सत्यमेव जयते

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL

TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

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

(Thursday the 18th day of March, 2021)

Appeal No. 473/2019

(Old No.ATA-260(7)2016)

Appellant : M/s. Malabar Spinning & Weaving Mill
Thiruvannur Nada P.O
Kozhikode – 673 029.

By Adv. V. Krishna Menon

Respondent : The Assistant PF Commissioner
EPFO, Sub Regional Office
Eranhipalam
Kozhikode – 673006

By Adv.Dr.Abraham.P.Meachinkara

This case coming up for hearing on 28.01.2021 and this Industrial Tribunal-cum-Labour Court issued the following order on 18/03/2021.

O R D E R

Present appeal is filed from order No KR/KK/176/ Enf-1(3)/2015/9425 dt. 05/01/2016 assessing dues U/s 7A of EPF & MP Act,1952 (hereinafter referred to as 'the Act') in respect of non-enrolled employees for the period

from 04/2010 to 12/2014. The total dues assessed is Rs. 91,64,018/-.

2. The appellant is a Government of Kerala undertaking and a unit of the Kerala State Textile Corporation Limited (KSTC). The appellant is a yarn manufacturing unit. The unit was closed in the year 2003 and are re-opened in December 2006. When the Mill restarted, most of the employees were superannuated or opted for voluntary retirement. As on December 2006, only 69 employees remained on the roll of the appellant establishment.After renovation, the appellant establishment required 271 employees, as per the long term agreement signed with the union. A copy of the long term agreement is produced and marked as Annexure A1. The appellant initiated process for recruitment of the employees. Since there was delay, it was decided that the appellant will take trainees on a six months duration. First batch of 91 trainees joined on 27/03/2010, the second batch of 45 trainees joined on 07/03/2011 and the 3rd batch of trainees joined on 01/06/2012. Hence the appellant has taken 176 persons as trainees. The basic qualification required for the employees of the mill is 7th std pass. However Government

of Kerala issued order dt.01.01.2011 fixing basic qualification as SSLC. A copy of the order dt. 01.01.2011 is produced and marked as Annexure A2. The appellant took up the matter with the State Government and the State Government vide Annexure A3 dt. 23.12.2014 amended the basic qualification as 7th std pass. Hence there was no regular selection for the post of workers from 2011 to 2014. A copy of the order issued to a trainee on his engagement in service is produced and marked as Annexure A4. The recruitment process for selection of permanent employees in terms of clause 11(A) of the LTA has already commenced. The engagement of trainees is only till such time when regular appointments are to be effected and as they were being engaged under a six month training scheme. The respondent initiated an enquiry U/s 7A of the Act, on the ground that despite several directions the mill failed to enroll 176 employees to the membership of provident fund. A representative of the appellant attended the hearing and explained the reasons for non-enrollment and also produced the documents called for by the respondent. Without considering any of the representation the respondent issued the impugned order. The appellant is a loss making unit

since its re-opening in December 2006. The appellant mill is under severe financial crisis due to unfavorable market conditions. During 2014-15 the loss of the Mill was Rs.885.50 lakhs and cumulative loss upto 31/03/2015 is Rs. 5516.14 lakhs. A copy of the audited Balance Sheet for the year ending 2014-2015 is produced and marked as Annexure A6. The respondent cannot claim that the 176 trainees shall be enrolled to provident fund since they were already enrolled under ESIC Act. Since the trainees were engaged for a training period of 6 months there is no logic in assessing dues from day one of their appointment.

3. The respondent filed counter denying the above allegations. The appellant is an establishment covered under the provision of the Act w.e.f 31/07/1956. During the routine inspection of the records of the appellant establishment, it was found that the appellant failed to enroll 176 employees to provident fund membership. Inspite of repeated directions the appellant failed to comply with the statutory provisions. Hence an enquiry U/s 7A of the Act was initiated. A representative of the appellant attended the enquiry and produced records called for during the enquiry. It is seen that the number of regular employees are less

than the number of trainees engaged by the appellant establishment. It was also seen that the trainees engaged under a six months training programme in April 2010 still continued to be trainees after more than 5 years. As per Sec 2 (f) of the Act " 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 an establishment and who get its wages directly or indirectly from the employer and includes any person employed by or through a contractor in or in connection with the work of the establishment. An apprentice is also an employee not being an apprentice engaged under Apprentice Act 1961 or standing order of the establishment. In ***NEPC Textiles Vs RPFC,*** 2007 LLR 535 the Hon'ble High Court of Madras held that persons though engaged as apprentice but required to do the regular work of employees have been rightly held as employee of Mill. The law does not permit abuse or exploitation of the labour force conveniently titling the regular employees engaged in the production line as "Apprentices" and the appellant cannot expect the authorities to keep their eyes blindfolded and remain mute spectator and approve their exploitative mechanisms.

4. The only issue in this appeal is the non-enrollment of 176 persons employed as trainees, to provident fund membership. According to the learned Counsel for the appellant when the appellant unit restarted its operation in December 2006 after renovation, there was acute shortage of staff for running the mill. The actual number of employees required in terms of long term agreement in Annexure 1 was 271 and the actual number of employees available was 69. Hence to avoid the complete closing of the appellant establishment it was decided to engage trainees in a phased manner for a period of 6 months. It was also decided to fill up the vacancies on regular basis. In view of some disputes regarding the educational qualification, the recruitment process was delayed and the appellant establishment was forced to continue with the employees who are engaged as trainees. According to the learned Counsel for the respondent, from the pleadings in the appeal memorandum itself it is clear that the so called trainees are engaged against regular employees and they were doing regular work of the appellant establishment. As per Sec 2 (f) of the Act " 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 an establishment and who get its wages directly or indirectly from the employer and includes any person employed by or through a contractor in or in connection with the work of the establishment. From the above definition of "employee," it is clear that any person employed by or through a contractor or in connection with establishment will be an employee of the appellant establishment. It can be seen from the definition of the employee that apprentice or trainees are also employees under the Act with a specific exclusion of apprentices engaged under Apprentices Act, 1961 or under the standing order of the establishment. The appellant has no case that these trainees are appointed under Apprentices Act, 1961 or under the standing orders of the appellant establishment. It is also seen that the respondent has examined the reasons why they cannot be treated as learners for the purpose of exclusion under the Act. According to the respondent the remuneration paid to trainees having equal designation varies even in cases where they worked for same number of days in a month. Same type of work is handled by the trainees as well as the regular employees. The number of

regular employees are 131 where the number of trainees are 176. The said trainees have been working in the establishment for several years starting from April 2010 onwards. Most of them still continues as trainees even after 5 years. All these so called trainees are enrolled to benefits of ESIC Act whereas they claim exclusion from EPF and MP Act.

5. It can be seen from Annexure 4, offer as trainee that the training is for a period of 6 months from the date of entry into service. However the trainees continued to be trainees even after six months and even beyond 5 years. This is a clear case of exploitation of labour by the appellant establishment. The appellant claimed financial difficulties as a reason for non enrollment of these employees. However the respondent cannot be a mute spectator and accept the exploitative attitude of the appellant when there is clear violation of the provisions of the Act. The respondent authority U/s 7A of the Act has got ample power to go behind the terms of appointment and find out whether they are really engaged as apprentices. Merely because the appellant had label them as apprentices and produced the order of appointment that will not take away the jurisdiction

of the respondent authority from piercing the veil and see the true nature of such appointments. From the pleadings itself it is clear that the trainees are engaged to do regular work of the appellant establishment and they cannot be treated as learners for the purpose of enrollment under the Act. However considering the special circumstances of the appellant that they were forced to engage trainees for 6 months, it will be appropriate if the appellant is given the benefit of extending training to its employees in the initial stages, after reopening of the appellant establishment.

6. Considering the facts, circumstance and pleadings in this appeal, I am inclined to hold that the non-enrolled employees can be treated as trainees for the first 6 months of their appointment as they are engaged as trainees for six months as per the appointment letter. However the appellant is liable to enroll all these employees to provident fund after six months of training in the appellant establishment.

7. This appeal was admitted vide order dt. 01/11/2019 subject to a pre-deposit of 30% of assessed dues with the respondent U/s 7(O) of the Act. The appellant

approached the Hon'ble High Court in WPC No. 35757/2019 against the said order and the Hon'ble High Court vide order dt. 24/12/2019 directed the appellant to remit the pre-deposit of 30% in 5 installments commencing from 10/01/2020. Even on the date of hearing of the appeal, neither the appellant nor the respondent would confirm the remittance of Sec 7(O) pre-deposit as directed by the Hon'ble High Court. If the appellant failed to deposit the amount, the appeal itself is not maintainable in view of the decision of the Division Bench of the Hon'ble High Court of Kerala in ***Muthoot Pappachan Consultancy Management Services Vs. EPFO,*** 2009(1) KHC 362.

Hence the appeal is partially allowed, the impugned order is set aside and the appellant is direct to re-assess the dues after excluding 6 months training period from the date of joining of the employees. The respondent shall issue notice to the appellant and reassess the dues within a period of three months from date of receipt of this order.

Sd/-

(V. Vijaya Kumar)
Presiding Officer