



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

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

(Monday the 25th day of April, 2022)

Appeal No. 70/2020

Appellant M/s. Travancore Rubber & Tea Co. Ltd
Ambanaad Estate , Kalthuritty
Kollam -691 309.

By Adv. Joseph & Kuriyan

Respondent The Assistant PF Commissioner
EPFO, Sub Regional Office
Kollam -691 001

By Adv. Pirappancode V.S.Sudheer
& Adv. Megha.A

This case coming up for hearing on 14/09/2021 and this Industrial Tribunal-cum-Labour Court issued the following order on 25/04/2022.

ORDER

Present appeal is filed from order No. KR /KLM / 44 / Enf-1(1) Area. 2 /2020-21/81C dt. 29/09/2020 assessing dues U/s 7A of EPF & MP Act, 1952 (hereinafter referred to as 'the Act') on regular dues for the period from 04/2018 to 09/2019

and two non-enrolled trainees from 05/2017 to 08/2019. The total dues assessed is Rs. 54, 23,693/-.

2. Appellant is a Public Limited company incorporated under the Companies' Act 1956. The appellant is covered under the provisions of the Act. The appellant is engaged in the production and sale of tea and rubber and other related products. The appellant delayed remittance of contribution for the period from April 2018 to August 2019 on account of financial crisis and paucity of funds. The appellant has remitted the employees' share of contribution deducted from the salary of the employees. The appellant also remitted the complete contribution for December 2018 and January 2019. The appellant remitted the employees' share of contribution for the months of April, May, June and July of 2018 on 13/10/2020 and August, September, October and November 2020 on 30/10/2020 respectively. Therefore the entire employees' share of the contribution and an amount of Rs.2,45,219/ towards employers' share of contribution had already been remitted by the appellant. The balance amount outstanding is the employers' share of contribution from February 2019 to August 2019 amounting to Rs.24,10,084/-. The respondent issued summons dt.20/01/2020 directing the

appellant to appear before the respondent U/s 7A of the Act. The appellant attended the hearing and explained that the delay was not deliberate and the appellant was in acute financial difficulties. The financial difficulties is caused by Shri. Rajamanikkam report questioning the ownership of the appellant, over its land. The issue was resolved by the Hon'ble High Court of Kerala in the judgment of 2018 (2) KLT 369. November 2017 Okhi Cyclone uprooted about 4000 Gravelia trees planted for the purpose of providing shade to the Tea plantation. For removing the trees the appellant had entered into an agreement for sale of the trees for an amount of Rs.2,12,40,000/- to one Shri. Raqeeb. The forest department did not permit and the appellant was forced to approach Hon'ble High Court in W.P.(C) No. 28246/2019. Though the High Court allowed the appellant to sell and remove the fallen trees, the trees were already decayed as they have been exposed to the vagaries of nature. Another issue raised in the impugned order is with regard to the non-enrollment of Shri. Deva Raj.R and Smt. Aswathy. The appellant had already taken action to enroll Smt.Aswathy to the provident fund membership from the date of eligibility. Shri.Devaraj was appointed as a staff trainee in April 2017, a copy of the appointment letter is produced. He left the appellant company on 29/08/2019, a copy

of the resignation letter is produced. The appellant was under the bonafide belief that trainees are not required to be enrolled to provident fund membership.

3. The respondent filed counter denying the above allegations. The appellant establishment is covered under the provisions of the Act with effect from 31/07/1956. The appellant defaulted in remittance of contribution for the period 04/2018 to 08/2019. The respondent therefore initiated action for assessment of dues. The Enforcement Officer who conducted the inspection reported that the appellant failed to remit the contribution and also detected non-enrollment of two employees for the period 05/2017 to 08/2019. There was no dispute regarding the remittance of regular contribution and also with regard to non-enrollment of Smt. Aswathy. The only dispute raised during the course of 7A enquiry was with regard to enrollment of Shri. Devaraj R. According to the appellant Shri. Devaraj. R was appointed as trainee staff and therefore he was not enrolled to the fund. The representative of the appellant filed a written statement dt. 07/09/2020 stating that Shri. Devraj was appointed as a staff trainee and was not a regular appointment. He was appointed for a period of three years. Hence he was not enrolled to the fund.

The Enforcement Officer was directed to furnish comments on the stand taken by the appellant. He reported that the non-enrollment of two employees were noticed during inspection. Shri. Devraj R was appointed as a staff trainee. He was appointed for a period of three years. However nowhere in the appointment order it was mentioned he was appointed as an apprentice under Apprentice Act 1961 or as per the Standing Orders of the establishment. Further the Enforcement Officer also submitted copies of the attendance register for the month of August 2019, statement of details of employees and office staff of the establishment duly attested by the employer which include the name of Shri.Devaraj. R. The report of the area Enforcement Officer dt. 09/09/2020 along with the enclosures are produced and marked as Exbt R1.As per the terms and conditions of the appointment, Shri. Devraj.R was eligible for service benefits such as bonus under Payment of Bonus Act. The only ground pleaded by the appellant for non-remittance of contribution is the financial difficulties. Financial difficulties cannot be a ground for non-remittance of provident fund contribution. With regard to non-enrollment of Shri.Devraj.R he was a trainee staff but was not appointed as Apprentice Act .

4. When the matter was taken up for hearing the learned Counsel for the appellant fairly conceded that they don't have any dispute regarding assessment of regular dues and also enrollment of Smt. Aswathy to provident fund membership. The only dispute is with regard to the enrollment of Shri.Devraj.R who was appointed as staff trainee for three years and who already left the service of the appellant establishment without completing the three year term. According to the learned Counsel for the respondent Shri.Devaraj.R was appointed as a trainee staff. Since he was not appointed as an apprentice under Apprentice Act 1961 or Standing Orders of the appellant establishment, the appellant establishment is required to enroll Shri. Devaraj. R to provident fund membership from his date of eligibility. As per Sec 2(f) of the Act. " An 'employee' means any person who is employed for wages in any kind of work manual or otherwise in or in connection with the work of the establishment and who gets its wages directly or indirectly from the employer, and includes any person,

(1) Employed by or through a contractor in or in connection with the work of the establishment.

(2) Engaged as an apprentice, not being an apprentice engaged under the Apprentices Act, 1961 (52 of 1961) or under the standing order of the establishment .

It is clear from the above definition that the trainees will also come within the definition of employee with a specific exclusion of trainees engaged under apprentices Act 1961 or under the Standing Orders of the appellant establishment. The appellant has no case that Shri. Devaraj.R was engaged under Apprentices Act or under the Standing Orders of the establishment. Hence the finding of the respondent authority that Shri. Devraj. R is eligible to be enrolled to provident fund membership from his date of eligibility and the assessment thereto is legally sustainable.

5. The learned Counsel for the appellant pleaded that the appellant may be granted some installment facility to remit balance amount. It is seen that the appellant has requested for an installment facility to remit the balance contribution of Rs.24,10,084/- in seven monthly installments. This appeal is filed in 2020 and the appellant got more than adequate time to clear the outstanding dues. Hence it is not correct to grant further installment facility to remit the contribution.

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

Hence the appeal is dismissed.

Sd/-

(V. Vijaya Kumar)
Presiding Officer