



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

सत्यमेव जयते

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

(Wednesday the 20th day of January, 2021)

Appeal No. 54/2019

(Old No.ATA-232(7)2014)

Appellant

M/s. St. Gregorious Memorial
Thekkedath Hospital
Pathanapuram
Kollam – Kerala -689695

By Adv. C.M. Stephen

Respondent

The Assistant PF Commissioner
EPFO, Sub Regional Office
Parameswar Nagar, Chinnakkada
Kollam – 691001

By Adv. Pirappancode VS Sudheer
& Adv. Megha . A

This case coming up for hearing on 21.12.2020 and this Industrial Tribunal-cum-Labour Court issued the following order on 20/01/2021.

ORDER

Present appeal is filed from order No.KR/KLM/25546/ENF 1 (2)/2014/8586 dt. 06/03/2014 confirming the coverage U/s 7A of EPF & MP Act,1952 (hereinafter referred to as 'the Act') .

2. The appellant is a Nursing Home with two Doctors and nine Staff. The respondent provisionally covered the appellant establishment U/s 1(3) (b) of the Act. w.e.f 01/08/2011. The appellant filed a representation stating that the appellant never employed 20 employees. The appellant also enclosed muster roll, register of wages, application for license, copies of professional tax receipts, copy of income tax assessment and profit and loss accounts along with the representation. The representation dt. 30/5/2012 is produced and marked as Annexure A3. Since the appellant was not coverable under the Act w.e.f 1/8/2011, the appellant did not remit the contribution as required under the provisional coverage memo. The respondent initiated an enquiry U/s 7A of the Act. Since the respondent had already seized the records of the appellant, the appellant filed Annexure A5 representation against the Enforcement Officer's report. The respondent had all the documents maintained by the employer before him at the time of enquiry. None of those records will prove that the appellant had employed 20 or more employees on any day of the relevant period. The audited Income & Expenditure

Account for the year 2011-12 is produced and marked as Annexure A6 which will clearly show that the appellant engaged only 9 employees. A copy of the return filed before the Pathanapuram Grama Panchayath dt. 10/8/2011 is produced and marked as Annexure A7 which will prove the staff strength of nine employees. The respondent conducted the enquiry in violation of the principles of natural justice. A copy of the mahazer prepared by the Enforcement Officer was not given to the appellant. The appellant was not allowed to cross examine the Enforcement Officer's on the basis of the report. A true copy of the request filed by the appellant before the respondent is produced and marked as Annexure A8. The respondent ought to have initiated an enquiry under Para 26 (B) of EPF Scheme to finally decide the eligibility of the employees to be enrolled the fund. The respondent ought to have rejected the complaints filed by some employees as they failed to attend the enquiry before the respondent. The respondent committed a mistake in counting the internship trainees as employees for the purpose of coverage. The respondent is relying on 2 documents which were not produced in the enquiry. The respondent claimed that there was a complaint launched by

the employees of the appellant. Similarly it was also contended that there was a spot mahazer prepared by the Enforcement Officer's with the signature of employer containing names of more than 20 employees. The copy of the spot mahazer and the copy of the complaint was not given to the appellant. There was no evidence before the respondent in support of the coverage. No opportunity was given to the appellant to adduce evidence.

3. The respondent filed counter denying the above allegations. The appellant is an establishment covered under the provision of the Act under the code No. KR/25546. The employees of the appellant establishment filed a complaint dt. 8/10/2011 stating that the employees provident fund and miscellaneous provisional Act was not made applicable to the employees even though the appellant establishment employed more than 20 persons. A copy of the complaint is produced and marked as Exbt. R1. An Enforcement Officer of the respondent was deputed to investigate the complaint. The Enforcement Officer visited the establishment on 22/12/2011 and submitted a report dt. 23/01/2012. A copy of the report is produced and marked as Exbt R2. In

the Exbt. R2 report it was stated that the registers maintained by the appellant contained only name of nine employees. However he could locate 13 more employees working in the hospital. The respondent initiated an enquiry U/s 7A of the Act. Though the enquiry was posted on 15/05/2012 there was no representation on the side of the appellant. In the meanwhile a complaint was received from Smt. Usha Mohandas through the office of the Minister of Labour and Rehabilitation, Government of Kerala. The complainant stated that her services was terminated by the appellant on 31/3/2012 without any reason and without issuing a notice. It was also pointed out that her provident fund account was not being settled by the appellant. Copy of the complaint is marked as Exbt. R3. A representative of the appellant attended the hearing on 30/5/2012 and produced records like muster roll, register of wages etc. The records produced by the appellant in the enquiry showed that the employment strength of the appellant was below 20. Hence a squad of Enforcement Officers was deputed to the appellant establishment to investigate and find out whether the appellant engaged more than 19 employees at any point of time. The report of the squad of Enforcement

Officer is produced and marked as Exbt. R4. On the basis of the report of the squad of Enforcement Officers the appellant establishment was provisionally covered under the Act, w.e.f 1/8/2011. The enquiry was adjourned 19 times to facilitate production of records for finalizing the enquiry. On 10/12/2012 the copies of the reports of the Enforcement Officer was handed over to the Advocate, representing the appellant. After providing 19 chances, and in the absence of valid documents produced by the appellant the respondent confirmed the coverage of the appellant w.e.f 1/8/2011. The records maintained by the appellant contains only the names of 9 employees whereas the Enforcement Officer who conducted the inspection could locate 30 employees working in the appellant establishment. The squad of Enforcement Officers' who conducted the inspection of the appellant establishment prepared a spot mahazer in which it is crystal clear that there were more than 20 employees working as on 1/8/2011. The spot mahazer was also duly signed by the appellant. It is also clarified that on the request of the Advocate of the appellant the copy of the report of Enforcement Officers' were handed over to

Advocate Umadevi on 10/12/2012. On the request of the Advocate for the appellant the Enforcement Officers' were present in the enquiry on 18/2/2014 to adduce evidence. However none of the Enforcement Officers' were examined by the appellant. There were 30 employees working during various times and as on 1/8/2011 there were more than 20 employees working in the appellant establishments. As per the definition of the employees U/s 2 (f) of the Act, all the trainees and apprentices other than apprentices engaged under the Apprentices Act 1961 or under the standing orders of the establishment are employees and are required to be enrolled to the fund. As per the provisions of the Act, the excluded employees also are considered for employment strength but those categories of employees can be excluded from the provisions of the scheme. The appellant also failed to produce any documents to prove that the 13 employees claimed to be trainees are under internship from other institutions.

4. The only issue that is required to be decided in this appeal is whether the appellant establishment is coverable under the provisions of the Act w.e.f 01/08/2011. There is no dispute regarding the point that the appellant is a

nursing home and the same is notified under the provisions of the Act. The other condition that is required to be satisfied is whether the appellant establishment was employing more than 19 employees as on the date of coverage. The issue of coverage came up when the respondent received a complaint from 21 employees alleging that appellant is a 50 bedded hospital and there are around 30 staff working in the hospital. Exbt. R1 is a complaint along with details of 21 employees. The Enforcement Officer who conducted the investigation vide Exbt. R2 report confirmed that there are 23 employees working with the appellant establishment whereas only 9 names are reflected in the attendance register. The respondent received Exbt. R3 complaint through the Minister for Labour and Rehabilitation, Government of Kerala, filed by one Smt.UshaMohandas, in which she alleged that the management is not settling her provident fund. Hence a squad was deputed to investigate that matter. The squad after investigation filed Exbt.R4 report dt. 3/8/2012 stating that the appellant establishment is coverable with effect from 1/8/2011 as the employment strength was above 20 as on that date. This squad also enclosed along with the

Exbt. R4 report the names of the employees who worked in the appellant establishment from 1993 to 2012. The employer of the appellant establishment also counter signed the employees list submitted by the squad of Enforcement Officers. According to the squad of Enforcement Officers, the employment strength of appellant establishment crossed 20 as on 1/8/2011 and therefore it is statutorily coverable U/s 1(3)(b) of the Act. According to the appellant, some of the so called employees are trainees, and they cannot be counted for the purpose of coverage. It is seen that the respondent has given 19 opportunities to the appellant to produce records to substantiate his claim. As per Sec 2(f) of the Act, an employee is a person who is employed for wages in any kind of work, manual or otherwise in or in connection with the work of the establishment who gets his wages directly or indirectly from the employer and included any persons engaged as an apprentice, not being an apprentice engaged under Apprentices Act 1961 or under the standing orders of the establishment. The appellant has no case that the so called trainees engaged by the appellant establishment are apprentices engaged under Apprentices Act or under the

standing orders of establishment. If they were interns as claim by the appellant, he could have produced documents to support the same before the respondent authority. Having failed to prove that the so called employees were engaged as trainees the appellant cannot claim exclusion for the purpose of coverage under the Act. The appellant also claimed that the report of the Enforcement Officers were not given to the appellant. However the impugned order very clearly states that on 10/12/2012 the copies of the reports of the Enforcement Officers' were handed over to Advocate Umadevi. The appellant also pleaded that they were given an opportunity to cross examine the Enforcement Officers who conducted the investigation against the appellant. However the impugned order clearly states that the Enforcement Officers were present in the enquiry for cross examination. However the appellant failed to cross examine the Enforcement Officers. It is seen that the appellant was given all the opportunities to substantiate his claim. Having failed to avail the same, the appellant cannot come up in appeal and plead that he was not given sufficient opportunity. Further it is seen that the list of employees produced by the squad of Officers is

countersigned by the appellant and the respondent relied on that document to confirm coverage.

5. Considering all the facts, circumstances and pleadings, I am not inclined to interfere with the impugned order.

Hence the appeal is dismissed.

Sd/-

(V. Vijaya Kumar)
Presiding Officer