



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

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

(Friday the 8th day of April, 2022)

Appeal No. 611/2019

(Old No. ATA 635 (7) 2013)

Appellant : Corporation of Kochi
Corporation Office,
Post box No. 1016,
Kochi – 682 011

By Adv. C.B Mukundan

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

By Adv. Sajeev Kumar K. Gopal

This appeal came up for hearing on 19/01/2021 and this Industrial Tribunal cum Labour Court issued the following order on 12/03/2021, and the amended order is issued on 08/04/2022.

O R D E R

The final order in Appeal No. 611/2019 was issued vide order dt. 12/03/2021. The respondent authority filed IA No. 39/2022 pointing out that there is clerical error in the order issued by the Tribunal and

the same is required to be corrected U/s. 7L (2) of the EPF & MP Act. As per Sec 7L(2) “ A Tribunal may, at any time within five years from the date of its order, with a view to rectify any mistake apparent from the record, amend any order passed by it under Sub Section (1) and shall make such amendment in the order if the mistake is brought to its notice by the parties to the appeal ”. The mistake pointed out by the respondent is, instead of “dues U/s 7A of the EPF & MP Act 1952” “damages U/s 14B of EPF & MP Act 1952” was incorporated in the order. Further instead of total “dues assessed”, total “damages assessed” is incorporated in the order. These are bonafide mistakes that crept into the order and therefore requires correction. Since the amendments will not have the effect of enhancing the amount due or otherwise increase the liability of the appellant, no notice is issued to appellant regarding the correction.

Accordingly the amendments are incorporated in the order.

2. Present appeal is filed from Order No.KR / KC / 27450 / Enf-1(4) / 2012 / 8229 Dt. 22.10.2012 assessing dues U/s 7A of EPF & MP Act, 1952 (hereinafter referred to as 'the Act') for the period from 01/2011 to 10/2011. The total damages assessed is Rs. 66,44,808/-.

3. The appellant organization, Corporation of Cochin, is a Local Self Government Institution constituted under the provisions of the Kerala Municipality Act 1994. The respondent vide its communication in the month of May 2011 brought the contingent workers of the appellant organization under the coverage of EPF Act w.e.f. 08/01/2011. The appellant could not start compliance immediately for formal approval by different statutory forums constituted under the provisions of Municipality Act. Further the consolidation of the details of workers, which is more than 900 also took some time. Hence the appellant started compliance only from the month of November 2011. The financial constraints of the

appellant also lead to the delay in remittance of contribution. The respondent issued a notice dt. 12/09/2011 U/s 7B of the Act. The appellant appeared and produced the necessary information before the respondent authority. The appellant informed the respondent during the course of enquiry that the contributions could not be recovered from the employees' wages till October 2011. The appellant also explained the difficulty in recovering the past arrears from the employees. Therefore the appellant requested the respondent to waive the employees' share of the contribution for the period from 01/2011 to 31/10/2011. From the impugned order dt. 22.10.2012 it is seen that the respondent failed to accept the request of the appellant to waive the employee share of contribution from January to October 2011. However the respondent waived the employees' share of contribution from January to May 2011. The appellant filed a review application U/s 7B of the Act and requested the respondent to waive the employees'

share of contribution from 06/2011 to 10/2011. The respondent issued an order dt.28/02/2013 rejecting the claim of the appellant. Further the respondent issued a final order dt.16/05/2013 rejecting the claim of the appellant for waiver of employees share till October 2011.

4. The respondent filed counter denying the above allegations. In exercise of the powers conferred by Clause (b) of Sub Sec (3) of Section 1 of the Act the Central Government has issued Notification No. SO 30 (E) dated 08/01/2011 introducing a new schedule whereby Municipal Councils and Municipal Corporation constituted under Sub Clauses (b) & (c) of Clause (1) of Article 243 Q of the Constitution of India, are brought under the provisions of the Act. As per the said notification, the provisions of the Act were made applicable to the Municipal Councils and Municipal Corporations employing twenty or more persons w.e.f 08/01/2011. The notification was intended to cover all employees of the establishment as per the definition of

Sec 2(f) of the Act excluding those employees who are getting PF and Pension. A copy of the notification dt. 08/01/2011 is produced and marked as Exbt. R1. The appellant Corporation ought to have started compliance from 08/01/2011 when the notification was issued. The respondent issued a coverage notice dt. 11/05/2011 allotting a PF Code number to the appellant Corporation. A copy of the coverage notice dt. 11/05/2011 is produced and marked as Exbt. R2. The appellant failed to start compliance even after the receipt of Exbt. R2 coverage memo dt. 11/05/2011. Hence an enquiry U/s 7A of the Act was initiated and the dues for the period from 01/2011 to 10/2011 was assessed on the basis of the documents produced by the appellant during the course of the enquiry. On the request of the appellant the employees' share of contribution for the period from 01/2011 to 05/2011 was not included in the assessment. The appellant filed a review application U/s 7B of the Act on the grounds that the respondent has not taken into account the

remittances made by the appellant and also requesting that the employees share of contribution for the period from 06/2011 to 10/2011 shall also be waived. The request of the appellant for waiver for employees share beyond May 2011 was rejected by the respondent authority. It was also clarified to the appellant that the remittance made by the appellant pertains to the period from 11/2011 to 03/2012 and therefore is not accounted for the assessment period in the impugned order. The appellant there after remitted the entire employers share of contribution for the period 01/2011 to 12/2011 and further requested for the waiver of employees share of contribution for the period 06/2011 to 11/2011. The request for waiver of employees' share was rejected vide Annexure 3 letter dt. 16.05.2013.

5. The only issue pending in this appeal is with regard to the waiver of employees share for the period from 06/2011 to 10/2011. According to the learned Counsel for the appellant there was delay in taking administrative decision for remittance of contribution,

though the appellant Corporation is covered w.e.f 08/01/2011. According to the learned Counsel for the respondent, the respondent issued a coverage memo in May 2011 and the appellant is liable to recover the employees' share of contribution atleast from that date. If there is delay due to administrative decisions, the appellant cannot claim any relief on that ground. It was also clarified by the learned Counsel for the respondent that the employees' share of contribution for the past period cannot be recovered from the employees and it is the obligation of the appellant to remit the same, if the employees' share is not deducted from the salary of the employees from the due date of eligibility. There is no provision for waiving the employees' share of contribution on the ground of non-deduction from the employees' salary. However, Government of India has issued a direction to waive the employees' share of contribution for the pre-discovery period in case of retrospective coverage of an establishment. As per the said instructions " In

exercise of powers conferred by Paragraph 78 of the Employees PF Scheme 1952, the Central Government hereby directs the waiver of recovery of employees share of provident fund contribution which have not been deducted from the wages of the employees during the pre-discovery period. Pre-discovery period will include the period commencing on the date from which the Act is legally applicable to a factory or establishment and date on which a formal notice for coverage under the Act is served on the employer by the provident fund authorities. In such cases the employees share of contribution shall be payable from the first of the month following the issue of the notice for coverage under the Act.” In this particular case, coverage memo is issued to appellant on 11/05/2011 and the appellant is entitled for waiver of employees’ share of contribution from 01/2011 to 05/2011. The respondent has paid the employers share up to 05/2011 as per the impugned order. The claim of the appellant that there was delay in taking administrative

decisions for remitting the contribution cannot be accepted as a ground for not deducting and remitting the statutory contribution with the respondent in time. As rightly pointed out by the learned Counsel for the respondent it is a statutory obligation on the part of the appellant to remit both the contribution, employer as well employees' from 06/2011 onwards and the appellant cannot escape the responsibility by claiming delay in taking administrative decisions.

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

Hence the appeal is dismissed.

Sd/-

(V.Vijaya Kumar)
Presiding Officer