



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

सत्यमेव जयते

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

(Tuesday the 22nd day of February, 2022)

Appeal No.676/2019
(Old No.ATA-545(7)2012)

Appellant

Kerala State Civil Supplies Corporation
Maveli Bhavan , Maveli Road
Gandhi Nagar , Cochin – 682 020.

By Adv. Molly Jacob

Respondent

The Regional PF Commissioner
EPFO, Sub Regional Office
Kaloor, Kochi– 682017.

By Adv. Sajeev Kumar K. Gopal

This case coming up for hearing on 01/11/2021 and this Industrial Tribunal-cum-Labour Court issued the following order on 22/02/2022.

ORDER

Present appeal is filed from order No. KR/ KC/4409 /Enf-1(2)/2011/15433 dt.01/03/2012 assessing dues in respect of non-enrolled daily wages employees engaged by the appellant, U/s 7A of EPF & MP Act, 1952 (hereinafter referred to as ‘the Act’). Total dues assessed is Rs.1,47 69,761/- .

2. The appeal was filed before EPF Appellate Tribunal New Delhi. The EPF Appellate Tribunal admitted the appeal vide its order dt.10/07/2012 on the condition that the appellant shall furnish a bank guarantee equaling to 50% of the assessment U/s 7(O) of the Act. The appellant filed a bank guarantee for Rs.73,84,818/- which was valid upto 2019. After the transfer of files from EPF Appellate Tribunal, notice was issued to the appellant as well as the respondent. The appellant entered appearance. It was pointed out that the bank guarantee furnished by them lapsed in the year 2013. The appellant was therefore directed to renew the bank guarantee. Thereafter the appeal was posted on various dates and there was no representation on the side of the appellant. This Tribunal also found that the appellant has no case on merit as the appellant was liable to enroll all the temporary and casual employees to the fund from their date of eligibility. Accordingly the appeal was dismissed vide order dt. 14/01/2021.

3. The appellant filed a review application on the ground that as per the impugned order, the employees who resigned from the service of the appellant and those already enrolled are included. Further it was also pointed out in the review application

that the bank guarantee has extended upto March 2022. The matter was heard and the review application was allowed vide order dt. 20/09/2021.

4. The appeal was finally heard on 11/11/2021. According to the learned Counsel for the appellant, the respondent authority issued the impugned order assessing dues in respect of 3801 causal employees. Out of the 3801 workers included in the list, there are duplication in 219 names. It was also pointed out the names of 264 permanent staff who were already enrolled to the fund was also included in the assessment. It was also pointed out that the names of 5 employees who were on deputation were also included in the assessment. The appellant furnished the list of duplication and employees. According to the learned Counsel for the appellant all those employees who continued in service as on 2012-2013 were enrolled to the fund as per the claim of the learned Counsel for appellant a total of 956 employees are enrolled to the fund.

5. According to the learned Counsel for the respondent the list of 3801 non-enrolled employees were identified by the respondent authority after elaborate exercise undertaken during the course of Sec 7A. Hence he strongly disputed the claim of the

learned Counsel for the appellant that 2435 employees are not identifiable. He also pointed out that the claim regarding duplicate entries and also inclusion of the enrolled employees in the list of non-enrolled employees will have to be examined on facts, based on the evidence to be produced by the appellant establishment. However he opposed the claim of the learned Counsel for the appellant that the left employees need not be directed to be enroll to the fund.

6. The learned Counsel for the appellant relied on the decision of the Hon'ble High Court of Punjab and Haryana in **Food Corporation of India Vs RPFC**, W.P.(C) No. 3305 of 1993 and the decision of the Hon'ble High Court of Bombay in **Sreerampur Education Society Vs RPFC**, W.P.(C) No. 803/2001. In the above cases the issue was with regard to the identification of employees as the assessment was based on Balance Sheet figures. In this particular case, as already pointed out, the respondent authority during the assessment U/s 7A has done an elaborate exercise of collecting details of employees from various outlets of the appellant corporation and also confirmed the same through the witnesses examined in the enquiry. Hence the appellant cannot take a plea that these employees left their services and therefore

they need not be enrolled to the fund. It is a well settled principle of common law that wrong doer cannot take advantage of his own wrong. In **Eureka Forbes Ltd Vs Allahabad Bank**, 2010(6) SCC 193 the Hon'ble Supreme Court held that “the maxim ‘**nullus commodum capere potest de injuria sua propria**’ has clear mandate of law that, a person who by manipulation of process frustrates the legal rights of others, would not be permitted to take advantage of his wrong or manipulation.” In the present case it is a fact that the all these employees were working with the appellant establishment during the relevant point of time. It was a statutory obligation on the part of the appellant to enroll them to provident fund membership from their date of eligibility. The appellant failed to comply with the statutory provision and there by violated the provisions. Having violated the provisions mandated under the Act, the appellant cannot take a plea that they are not liable to enroll those employees who left the service of the appellant. The respondent organization has an obligation to pay the amounts to the concerned employees along with upto date interest at any time during their life time.

7. Considering the facts, circumstances pleadings and evidence in this appeal, the respondent will have to examine

whether there are duplications and also whether the enrolled employees and employees on deputation were included in the impugned assessment. If the respondent finds that the those names are included, the assessment order requires a review. However it is clarified that the left employees stand on a entirely different footing and is required to be examined in the light of the observations made above.

Hence the appeal is allowed, the impugned order is set aside and the matter is remitted back to the respondent to re-assess the due after issuing notice to the appellant, within a period of 6 months.

Sd/-

(V. Vijaya Kumar)
Presiding Officer