



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

सत्यमेव जयते Present: Shri.V.Vijaya Kumar, B.Sc., LL.M., Presiding Officer.

(Friday the 13th day of May, 2022)

Appeal No.720/2019
(Old No. ATA 313(7)/2012)

Appellant : The Trivandrum Co-operative District
Wholesale Society Ltd., No. 4
Sasthamangalam P.O
Thiruvananthapuram 695 010.

By Adv. B.S Swathi Kumar

Respondent : The Assistant PF Commissioner
EPFO, Regional Office
Pattom , Trivandrum -695004.

By Adv. Nita. N.S

This appeal came up for hearing on 17/02/2022 and this Industrial Tribunal cum Labour Court issued the following order on 13/05/2022.

ORDER

Present appeal is filed from Order No. KR / 1701 / Enf-1(6) / 2011 / 12452 dt. 06/01/2012 assessing dues U/s 7A of EPF & MP Act, 1952 (hereinafter referred as 'the Act'.) for Nine Non-enrolled

employees for the period from 05/2001 to 11/2011. The total dues assessed is Rs. 4,91,577/-.

2. The appellant is a society registered under Kerala Co-operative Societies Act 1961. The main function of the society is to sell consumer items at reasonable rates to public. The society is running at a huge loss. Initially there were nearly 400 employees working in the appellant establishment. Now there are 2 permanent employee, one part time sweeper, Five provisional temporary hands and eight daily wages employees. Based on an inspection conducted by the Enforcement Officer of the respondent organization, a summons dt. 07/10/2011 was issued to the appellant U/s 7A of the Act. True copy of the summons is produced and marked as Annexure A1. The Managing Director of the appellant appeared and filed a written submission. It was pointed out that the contribution was not paid in respect of nine employees only due to the financial constraints of the appellant establishment. True copy of the written explanation is produced and marked as Annexure A2. Without taking into account the submissions made by the appellant the respondent issued the impugned order, a copy of which is produced and marked as Annexure 3. The appellant

challenged the Annexure A3 order before the Hon'ble High Court of Kerala in W.P.(C) No. 2630/2012 and the Hon'ble High Court vide judgment 12/2012 directed the appellant to file the statutory appeal U/s 7(I) of the Act. The true copy of the judgment is produced and marked as Annexure A5. The total employment strength as on today is less than 20. Out of the nine non-enrolled employees, Shri. Anil left the service with effect from 31/05/2011. The true copy of the relevant extract or register showing the payment for the month of May 2011 is produced and marked as Annexure A5. The respondent authority did not consider the submission. The maximum salary was only Rs. 3000/- per month and therefore it is not possible to recover the 50% contribution from these employees. Hence the arrears of contribution assessed as per the impugned order may not be insisted. The appellant establishment is employing less than twenty employees and therefore the society is not an establishment defined U/s 1(3)(b) of the Act.

3. The respondent filed counter denying the above allegations. The appellant is covered under the provisions of the Act with effect from 30/09/1964. The appellant failed to enroll

nine employees to the fund with effect from 05/2001 onwards. Hence an enquiry U/s 7A of the Act was initiated. A representative of the appellant attended the hearing and submitted that the regular contribution upto 07/2011 had already been remitted. He admitted that nine employees are required to be enrolled to the fund from the date of their joining. He produced the salary records of the employees to be enrolled. On the subsequent hearing, the representative of the appellant attended the hearing and produced challans for having remitted the dues for regular employees. He also submitted the monthwise dues in respect of nonenrolled employees from 04/2006 to 11/2011. The representative of the appellant also produced the salary details of the nonenrolled employees from 05/2001 to 03/2006 and from 04/2006 to 11/2011. The respondent authority concluded the enquiry on the basis of the details produced by the appellant before the respondent authority. U/s 1(5) of the Act an establishment to which this Act applies shall continue to be governed by this Act, notwithstanding that the number of persons employed therein at any time falls below 20. As per Para 26(2) of EPF Scheme, every employee employed in or in connection with the work of the

establishment, other than the excluded employees shall be entitled and required to become a member of the fund from the date of joining the factory/ establishment .

4. The learned Counsel for the appellant filed a rejoinder. The appellant is an establishment registered under the Co-operative Societies Act. By virtue of powers conferred U/s 80A of the Act, a Self Financing Pension Scheme 1994 was introduced by the Government of Kerala and was made applicable to all Co-operative institutions by SRO No 578/2006 dt. 12/07/2006 with effect from 03/06/1993. Further by SRO No. 486/2006 dt. 19/06/2006 the Government of Kerala exempted the primary Co-operative institution to which the Kerala Co-operative Society's Employees Self Financing Pension Scheme 1994 is applicable from the operation of the Employees Pension Scheme 1995. The exemption notification though challenged before the Hon'ble High Court of Kerala in W.P.(C) No. 13504/2011 and connected cases, by judgment dt. 07/02/2012 the Hon'ble High Court of Kerala upheld the validity of the exemption order. Regional Provident Fund Commissioner, Trivandrum, vide order No. KR/RO/TVM/Co-op Societies / Pension Cell/ T2/09/1172B

dt.1/7/2019 clarified that the respondent organization has decided to transfer the Employees' Pension Fund contribution to Kerala State Pension Board with regard to employees who are on role on 30/06/2006. In the instant case, the initial summons was issued on 10/10/2011 informing that a hearing was scheduled on 24/11/2011. The Assistant PF Commissioner has no power to issue the summons, since the appropriate government has issued an order of exemption. A true copy of the SRO No. 578/2006 dt.12/07/2006 is produced and marked as Annexure A6. A true copy of the communication dt. 01/07/2009 from the Regional PF Commissioner is produced and marked as Annexure A7. The Act and Rules does not provide for giving effect for orders on retrospective basis. In **District Exhibitors Association and other Vs Union of India and other**, 1991 KHC 961 the Hon'ble Supreme Court held that the scheme neither permits retrospective operation or deduction from the employees' wages on retrospective basis. From the above provisions it is clear that the appellant society is under the control of the state Government to which separate provident fund scheme is applicable and therefore the appellant society is exempted as per Sec 16(1) (b) and Sec 17 of the Act. Out

of the nine non-enrolled employees, six persons were engaged only from 01/06/2004 and other three persons from 03/2005. Without taking into the above factual position the respondent issued the impugned order.

5. The respondent authority initiated an enquiry U/s 7A of the Act since the appellant failed to enroll Nine employees to provident fund membership and there was also default in regular contribution. During the course of the enquiry the appellant remitted the regular contribution. The only question remaining to be adjudicate was the assessment of dues in respect of for non-enrolled employees. The representative of the appellant attended the hearing produced the wage particulars of nine employees from the due date of eligibility, on the basis of which the assessment order was issued by the respondent authority.

6. In this appeal the appellant has challenged the impugned order on the ground of financial difficulties and on the ground that one of the employee left on 31/05/2011. However in the replication filed by the appellant some other legal issues are raised by the learned Counsel for the appellant. The main contention in the replication and by the learned Counsel for the

appellant is that the appellant being a co operative society is exempted by the government from the Employees Pension Scheme 1995 and therefore the appellant establishment is not liable to comply under the provisions of the Act. It is also argued that the appellant being a Co-operative Society and employing less than 20 employees will not come within the provision of the Act .

7. The appellant establishment was employing more than 400 employees and the appellant society was covered under the provisions of the Act with effect from 30/09/1964, under the provisions of the Act. As rightly pointed out by the learned Counsel for the respondent, an establishment covered under the provisions of the Act will continue to be covered inspite of the fact that the employment strength of the appellant establishment has gone below the statutory limit of 20. As per Sec.1(5)

“ An establishment to which the Act applies shall continue to be governed by this Act, notwithstanding that the number of persons employed therein, at any time, falls below 20 .”

8. Hence the contention of the appellant that the employment strength of the appellant establishment at present is only 16 and therefore it is not coverable under the provisions of the Act is not legally sustainable. The Hon'ble High Court of Kerala considered the question whether a Co-operative Society can claim exclusion U/s 16(1) of the Act in **Kottayam District Co-operative Hospital Vs RPF**, 2009 LLR 839 (Ker.HC) and in **Assistant PF Commissioner Vs Karappuram White Shine Shri. Vyavasaya Co-operative Society**, 2018 (156) FLR 487 and held that, to bring an establishment under 16(1) of the Act, two conditions of employees not less than 50 and working without the aid of power are to be fulfilled. Another contentions raised by the learned Counsel for the appellant was with regard to the exemption granted from Employees Pension Scheme 1995. According to the Counsel as per Sec 80A of the Co-operative Societies Act, a Self Financing Pension Scheme 1994 was introduced by the Government of Kerala and brought all the primary Co-operative Societies under the fold of Co-operative Societies Employees Self Financing Pension Scheme and they were exempted from Employees Pension Scheme 1995. It is to be understood that the appellant establishment is covered

under the provisions of EPF and MP Act, and is exempted only from Employees Pension Scheme 1995. The appellant is therefore required to continue to comply under the Provident Fund as well as EDLI Scheme. Exemption from Employees Pension Scheme does not mean exemption from EPF and MP Act, itself. The exemption notification from the Pension Scheme was challenged by some of the employees before the Hon'ble High Court of Kerala and the single Bench of the Hon'ble High Court of Kerala upheld the validity of the exemption which is reversed by the Division Bench of the Hon'ble High Court of Kerala. The said judgment of the Division Bench is challenged before the Hon'ble Supreme Court by the Co-operative Societies Pension Fund Board and is still pending. The learned Counsel for the appellant also argued that the appellant is not liable to pay the employees share of contribution relying on the decision of the Hon'ble Supreme Court in **District Exhibitors Association Vs. Union of India**, 1991 KHC 961. In the above case the cinema theatres are notified by Government of India under the Schemes on 30/04/1986 retrospectively with effect from 01/10/1984 and the Hon'ble Supreme Court held that such retrospective notification are not permissible as the employers'

share was not deducted from the salary of the employees. In this case, the appellant defaulted in payment of contribution and therefore the above decision cannot be extended for default.

9. The subject matter of the impugned order is with regard to the enrollment of the nine casual employees engaged by the appellant establishment. It is seen that the Managing Director of the appellant establishment who appeared before the respondent authority produced all the relevant documents and the assessment of dues is done on the basis of those records and statement produced by the appellant. Hence the appellant cannot dispute the correctness of the quantification of dues. The learned Counsel for the respondent also pointed out that, only regular employees of the Primary Co-operative Society are eligible to be enrolled to the Co-operative Society's Employees Self Financing Pension Scheme and the casual employees against whom the present assessment is made, are not eligible to be enrolled under the said Scheme. Hence the appellant will have to comply with the respondent in respect of all the nine nonenrolled employees.

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

Hence the appeal is dismissed.

Sd/ ~

(V.Vijaya Kumar)
Presiding Officer