



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

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

( Wednesday the 18<sup>th</sup> day of May, 2022)

**Appeal No.609/2019**  
(Old No.ATA-649(7)2013)

Appellant M/s. Professional Couriers  
16/1034, Tagore Road,  
Thoppumpady,  
Kochi - 682 005

By Adv. C. Anil Kumar

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

By Adv. Sajeev Kumar K. Gopal

This case coming up for hearing on 02/02/2022 and this Industrial Tribunal-cum-Labour Court issued the following order on 18/05/2022.

**ORDER**

Present appeal is filed from order No. KR/ KC/27910/ Enf-3(3)/2013/5535 dt. 10/07/2013 confirming the coverage of the appellant establishment U/s 7A of EPF & MP Act, 1952 (hereinafter referred to as 'the Act') with effect from 31/08/2011.

2. The appellant is a franchisee of a Courier Service. Since the area of operation of the appellant establishment is very small, the appellant required only less than 15 employees. On occasions the employees' strength had reached 18, but never touched 20. The establishment is maintaining all statutory registers. During 2011 December the employees joined a trade union and later on through union demanded revision of wages and other service conditions. The appellant could not meet the requirements. In order to pressurize the appellant the union started sending complaints to various authorities like ESI, EPF, state labour authorities etc. alleging non-compliance of the statutory provisions. The trade union filed a complaint to the respondent organization also claiming that the employment strength was 21. The union gave a list of 21 employees also along with the complaint. A copy of the list of employees is produced and marked as Annexure 1. An Enforcement Officer conducted an inspection of the appellant establishment. Without

verifying the correctness of the complaint, the respondent covered the appellant establishment under the provisions of the Act. The respondent issued a coverage memo dt. 16/05/2012, a copy of which is produced and marked as Annexure 2. Since the appellant disputed coverage, the respondent initiated an enquiry U/s 7A of the Act. The appellant produced records like wage register, settlement arrived within the complainant union and the Ledger, Journals, Day book etc to prove that the appellant never employed 20 persons. The name of the employees and their length of service in Annexure 1 list is disputed by the appellant. The disputed persons were summoned by the respondent authority. The specific stand taken by the appellant was that Shri. Varghese @ Kochumon was never an employee of the appellant. He submitted before the respondent authority that he never worked with the appellant. A copy of the letter dt.15/05/2013 is produced and marked as Annexure 2. According to the claim of K.Subramanian, he worked under the appellant only from

November 2011 to January 2012. When statement was taken from him by the respondent authority, he has taken different stands before the respondent authority. When statement was taken on 14/02/2013, he submitted that he worked under the appellant from February 2009 to February 2012. In his statement dt. 09/04/2013 Shri. K. Subramnian submitted that he had joined in 2008 and left in April 2012. A true copy of the statement of Shri. Subramanian on 14/02/2013 and 09/04/2013 issued by the respondent are produced and marked as Annexure 4 and 5 respectively. The above versions of Shri. K. Subramanian is different from what is stated in Annexure 1. There was even an attempt of impersonation by the union. One person impersonated as Shri. Sunil Kumar K.S appeared before the respondent authority on 14/02/2013 and gave a statement that he had worked with the appellant from 01/05/2010 to 01/05/2012. Such statement was objected to by the appellant. The respondent thereafter issued summons to Shri. Sunil

Kumar K.S. He appeared before the respondent authority on 30/04/2013 and stated that he joined with the appellant in 1996 and is continuing the service with the appellant. A true copy of the proceedings dt. 09/04/2013 and 30/04/2013 are produced and marked as Annexure 6 & 7 respectively. The signature of Smt. Sabitha in Annexure 1 is entirely different from her signature in Annexure 6. Smt. Sabitha disputed her signature in Annexure 1 during her statement before the respondent authority. The union which complained before the respondent regarding non-compliance has signed a settlement before the conciliation officer on 31/05/2012 in which they had admitted that the appellant is having only 18 employees. A true copy of the conciliation settlement dt.31/05/2012 alongwith translation is produced as Annexure 8 and Annexure 8(a) respectively. During the pendency of proceedings before the respondent, the ESI authority conducted an inspection of the appellant on 14/05/2012. A true copy of the visit note

issued by the Branch Manager, ESI Corporation is produced and marked as Annexure 9. Attendance register Journal, Ledger and Profit and Loss account for the period of 5 years prior to the notice was produced before the respondent authority. Without applying his mind to the submissions and documentary evidence, the respondent issued the impugned order, a copy of which is produced and marked as Annexure 10. The appellant produced bio-data of Smt. Sabitha in order to prove her date of joining. Shri. K.Subramanian's name was included in the documents for the period from November 2011 to January 2012. His statement was recorded twice. On both occasions he has given different dates of joining. The respondent authority ought to have rejected inconsistent testimony of Shri.K. Subhramaniam. There is no basis for the conclusion by the respondent authority that Shri. K.Subramanian was in service of the appellant on 31/08/2011. The respondent authority relied on an uncorroborated and contradictory letter submitted by the

union on 05/01/2011 that there were 18 employees working in the appellant establishment in addition to one employee under suspension who is Shri. K. Subramanian. Another employee was on maternity leave who is Smt. Sabitha and third employee under compulsory leave was Shri. Kochumon, which brought the employment strength to 21. Shri Varghese @ Kochumon submitted a letter, Annexure 3 to the effect that he never worked with the appellant. Not mentioning of the receipt of such a letter would prove that the proceedings of the respondent was not fair. Smt. Sabitha deposed that she resigned and left on 31/08/2011. The respondent failed to consider the documents produced by the appellant to support their contentions.

3. The respondent filed counter denying the above allegations. The appellant establishment is covered under the provisions of the Act with effect from 31/08/2011. A grievance letter dt. 05/01/2012 was received from the General Secretary of General Workers Union informing

that the franchisee M/s. Professional Couriers has not extended provident fund to its employees and an Enforcement Officer was deputed to investigate. The Enforcement Officer submitted a marginal establishment investigation report wherein it was stated that the establishment employed 21 employees. Later he submitted a report dt. 02/04/2012 recommending coverage of the establishment with effect from 01/09/2011. Accordingly the establishment was covered under the provisions of the Act with effect from 01/09/2011. On receipt of the coverage notice dt.16/05/2012, the appellant disputed coverage vide its letter dt. 30/06/2012. According to the appellant, the appellant establishment never employed 20 persons. It was also alleged that the list of employees given by the general workers union contained the name of persons who were not on the roles of the appellant establishment. They produced a copy of the Memorandum No.05/2012 between the appellant union and the Deputy Labour Officer where the strength of the appellant was



indicated as 18. A certificate was issued by the Labour Officer was also produced showing the employment strength as 18. The appellant also produced a certificate from the Branch Manager, ESIC that the employment strength of the appellant was below 20. During the hearing, the appellant submitted wage register from 01/2012, ledger for the period 2007-2008 to 2011-2012, Cash book from 2008-2009 to 2010-2011, Muster Rolls from 01/2008 to 2/2011 and balance sheet for 2007-2008 to 2010-2011. A copy of the complaint filed by the union and the report of the Enforcement Officer dt. 24/02/2012 were served on the Counsel for the appellant. The appellant was also directed to furnish certain details such as staff welfare expenses, loading and unloading charges etc. Since several complaints was received from the employees, summons were sent to the following complainants to be part of the ongoing enquiry. Smt. Selvin Antony, Smt.Sabith N.V, Shri.Sunil Kumar K.S. Shri. K. Subramanian, Shri.Varghese, Shri.T.A. Farooq and

General workers union were summoned in the enquiry. Smt. Sabitha stated that she joined the appellant establishment on 04/2011 and left service on 31/08/2011. She further stated that she did not file any complaint. Shri. Selvin Antony submitted that he left the service of the appellant on 10/2012 he also stated that he did not file any complaint. Shri. Sunil Kumar K.S stated that he joined the service in 1996 and is still working. He submitted that he worked in the Aroor unit of the appellant and two more employees, Smt Sulekha and Shri. Krishna Kumar are working there. Shri.T.A.Farooq submitted that he joined the service in 2008 and is still working. Shri. Subramanian. K. submitted that he joined in 02/2009 and his services were terminated on 02/2012. On the basis of the evidence and oral testimony it is clear that there were 21 employees working in the appellant establishment as on 31/08/2011 and therefore the date of coverage was preponed from 01/09/2011 to 31/08/2011. The complaint of the union as well as the

report of Enforcement Officer clearly establish the fact that the appellant establishment was employing more than 19 employees as on 31/08/2011. The evidence of Shri.K.Subramanian and Smt.Sabitha would support the case of the union that they were in service of the appellant establishment as on 31/08/2011. The contention regarding the impersonation of Shri. Sunil Kumar K.S was resolved during the enquiry itself. Smt Sabitha admitted before the respondent authority that she worked with the appellant establishment upto 31/08/2011. The establishments rendering courier service is notified under the Act with effect from 1<sup>st</sup> April 2001 as per SO 746 dt.22/03/2001. Hence the appellant establishment falls under the Schedule Head notified by the government. A copy of the complaint dt. 08/03/2013 received from the General Workers union is produced and marked as Exbt R1.

4. The respondent authority received a complaint from a union alleging that the appellant establishment is

employing 21 persons and they are not extended the benefit of provident fund. An Enforcement Officer was deputed by the respondent to investigate the complaint. Initially he reported that the appellant is a marginal establishment employing 18 persons. After subsequent inspection of the appellant establishment, the Enforcement Officer reported that the appellant employs 21 persons and therefore it s coverage with effect from 01/09/2011. Accordingly the appellant establishment was covered. The appellant disputed coverage. The respondent summoned the appellant U/s 7A of the Act, to decide the applicability of the Act, to the appellant establishment. The Enforcement Officer of the respondent authority was relying on the Exbt R1 complaint send by the union dt. 08/03/2013, wherein it was alleged that the appellant establishment was employing 21 persons. In a previous complaint the union also produced the list of 21 employees' alongwith their address and the length of service with the appellant establishment. The respondent authority therefore decided

to summon the disputed employees and also the union in the enquiry. The documents produced by the appellant would show that they were employing 18 employees as on 31/08/2011. There were three employees whose employment was disputed by the appellant. Smt. Sabitha appeared in the enquiry and stated that she left the service of the appellant establishment on 31/08/2011. Another disputed employee Shri.K.Subramanian appeared and in the proceedings dt. 09/04/2013. He submitted that he joined the service of the appellant establishment on 11/2011 and left on 01/2012. In the proceedings dt.14/02/2013, he submitted that he joined the service of the appellant establishment on 02/2009 and his service was terminated on 02/2012. From the management side the bio-data of Shri.Subramanian was produced and it was not tallying with the statement given on 09/04/2013. According to the employer Shri. K. Subramanian joined the service of the appellant establishment after one month of the date of the bio-data. The respondent issued summons

to another employee whose name is reflected in the list of employees furnished in the union, Shri.Varghese Cherian @ Kochumon. Though he did not attend the enquiry, vide his letter dt.15/05/2013, Annexure 3 informed the respondent authority that he never worked with the appellant establishment. There was also a issue regarding impersonation in respect of Shri. Sunil Kumar K.S. Some other person tried to appear in the enquiry and give evidence on behalf of Shri. Sunil Kumar K.S. Since the appellant objected, the respondent issued fresh summons and Shri. Sunil Kumar K.S appeared before the respondent authority and submitted that he continued to be working with the appellant establishment as on the date of the proceedings. As per Annexure 8(a) settlement signed between the union and the management, there were 18 employees working in the appellant establishment as on 31/05/2012. However the union clarified its position vide Exbt R1 dt. 08/03/2013 stating that there were infact 21 employees out of which one employee, Shri.K.

Subramnaian was under suspension and Smt.Sabitha was on maternity leave and Shri.Kochumon was on compulsory leave. The Annexure 9, a visit note by the ESIC also shows that the employment strength as on 14/05/2012 was 18 only.

5. The crucial question to be decided in this case is whether the appellant establishment was employing more than 19 employees as on 31/08/2011. The employment strength as on May 2012 is not relevant for this purpose. As on 31/08/2011 there is no dispute regarding the fact that there were 18 employees working with the appellant establishment. As per the evidence of Smt. Sabitha she left service on 31/08/2011 and therefore the employment strength can easily be taken as 19. The real dispute is with regard to the service of Shri. K. Subramanian. As rightly pointed out by the learned Counsel for the appellant, he has given contradictory statements. According to the Counsel for the appellant, they produced the copy of the bio-data submitted by Shri K. Subramanian during the

course of the enquiry proceedings. In the proceedings dt. 30.04.2013 it is recorded that “The advocate produced Bio-data of K. Subramanian. It is not tallying with the statement given by him on 09/04/2013. He joined only after one month from the date of bio-data as per the employers’ statement”. The impugned order is completely silent regarding the production of bio-data of Shri.K Subramanian and contents of the same. According to the learned Counsel for the appellant, Shri.K.Subramanian joined the service of the appellant one month after giving biodata. Neither the appellant nor the respondent produced a copy of the bio-data in this appeal. Shri. K.Subramanian was employed with the appellant and his services were terminated by the appellant, according to their own admission. On a perusal of the Annexure 8, item No.2 of the bipartite settlement of the union and the management, it is stated that “Shri.K. Subramanian who is under suspension will be terminated and he will be paid a compensation of Rs.10,000/- and the amount is being paid



to the union today”. This settlement is dt. 31/05/2012. Hence it is clear that the termination actually took place only as per the above bipartite settlement. However it is for the management to establish whether Shri.K.Subramanian was in the service, of the appellant as on 31/08/2011. If Shri. K. Subramanian was in service, the employment strength of the appellant establishment will reach 20 as on August 2011 and the coverage as on 31/08/2011 will be valid. However the respondent authority has not examined this aspect meticulously and also not considered the contradictory evidence given by Shri.K.Subramanian at the time of evidence before the respondent authority. Since the records of the employment and termination of employees are with the appellant, the burden of proof to establish whether Shri. Subramanian joined service of the appellant establishment after 31/08/2011 is on the appellant and if the appellant succeeds the coverage as on 31/08/2011 is not sustainable.

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

Hence the appeal is allowed the impugned order is set aside and the matter is remitted back to the respondent to re-examine the issue on the above direction. The respondent shall issue summons to the appellant as well as the union before deciding the matter finally. If the appellant fails to appear or produce documents called for, the respondent is at liberty to decide the matter according to law.

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