferred to CGIT Ernakulam and numbered as Appeal No.517 of 2019. As already pointed out the coverage and assessment of the 2 units run by Travancore Devaswom Board has already been confirmed by the EPF Appellate Tribunal and CGIT Ernakulam. Since the appellant establishment failed to continue compliance under the provisions of the Act, an Enforcement Officer visited the appellant establishment and furnished the provisional assessment of dues. Hence a notice was issued to the appellant U/s 7A of the Act and the appellant was given 16 opportunities for producing records and also to comply with the provisions. In the meanwhile the Secretary of Travancore Devaswom Board vide its letter dt.13/05/2014 informed that the issue regarding coverage is pending before EPF Appellate Tribunal and also stating they started compliance w.e.f.04/2014. In view of the pendency of Appeal No ATA No.616(7)2008 filed by the establishment before EPF Appellate Tribunal, New Delhi the enquiry initiated for the assessment for the period from 03/2008 to 12/2012 was kept in abeyance till the final disposal of the appeal by the EPF Appellate Tribunal. Consequent on merger of EPF Appellate Tribunal Appeal No.616(7)2008 is now transferred to CGIT, Ernakulam and is

renumbered as 517/2019. It is seen that ATA No.615(7)2008 challenging the coverage of the appellant establishment and assessment of dues had already been dismissed by the EPF Appellate Tribunal vide order dt.02/09/2011. Hence it was decided to continue with the proceedings and the appellant entered appearance on various dates through their own representation or through their Advocate. The appellant submitted that the enquiry is premature as the question of the coverage is pending before CGIT Ernakulam. It may be noted that the coverage dispute of the appellant establishment has already been resolved by the EPF Appellate Tribunal and the assessment for the period from 06/2003 to 02/2008 was upheld and the amount was also recovered from the appellant establishment. The claim of the appellant that copy of the inspection report was not given to them is not correct. A copy of the inspection report was already handed over to the appellant establishment under signature of the authorized representative of the appellant. A copy of the inspection report with the acknowledgement is produced and marked as Exbt.R3.

4. The main contention raised by the appellant in this appeal is that ATA No.616(7)2008 filed by the appellant

disputing the applicability was filed before the EPF Appellate Tribunal and the same is transferred to this Tribunal and is renumbered as Appeal No.517/2019 is still pending. It is seen that Appeal No.517/2019 is dismissed by this Tribunal vide order dt.13/08/2021. Hence the main contention regarding the applicability of the provision of the Act to the appellant establishment is already decided against the appellant. Further it is seen that the respondent has already assessed and recovered the contribution in respect of the appellant for the period from 06/2003 to 02/2008. The only requirement left is to regularize the recovery by filing returns by the appellant. The impugned order is issued assessing dues for the period from 3/2008 to 12/2012. It is seen from the impugned order that the appellant establishment started compliance from April 2014 so that the dispute is with regard to the assessment and recovery of dues for the period from 03/2008 to 03/2014. It is also seen that the other two schools run by Travancore Devaswom Board which are clubbed and covered along the appellant also started compliance from the due date of coverage. There is no dispute regarding the quantum of dues and the only requirement of the appellant before the respondent authority was to wait for

compliance till Appeal No.517/2019 is disposed of by EPF Appellate Tribunal/CGIT. Since Appeal No.517/2019 is already decided by this Tribunal upholding coverage of the appellant establishment nothing remains in this appeal to be adjudicated.

5. It is seen that the appellant was given more than adequate opportunity by the respondent. The appellant never raised any dispute regarding the quantum of dues which is based on the records of the appellant. Further the remittance upto 02/2008 has already been accounted.

6. Considering the facts, circumstances and pleadings in this appeal, I am not inclined to interfere with the impugned order.

Hence the appeal is dismissed.

Sd/-
(V. Vijaya Kumar)
residing Officer