



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

सत्यमेव जयते

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

(Monday the 1st day of February, 2021)

Appeal No. 153/2019

(Old No.ATA-81(7)2015)

Appellant : M/s. Bhavans Vidyalaya,
Thottakara, Ottapalam
Palakkad – 679102.

By Adv. K.K. Premlal

Respondent : The Assistant PF Commissioner,
EPFO, Sub Regional Office
Eranhipalam.P.O
Kozhikode- 673006

By. Adv. Dr. Abraham P.Meachinkara

This case coming up for hearing on 29.12.2020 and this Industrial Tribunal-cum-Labour Court issued the following order on 01/02/2021.

ORDER

Present appeal is filed from order No. KR/KK/28529/Enf-4(4) 2013-14/133 dt. 04/04/2014 issued U/s 7A of EPF & MP Act, 1952 (hereinafter referred to as 'the Act') deciding the applicability and also assessment of dues for the period from 07/2010 to 11/2012. The total dues assessed is Rs. 3,49,982/-.

2. The appellant is an unaided educational institution. The appellant received a summons from the respondent directing them to produce documents for the period from 06/2005 to 11/2012. Respondent was under the impression that the appellant is a branch unit of Bharatiya Vidya Bhavan, Mumbai. The appellant filed a detailed written statement informing the respondent that the appellant is an independent unit and the employment strength of the appellant never reached 20. The appellant appeared before the respondent and produced all the records including the wage registers for the relevant period. Though the respondent accepted the plea of the appellant that the appellant unit is not a branch of Bharatiya Vidya Bhavan, Mumbai, the respondent found that the employment strength of the appellant crossed 20 during 7/2010 and therefore covered the establishment under the Act from 7/2010 and also assessed the dues from 7/2001 to 11/2012. The appellant filed a review application U/s 7B (1) of the Act. The hearing was posted on 25/7/2014 and on 24/7/2014 the appellant received a telephonic message from the Enforcement Officer of the respondent that the enquiry fixed on 25/7/2014 is adjourned on administrative

grounds. Hence the appellant did not attend the enquiry U/s 7B of the Act and could not produce documents to support the claim of the appellant that the appellant never employed 20 persons as on 7/2010. The appellant received an order dt. 24/9/2014 rejecting the claim of the appellant without perusing the documents or hearing the appellant. The appellant has taken as specific stand that the employment strength of the appellant establishment was always below 20. However the appellant was not given adequate opportunity to prove the same before the respondent authority. The respondent has not given any reason for discarding the wage registers produced by the appellant before the respondent in the 7A enquiry. The Enforcement Officer who submitted the inspection report was not examined in the proceedings to prove the report of the enquiry officer. If not for the communication received from the Enforcement Officer of the respondent, the appellant ought to have produced the records and convinced the respondent authority that the appellant never employed 20 persons during the relevant point of time.

3. The respondent filed counter denying the above allegations. The appellant establishment defaulted in

payment of contribution for the period from 7/2010 to 11/2012. In spite of repeated effort made by the office of the respondent, the appellant failed to remit the contribution for the relevant point of time. After hearing the appellant, the respondent found that the appellant establishment cannot be clubbed with the unit at Mumbai and the respondent also found that the employment strength of the appellant is 20 in 7/2010 and is therefore statutorily coverable under the provision of the Act from 7/2010. The review filed by the appellant U/s 7B of the Act was rejected as there was no additional evidence or important matter which could not be produced by the appellant at the time of hearing U/s 7A of the Act.

4. The appellant establishment was covered under the provisions of the Act w.e.f 06/2005 treating as a branch unit of Bharathiya Vidya Bhavan, Mumbai. The appellant disputed the coverage on two grounds: (1) that the appellant is not a branch of Bharatiya Vidya Bhavan, Mumbai and (2) that the employment strength of the appellant never reached 20 and therefore the appellant establishment is not coverable under the provision of the Act. The respondent initiated an enquiry U/s 7A and in the enquiry the

respondent found that the appellant cannot be clubbed along with the unit at Mumbai. However the respondent found that the employment strength of the appellant reached 20 on 1/7/2010 and therefore the appellant establishment is statutorily coverable from that date. Aggrieved by the said order the appellant filed a review application U/s 7B of the Act. Though the appellant attended the hearing on the first day of posting, they did not attend on the 2nd day as they received a message from the Enforcement Officer of the respondent that Sec 7B hearing is adjourned. However the respondent took a view that no additional documents were produced and therefore there is no merit in the review application filed by the appellant. The learned Counsel for the appellant argued that the appellant was prevented from producing the additional documents only because of the communication received from the Enforcement officer of the respondent. He further pointed out that the appellant never employed 20 persons during the relevant point of time. On a perusal of the impugned order it is seen that the respondent decided to cover the appellant establishment from 1/7/2010 on the strength of evidence available during the enquiry U/s 7A.

However it is not clear from the order the documents on which the respondent relied on to arrive at the conclusion that the employees strength of the appellant reached 20 on 1/7/2010. The learned Counsel for the appellant also argued that the Enforcement Officer who conducted the inspection was not examined in the enquiry to prove his report. Since the respondent relied on the records of the establishment, nonexamination of the Enforcement Officer will not in any way affect the validity of the impugned order. However if the respondent relied only on the report of the Enforcement Officer and the appellant desires to examine the Enforcement Officer who conducted the inspection, the same shall be allowed, in any quasi judicial proceedings.

5. The only question that is required to be answered is whether the appellant employed 20 persons on 1/7/2010 or on a subsequent days and whether the appellant establishment is statutorily coverable under the provisions of the Act. In view of the contentions taken by the learned Counsel for the appellant it is felt appropriate that the matter shall be examined by the respondent after giving an opportunity to the appellant to produce the records to substantiate his claim.

6. Considering the facts, circumstances and pleadings in this case, I am of the considered view that the appellant can be given an opportunity to prove their case that they never employed 20 persons as on 1/7/2010 or subsequently thereafter.

Hence the appeal is allowed, the impugned order is set aside and matter is remitted back to the respondent to re-decide the issue of applicability after providing an opportunity to the appellant, within a period of 3 months from the date of receipt of this order. The amount if any remitted by the appellant as per the direction of the Hon'ble High Court of Kerala shall be adjusted or refunded after finalization of the enquiry.

Sd/-

(V. Vijaya Kumar)
Presiding Officer