



सत्यमेव जयते

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

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

(Tuesday the 1st day of December, 2020)

APPEAL Nos.440/2018 & 441/2018

(Old Nos. 750(7)/2011 & 748(7)/2011)

Appellant : 1. M/s. Ladrum Estate
Hope Plantations
Peermade- 685531
Kerala.

2. M/s. Glen Mary Estate
Hope Plantations Kerala.
Peermade- 685531
Kerala.

By Adv. Sajith . P. Warriar

Respondent : The Assistant PF Commissioner
EPFO, Sub Regional Office
Kottayam - 686001

By Adv. Joy Thattil Ittoop

This case coming up for final hearing on
12.10.2020 and this Tribunal-cum-Labour Court on
01.12.2020 passed the following:

ORDER

Appeal No. 440/2018 is filed from order No. KR/KTM/395/7A /Enf 1 (4) 2011/6057 dt. 30/08/2011 assessing dues U/s 7A of EPF & MP Act (hereinafter referred to 'the Act') for the period from 09/2009 to 07/2010. The total dues assessed is Rs. 32,95,918/- in respect of M/s. Ladrum Estate of Hope plantation.

2. **Appeal No. 441/2018** is filed from order No. KR/KTM/401/7A/Enf 1 (4) /2011/6055 dt. 30/08/2011 assessing dues U/s 7A of the Act for the period 09/2009 07/2010 in respect of M/s. Glen Mary Estate, Hope plantations. Total dues assessed is Rs. 39,95,898/-

3. Both the above estates are units of Hope plantation and common issues were raised in the appeal. Hence the appeal are heard and disposed of by a common order.

4. The appellants are two units of Hope plantations. They are employing around 800 permanent workers. There

was financial difficulties and loss for the tea estates from year 2000 onwards. However the appellants paid the dues in installments pursuant to the installments granted by the Hon'ble High Court of Kerala. The respondent initiated action U/s 7A of the Act to determine the dues for the period 09/2009 to 07/2010. The appellant enrolled all its regular employees and paid contribution to them. The respondent took a view that the appellant failed to enroll temporary and casual workers. The assessment was made on payments made against cash work and incentive plucking. This work is not done by new workers but the same is done by the regular workers during their spare time. The appellant submitted that the above amounts were paid for the overtime work and hence will not attract provident fund deduction. Ignoring the above contentions the respondent issued the impugned orders.

5. The respondent filed counter denying the above allegations. The appellants are units of Hope plantations. An enquiry was initiated to determine the dues payable by

the appellants from 09/2009 to 07/2010. The Enforcement Officer who conducted the inspection of the appellant establishments submitted reports indicating the default in remittance of contribution. The copies of the report were given to the representative of the appellants who attended the hearing. In his report dt. 09/09/2010 the Enforcement Officer reported the admitted dues and in the reports dt. 23/02/2011 and 09/03/2011 he reported the dues in respect of the employees engaged through contractors. After receipt of the report the appellants sought time to give their response. According to the appellants all the casual employees were enrolled as per the provisions of the Act. They engaged their workers and hired workers from outside when the crop increases and they pay overtime to their workers and wages to the hired workers. They are not liable to pay provident fund for such workers. They paid incentives for plucking to their employees who worked beyond the duty hours. The name of contractors shown for the contract works of cutting, weeding, tea leaf lifting and pruning works are done by the estate workers already

enrolled to provident fund. The appellants are not collecting any contribution from the workers employed as and when needed. The appellants specifically objected to the dues furnished by the Enforcement Officer in respect of temporary and casual workers paid through vouchers and posted under the heads cash work, incentive plucking, sunday work and wages paid to contractors. The squad of Enforcement Officers who conducted inspection of the appellant establishments verified all the vouchers, identified the beneficiaries and they are employees as defined under the provisions of the Act. As per the scheme provisions all employees working for the establishment whether temporary, casual or workers engaged through contractors must be enrolled to the scheme from their date of joining.

6. It is seen from the pleadings of the parties to these appeals that the appellants were engaging workers on a casual basis and also through contractor. The payments towards this work is made under the heads cash work,

incentive work, Sunday work etc. The contentions of the learned Counsel for the appellants is that such payments will not attract provident fund deduction. The learned Counsel for the appellants also argued that certain payments were made to their regular workers for the extra work done beyond their regular working hours. According to the learned Counsel for the respondent all these employees will have to be enrolled to the provident fund in view of the various provisions of the Act. It was up to the appellants to establish before the respondent authority that some payments were made to their regular employees for the extra work done by them. The appellant failed to prove the claim either before the 7A authority nor in these appeals.

7. 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 establishment and who gets his wages directly or indirectly from the employer and includes any person employed by or

through a contractor in or in connection with the establishment. It is very clear from the above definition that all the employees engaged by the appellants in connection with the work of the establishments directly or through a contractor will be treated as an employee of the appellants and they are liable to be enrolled to provident fund from the due date of the eligibility. If the payments are made for extra work done by the employees as claimed by the appellants, they could have paid the amounts as overtime allowance which is excluded from the definition of basic wages under the Act. As per Sec 2 (b) of the Act, Basic wages means all emoluments which are earned by an employee which are paid or payable in cash but does not include house rent allowance, overtime allowance, bonus commission or any other similar allowance. A combined reading of the definition of employee U/s 2 (f) and basic wages U/s 2 (b) in the Act, it is clear that all the payments made by the appellants in whatever name it is called will attract provident fund deduction. The respondent has clearly stated that all the employees who are entitled to

receive the contribution are clearly identified through vouchers. Hence it is not possible to accept the claim of the learned Counsel for the appellant that the beneficiaries of the dues are not identified by the respondent. It was up to the appellants to prove before the respondent authority that the report filed by the Enforcement Officer was not correct. It is repeatedly held by various High Courts that it is up to the appellant to discredit the report of the Enforcement Officer if the same is not legally correct. In **HC Nerula Vs RPFC**, 2003 II LLJ 1131 the Hon'ble High Court of Delhi held that " the petitioner was given all reasonable opportunity to show that the report of the inspection was not correct. The petitioner however could not disprove the contents of the said report submitted by the inspector". Similarly, in the case of **C Engineering Works Vs RPFC**, 1986 1 LLN 242 the Hon'ble High Court of Delhi held that when the appellant failed to prove his claim before the respondent authority they cannot challenged the order issued by the respondent on the basis of the report of the Enforcement Officer. In this particular case a squad of

Enforcement Officers inspected the establishments, verified the records, identified the employees through voucher payment and assessed the dues in respect of those payments. The respondent provided a copy of the report of the squad of inspectors along with the enclosures to the appellants and appellants failed to discredit the report of the squad on the basis of the records available with them. Having failed to do so the appellants cannot dispute the claim of the respondent that the payments made to the employees will attract provident fund deduction.

8. Considering all the facts, pleading and evidence and I am not inclined to interfere with the impugned orders.

Hence the appeals are dismissed.

Sd/-

(V. Vijaya Kumar)
Presiding Officer