



सत्यमेव जयते

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

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

(Wednesday the 15<sup>th</sup> day of September, 2021)

**APPEAL No.57/2020**

Appellant

M/s TDB Central School,  
Vettikavala,  
Vettikavala P.O,  
Kottarakara,  
Kollam – 691 538.

By Adv. C.M.Stephen

Respondent

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

By 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 / KLM/  
Enf.I(4) / 25017 B / Area 5/ 2019/ 1358 A dt.03/03/2020

assessing dues U/s 7A of EPF and MP Act, 1952 (hereinafter referred to as 'the Act') for the period from 03/2008 to 12/2012. The total due assessed is Rs.14,33,037/-.

2. The appellant school at Vettikavala is an educational institution registered under the Central Board of Secondary Education and is covered under the provision of the Act. The appellant establishment is an independent school and is supervised and controlled by the Principal. This particular school has no head office or any branches anywhere else. The appellant establishment was brought under the purview of the Act w.e.f.18/06/2003 along with the Travancore Devaswom Board Central Schools at Chakkuvally and Kadakkal. The appellant disputed the coverage before the Hon'ble High Court of Kerala in W.P.(C) No.28136 of 2008. The Hon'ble High Court disposed of the Writ petition directing the appellant to file appeal before EPF Appellate Tribunal, New Delhi. The appellant filed appeal number ATA No.512(7)2011. The Hon'ble EPF Appellate Tribunal admitted the appeal and stayed the 7A order. The appellant attended the hearing in response to the summons issued by the respondent. The appellant also filed a counter statement before the respondent authority which was not

considered by the respondent. A copy of the counter statement is produced and marked as Annexure A2. The respondent authority ignored the contention that ATA No.512(7)2011 was still pending. Ignoring the contention of the appellant the respondent issued the impugned order. The respondent failed to furnish a copy of the report of the Enforcement Officer. The appellant was also not given opportunity to adduce evidence or produce documents. The enquiry U/s 7A was commenced by the respondent when the stay order of EPF Appellate Tribunal was in force. The respondent authority has no jurisdiction to recommence the enquiry disregarding the order dt.13/06/2014.

3. The respondent filed counter denying the above allegations. The appellant establishment M/s.TDB Central School, Vettikavala was brought under the purview of the Act along with 2 other schools run by Travancore Devaswom Board at Chakkuvally and Kadakkal. On the request of the appellant a separate code number was allotted to the appellant for administrative convenience. Aggrieved by the coverage, TDB Central School, Chakkuvally filed appeal before EPF Appellate Tribunal and the same was dismissed by the Tribunal vide its order dt.02/09/2011. The order of the EPF Appellate Tribunal,

New Delhi in ATA No.615(7)2008 is produced and marked as Exbt.R1. Similarly the appellant also filed an appeal as ATA No.512(7)2011 before the Hon'ble EPF Appellate Tribunal challenging the applicability of the provisions of the Act to the appellant establishment. The appeal was transferred to CGIT Ernakulam and was renumbered as appeal No.431/2018. CGIT Ernakulam also dismissed the appeal vide its order dt.28/06/2019. A copy of the order is produced and marked as Exbt.R2. The assessment of dues for the period from 06/2003 to 02/2008 was also confirmed by the CGIT. It was reported that the appellant establishment defaulted in remitting dues for period 03/2008 to 12/2012. Hence a notice was issued to the U/s 7A of the Act to the appellant school as well as the Secretary of Travancore Devaswom Board. A representative on behalf of appellant attended the enquiry on 08/03/2013. On the request of the appellant the enquiry was adjourned to 29/04/2013, 13/05/2013, 10/06/2013, 24/06/2013, 17/07/2013, 14/08/2013, 13/09/2013, 11/10/2013, 08/11/2013, 16/12/2013, 18/02/2014, 05/03/2014 and 04/04/2014. On 16/04/2014 the Advocate appearing for the appellant submitted that the appeal filed by the appellant

establishment is admitted by the EPF Appellate Tribunal, New Delhi in ATA No.512(7)2011 and the operation of the impugned order covering the appellant establishment is stayed by the EPF Appellate Tribunal. Hence the enquiry U/s 7A of the Act for assessing dues from 03/2008 to 12/2012 was kept in abeyance till the final disposal of the appeal. Appeal number ATA 512(7)2011 is transferred to CGIT, Ernakulam and the CGIT, Ernakulam renumbered the appeal as appeal No.431/2018 and vide order dt.28/06/2019 dismissed the same as there is no merit in the appeal. Hence the enquiry was restarted by the respondent authority. On the request of the Principal of the appellant establishment the enquiry was further adjourned to 19/08/2019, 03/09/2019, 12/09/2019 and to 03/10/2019. Since nobody attended the enquiry on the above dates a summons U/s 30 of Code of Civil Procedure was issued to the employer to attend the enquiry on 18/10/2019. On 18/10/2019 an Advocate representing the appellant attended the hearing and on his request the enquiry was further adjourned to 08/11/2019. On the request of the Principal, the respondent provided a copy of the due statement prepared by the Enforcement Officer for the period from 03/2008 to

12/2008. On 08/11/2019 an Advocate attended the hearing representing the Secretary of M/s. Travancore Devaswom Board. The appellant was again given adequate opportunity and finally on 30/12/2019 an Advocate appeared and filed a counter statement. According to the Advocate the enquiry is premature as the question of coverage under the provision of the Act is still pending before the Hon'ble CGIT. It was pointed out to the Advocate that appeal no 431/2018 was dismissed by the Hon'ble CGIT and the assessment and recovery of due was also confirmed. After considering the issues raised by the Advocate for the appellant, the respondent issued the impugned order assessing the dues from 03/2008 to 12/2012. As already pointed out the appellant establishment was covered along with 2 other schools at Chakkuvally and Kadakkal considering Travancore Devaswom Board as the trust running by the school, in the 7A proceedings initiated by the respondent authority. None of the establishment contested the applicability of the Act before the respondent authority but only requested for allotment of separate code numbers for administrative convenience. The respondent authority gave separate sub code numbers for administrative convenience. In the appeal No.ATA

615(7)2008, filed by the Principal of Chakkuvally school, the coverage was disputed and the EPF Appellate Tribunal vide its order dt.02/09/2011 upheld the coverage. The appeal filed by the appellant before EPF Appellate Tribunal was numbered as appeal No.431/2018 by this Tribunal and was dismissed vide order dt.28/06/2019. Hence the dispute regarding the coverage and assessment of dues from the date of coverage to 2/2008 is confirmed in the appeals. The appellant was also given a copy of the report of the Enforcement Officer on the request of the Principal during the course of the proceedings and more than adequate opportunity to produce records and substantiate their case.

4. The main ground taken by the appellant in this appeal is that the question of applicability raised before the EPF Appellate Tribunal, New Delhi in ATA No.512(7)2011 is yet to be finalized. The claim of the appellant falls flat since ATA No 512(7)2011 is transferred to this Tribunal and was renumbered as Appeal No.431/2018 and the same was dismissed vide order dt.28/06/2019. There was no serious contest regarding coverage before this Tribunal. The learned Counsel for the respondent pointed out that the dispute regarding the coverage

of the appellant establishment is finally decided in the decision of the EPF Appellate Tribunal in ATA No.615(7)2008 in an appeal filed by the Travancore Devaswom Board Central School, Chakkuvally. Subsequently the Appeal No.431/2018 filed by the appellant challenging the applicability was also dismissed by this Tribunal. Another appeal filed by the Travancore Devaswom Board Central School, Kadakkal was also dismissed by this Tribunal vide order dt.13/08/2021 upholding the coverage. Hence the claim of the appellant that the applicability of the Act to the appellant establishment is still pending before the CGIT has no basis. The assessment of dues from the date of coverage to 02/2008 was also confirmed in the orders issued by the EPF Appellate Tribunal as well as this Tribunal and is also reported that the amount for the period upto 2/2008 has already been recovered from the appellant.

5. In the impugned order the assessment is from 03/2008 to 12/2012. The appellant has taken a plea that he was not given adequate opportunity to represent his case and produce records. It is seen from proceedings that around 25 adjournments were given on the request of the appellant from 08/03/2013 to 30/12/2019. A representative or an Advocate of



the appellant attended the hearing and in one of the occasion it is seen that a copy of the report of the Enforcement Officer was also provided to the appellant in the proceedings on 08/11/2019. The appellant never disputed the quantification of the dues by the Enforcement Officer before the 7A authority. It is clear from Annexure A2 counter statement filed by the appellant before the respondent in the enquiry U/s 7A on 31/12/2019 that the appellant has taken only one ground before the respondent authority that the 7A enquiry is premature as the dispute regarding applicability is pending before this Tribunal. Having given adequate opportunity to represent their case before the respondent authority, it was upto the appellant to produce the records and plead all the grounds before the respondent. Having failed to do so, the appellant cannot take such pleadings which were not taken before the respondent authority, in this appeal.

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

Hence the appeal is dismissed.

Sd/-  
**(V. Vijaya Kumar)**  
Presiding Officer