



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

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

(Tuesday the 03rd day of May, 2022)

Appeal No. 703 /2019
(Old No. ATA 71(7) 2012)

Appellant : Mathews Mar Athanasius
Residential School,
Angadical. P.O,
Chengannur
Alappuzha – 689 122.

By Adv. R. Sankarankutty Nair

Respondent : The Assistant PF Commissioner
EPFO, Sub Regional Office
Kaloor,Kochi – 682 017

By Adv. Sajeev Kumar K Gopal

This case coming up for final hearing on 20/04/2022 and this Tribunal-cum-Labour Court on 03/05/2022 passed the following:

ORDER

Present appeal is filed from order No. KR / KC / 13221 / Enf-2(5) / 2011 /14025 dt. 16/12/2011 issued U/s 7B of EPF & MP Act, 1952 (hereinafter referred to as ‘the Act’) with regard to non-enrolled employees for the period from 04/2006 to 09/2010,

dues in respect of Security Guard from 03/2008 to 02/2011 and the dues in respect of Drivers from 03/2008 to 02/2011. The total dues assessed is Rs. 8,05,715/-.

2. The appellant is an educational institution run by Trinity Marthoma Educational Agency. The appellant is covered under the provisions of the Act. The appellant engaged some employees on casual basis against casual vacancies due to long term leave, and maternity of the regular staff. After the term of employment is over they left the service. The management is not maintaining the particulars of the casual employees. The respondent authority through its Enforcement Officer found out the name and salary paid to these employees and directed to remit the contribution. The appellant remitted the contribution in respect of employees who are identifiable and whose whereabouts are available. An Enforcement Officer of the respondent conducted an inspection in October 2010 and prepared a list of employees with their names and the salary paid to them for the period from April 2006 to October 2010. On the basis of the inspection report, the respondent authority initiated an enquiry U/s 7A of the Act. A representative of the appellant attended the enquiry and informed the respondent authority that many of the employees cannot be

located. The respondent authority ignoring the contentions of the appellant and issued an order dt. 20/06/2011 determining an amount of Rs.12,61,498/-. The appellant filed a review application U/s 7B of the Act. The respondent authority partially allowed the review application and vide order dt. 16/12/2011 issued an order re-assessing the dues as Rs.8,05,715/-taking into account the remittance of Rs.4,55,783/-made by the appellant. More over the amount is also determined in respect of excluded employees who as on the date of assessment had already superannuated from the service.

3. The respondent filed counter denying the above allegations. The respondent received a complaint dt.14/08/2010 alleging that there is non-enrollment of large number of employees and the salary is disbursed through vouchers to evade provident fund liability. A Squad of Enforcement Officers were deputed to investigate. The squad reported that 1) 67 employees who worked from 04/2006 to 09/2010 were not enrolled to the fund 2) Based on the records, the squad prepared a list of non-enrolled employees, salary paid from the date of joining to the date leaving service and actual dues statement. 3) Salaries were also being paid to the vehicle department for the year 2008-

2009 and 2009-2010, implying the engagement of drivers who were not enrolled to the fund. 4) The security guards engaged through M/s. Exo Security were also not enrolled to the fund. The respondent authority initiated an enquiry U/s 7A of the Act. A representative of the appellant attended the hearing and requested for time for production of records, on 27/04/2011. The representative of the appellant sought a copy of the due statement submitted by the Enforcement Officers with details of non-enrolled employees. The representative also submitted that they don't have any objection regarding the dues arrived at by the Enforcement Officer in respect of contract employees. The Enforcement Officer reported that three security guards and five to six drivers were engaged by the appellant establishment and provided the due statement for the period from 03/2008 to 02/2011. The respondent authority issued the order U/s 7A assessing an amount of Rs.12,61,498/-. The appellant filed a review application U/s 7B(1) of the Act. On the ground that many of the non-enrolled employees had already left. Out of 66 non-enrolled employees 23 are identifiable. Some of the employees joined after superannuation and they are excluded. The security guards are supplied by Exo Consultants and they are only been paid the security charges.

Drivers are pensioners and therefore excluded employees. Notice was issued to the appellant on the review application. A representative of the appellant attended the hearing and submitted that part of the amount had already been remitted by the appellant. After taking into account the contentions of the appellant, the respondent authority issued the impugned order modifying the earlier order issued under 7A of the Act. All the employees employed by the appellant are employees as defined U/s 2(f) of the Act. As per Para 36 of the Scheme, the appellant is required to furnish the details of the employees to the respondent. The contentions that the employees were engaged on casual basis in leave vacancies cannot be accepted, as any person employed in or in connection with the work of the establishment will come within the definition of employees. The appellant is trying to find a shelter under their own violation of statutory provisions. Had the appellant discharged their statutory obligation in time, such a situation would not have happened. Para 34 of the scheme mandates that the employer shall before taking any person into employment take it in writing in Form 11 whether he was a member of provident fund. In **P.M Patel & Son and others Vs Union of India and other**, the Hon'ble Supreme Court held that employee shall include any

person employed by or through a contractor in or in connection with the work of the establishment. As per Para 26(2) of EPF Scheme every employee employed in or in connection with the work of a factory/establishment other than an excluded employee who has not become a member already shall be entitled to become a member of the fund from the date of joining the establishment. In **Modern Transportation Consulting Service Pvt . Ltd and Another Vs Central PF Commissioner, EPFO and Others**, Civil Appeal No. 7698/2009 the Hon'ble Supreme Court held that retired employees who were re-employed by an establishment falls within the purview of the definition of the employee.

4. The respondent received a complaint alleging that the appellant establishment is not enrolling substantial number of employees to provident fund membership and also that salaries are disbursed through vouchers to these staff to avoid provident fund membership. A squad of Enforcement Officers were deputed to investigate. The squad found that 67 teaching staff were not enrolled to the fund for the period from 04/2006 to 09/2010 as per the records produced by the appellant. The squad also furnished the names, the period of service, the wages drawn and the actual dues for these non-enrolled employees. The squad also

noticed that 5 to 6 drivers are working in the appellant establishment and they were not enrolled to the fund. The squad also reported that the security guards deployed from Exo Security were not enrolled to the fund as M/s. Exo security is not covered under the provisions of the Act. The squad also provided the provisional assessment of dues on the basis of the records produced by the appellant establishment. The respondent initiated an enquiry U/s 7A of the Act. A representative of the appellant attended the hearing and requested for a copy of the report and admitted the liability in respect of contract employees. The respondent therefore issued an order assessing an amount of Rs.12,61,498/-. The appellant filed a review application U/s 7B. In the 7B review, the appellant took a contention that most of the non enrolled employees are temporary employees. They remitted the contribution in respect of 23 identifiable employees. The security guards are deployed through M/s. Exo Security and the salary is not directly paid by the appellant. The respondent authority examined all the grounds and concluded that the assessment already made U/s 7A is correct. However taking into account the remittance already made, assessment U/s 7B is reduced.

5. One of the major contentions in this appeal is that the 66 employees are engaged against leave vacancies and on temporary basis and therefore they need not be enrolled to the fund. As per Sec 2(f) of the Act, any person who is employed for wages in or in connection with the work of the establishment is required to be enrolled to the fund. The appellant has no contention that the teachers appointed in leave vacancies are not working in connection with the work of the establishment. Another contentions taken by the learned Counsel for the appellant is that the non-enrolled teachers are not identified. However they submitted the remittance of contribution in respect of 23 employees who could be identified. It is seen from the Sec 7A order that all the 66 non enrolled employees are indentified with their date of joining and further it is also submitted by the Counsel for the respondent that the list of non-enrolled employees with their date of joining and wages paid was also provided to the appellant. The appellant will not be in a position to dispute non-enrolled employees as details of employees were taken from records of the appellant. The appellant also cannot take a plea that the benefits will not reach the employees unless the employees are properly identified. The appellant has committed a violation of the

provisions of the Act by not enrolling these employees to provident fund membership. The appellant cannot therefore take the advantage of their violation by pleading that the benefits may not reach the employees. Another contention taken by the appellant is with regard to retired employees and who attained the age of 58 years. It is pointed out that there is no age limit for enrollment under Provident Fund Scheme and there is no exclusion for people other than those who were members of provident fund and took their settlement on attaining the age of 58 years.

6. The appellant has not raised any serious dispute regarding the enrollment of contract drivers and security guards in this appeal.

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

Hence the appeal is dismissed.

Sd/-

(V. Vijaya Kumar)
Presiding Officer