



सत्यमेव जयते

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

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

(Wednesday the 01st day of September, 2021)

Appeal No. 716/2019

(Old No. 542(7) 2012)

Appellant : M/s.Elite Mission Hospital
Koorkenchery P.O
Thrissur - 680007 ,
Kerala

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

By Adv.Sajeev Kumar K.Gopal

This case coming up for final hearing on 08/04/2021
and this Tribunal-cum-Labour Court on 01/09/2021 passed
the following:

ORDER

Present appeal is filed from order No. KR / KC / 9955/ Enf-II(3)/2010/17950 dt. 05/03/2012 assessing the 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 07/2011. The total dues assessed is Rs. 3,72,611/-.

2. The appellant is a Multi Specialty hospital. The appellant is regular in compliance with regard to remittance of provident fund contribution. The nursing students after completion of their course are permitted to undergo practical training and internship in various specialty and super specialty departments in the hospital. The apprenticeship is part of their studies. The students leave the establishment after completing their internship. They have no right of employment in the hospital. The Model Standing orders under Kerala Industrial Employment (Standing Orders Rules) 1958 is applicable to these apprentices. Since they are governed by standing orders they are specifically excluded U/s 2(f) of the Act. An Enforcement Officer of the respondent organization conducted an inspection of the appellant establishment on 13/10/2011 and reported that the appellant is liable to enroll the trainees to provident fund membership. A copy of the inspection report dt.13/10/2011 is produced and marked as Annexure 1. The appellant thereafter received a summons dt. 10/01/2012 from the respondent authority fixing the date of hearing as 23/01/2012. A copy of the summons is produced and marked as Annexure 2. The amounts alleged to be wages are stipend paid to the trainees. Model Standing Orders are applicable to the appellant

establishment and therefore trainees are excluded from the definition of employees. The appellant filed a written statement before the respondent authority stating the above facts. A copy of the written statement file is produced and marked as Annexure 3. Without considering the plea of the appellant the respondent issued the impugned order. The respondent never disputed the claim of the appellant in the written statement. In private employment, the employer is free to fix or apply any standing order subject of Industrial Employment (Standing Orders Act). The appellant instead of framing a separate set of standing order extended to the provisions of Model Standing Orders to the establishment. The findings of the respondent authority that Industrial Employment (Standing Orders) Act is not applicable to hospital is without referring to the notification extending provisions of Payment of Wages Act to hospitals. Hospitals are now covered under Kerala Shops and Commercial Establishments Act, 1960 and Government of Kerala extended the provisions of payment of wages Act to shops to which Kerala Shops and Commercial Establishment Act, 1960, applies as per notification dt.16/01/1963. The decision in the case of ***Cosmopolitan Hospital Vs TS Anil*** relied on by the respondent

is before the extension of provisions of Payment of Wages Act to hospitals and therefore cannot be applied to the present case.

3. The respondent filed counter denying the above allegations. During the course of an inspection conducted by an Enforcement Officer of the respondent organization, it revealed that the appellant establishment had not enrolled 65 eligible and entitled bond staff under EPF Scheme. The Enforcement Officer also forwarded copies of wage register for the period from 04/2010 to 07/2010 of the bond staff showing the names and remuneration paid to them. The statement of employees and their wages was also countersigned by the Accounts Manager of the appellant establishment showing the monthwise details of the number of employees, wages on which contribution are paid, amount of contribution, dues etc. The Enforcement Officer provided a copy of the report to the appellant establishment with a direction to enroll the bond staff nurses to the provident fund membership and remit the contribution from their date of eligibility. Since the appellant failed to comply with the statutory provisions, an enquiry U/s 7A was initiated and summon dt. 10/01/2012 was issued to the appellant fixing the enquiry on 23/01/2012. The appellant filed a written statement dt. 21/01/2012 stating that they have no

dispute over the quantum of stipend and requesting to exempt them from production of provident fund records and personal appearance on 23/01/2012. They also disputed the enrollment of trainees as they were engaged under Model Standing Orders under the Industrial Employment (Standing Orders) Act. It was also claimed that the trainees engaged under Model Standing Orders will not fall within the definition of “employee” U/s 2(f) of the Act. The claim of the appellant that the finding of the respondent authority is not based on any evidence is not correct, as the copies of documents relied on by the respondent authority had already been provided to the appellant. The term employee as defined U/s 2 (f) of the Act subsumes in its definition any individual engaged in or in connection with the establishment and who gets his wages directly or indirectly from the employer and includes even apprentices and trainees except those engaged under the Apprentices Act 1961 or under the certified standing orders of the establishment. The so called bond nurses who have successfully completed the nursing course and got registration from Kerala Nurses and Midwives Council enabling them to work as nurses are qualified nurses employed for wages in connection with the work of the establishment and therefore will come within the definition of the employee. In ***M/s. Lissy***

Hospital Vs Assistant PF Commissioner, ATA No. 293 (7)

2004 the Hon'ble EPF Appellate Tribunal held that the bond staff cannot be treated as trainees or apprentice. A copy of the order of the EPF Appellate Tribunal is produced and marked as Exbt R1. Para 26 of EPF Scheme 1952 provides that every employee employed in connection with the work of a factory or establishment to which the EPF Scheme applies other than excluded employees shall be entitled and required to become member of provident fund from the date of joining the establishment.

4. The main issue raised by the appellant in this appeal is whether Industrial Employment (Standing Orders) Act is applicable to hospitals and whether the bond nurses engaged by the appellant can be treated as trainees under the Model Standing orders. It is seen that the respondent authority in the enquiry U/s 7A has exactly raised these issues and answered the same against the appellant. It is seen that the appellant establishment is engaging 65 bond nurses as trainees. The Enforcement Officer during his inspection found that these trainees are not enrolled to provident fund. The Enforcement Officer, therefore, on his inspection directed the appellant to enroll these bond nurses to provident fund membership as

trainees are not excluded under the definition of “employee” as per Sec 2(f) of the Act. The respondent authority therefore initiated an enquiry U/s 7A of the Act and issued summons to the appellant establishment. In response to the summons the appellant filed a written statement stating that the hospital being a industrial establishment as defined under the Payment of Wages Act, the provisions of Industrial Employment (Standing Orders) Act and Rules made thereunder are applicable to the hospital. The Model Standing Orders prescribed under the rules has been extended to trainees of the hospital. Since the definition of employees U/s 2(f) of the Act excludes trainees under the standing orders of the establishment, the appellant is not liable to pay contribution for the amount mentioned in the inspection report. In the written submission it is specifically pleaded,

“We have no dispute over the quantum of the amount of stipend noted by the Enforcement Officer and hence we may be exempted from production of records mentioned in the summons.

In view of the above written submissions we may be exempted from personal appearance on 23/01/2012. In view of the above stand taken by the appellant and also in view of the fact that the appellant refused to produce any records before the

respondent authority, the respondent authority proceeded to analyze various provisions of Apprentices Act 1961, Industrial Employment (Standing Orders) Act, Payment of Wages Act and Kerala Shops and Commercial Establishments Act and came to the conclusion that the bond nurses engaged by the appellant establishment will come within the definition of employee and is therefore liable to pay contribution on the wages/ payments made to the trainees. The respondent authority also assessed the dues and the respondent remitted the same, however filed this appeal on the ground that Industrial Employment (Standing Orders) Act and Model Standing Orders are applicable to the appellant establishment.

5. According to the Counsel for the respondent the trainees are also included under the definition of employees in EPF & MP Act. The only exclusion being those under Certified Standing Orders and trainees appointed under Apprentice Act 1961. The question whether Certified Standing Orders are applicable to hospitals was considered by the Hon'ble High Court of Kerala in various judgments. In **Cosmopolitan Hospital Pvt Ltd Vs T.S.Anilkumar**, WP(C)no.53906/2005 the Hon'ble High Court of Kerala following the decision of **Indraprastha Medical Corporation Vs NCT of new Delhi**, 2001 (3) LLL 562 held that

hospitals will not come under the definition of industrial establishment in the Industrial Employment (Standing Orders) Act. Resultantly the model standing orders would not become applicable to a hospital, meaning there by, other service conditions agreed upon between the management and the employee would be the one that is applicable. The Hon'ble High Court of Kerala in **Indo American Hospital Vs APFC**, WP(C)no.16329/2012 vide its judgment dt.13.07.2017 held that the dictum laid down by the Hon'ble Supreme Court in **RPFC, Mangalore Vs Central Arcanut Coco Marketing & Processing Co-operative Ltd**, 2006 (2) SCC 381 is not applicable to the nursing trainees appointed in the hospital. In this case the Hon'ble High Court of Kerala was considering whether 34 trainees appointed by the hospital will come within the definition of employee U/s 2(f) of EPF & MP Act. The Hon'ble High Court refused to interfere with the orders of 7A Authority that those trainees will form part of employees and the management is liable to pay provident fund contribution in respect of those employees. The appellant relied on the decision of the Hon'ble High Court of Kerala in **Sivagiri Sreenarayana Medical Mission Hospital Vs RPFC**, 2018 (4) KLT 352 to argue that in view of the decision, the Standing Orders are applicable to

hospitals. On a perusal of the above judgment, it is seen that the Hon'ble High Court has also considered a situation where there is a possibility of misusing the above argument stating that;

“Of course, there would be many cases, where the employers for the sake of evading the liabilities and various labour welfare legislations, may allege a case which is masquerading as training of apprenticeship, but where in fact it is extraction of work from skilled or unskilled worker. Of course, the statutory authority concerned and the courts will then have to lift the veil and examine the situation and find out whether it is a case of masquerading of trainees and apprenticeship or whether it is one in substance one of trainee and apprentice as envisaged in the situation mentioned herein above and has dealt with in the aforesaid judgment referred to herein above”.

7. Coming to the facts of this case the appellant hospital engaged 65 bond nurses as trainees and they were not extended the benefit of provident fund. As per Sec 2(f) of the Act, trainees other than trainees appointed under apprentices Act or under standing orders of the establishment are treated as employees

and required to be enrolled to provident fund membership. It may be noted that bond nurses are nurses who completed their course of study and they are being engaged as trainees only for exploiting them by paying lesser wages and excluding them from all the statutory benefits. The issue whether Industrial Employment (Standing Orders) Act is applicable to the hospitals is being examined by the Division Bench of the Hon'ble High Court of Kerala as the Single bench of the Hon'ble High Court held that the Industrial Employment (Standing Orders) Act is applicable to the hospital as discussed above. Now even if the Industrial Employment (Standing Orders) Act is held to be applicable to hospitals. The issue is whether Model Standing Orders can be held to be applicable to the appellant establishment is required to be examined in the light of the provisions of the Industrial Employment (Standing Orders) Act. One of the points to be considered is whether the appellant can take protection under the Model Standing Orders even without adhering to the mandatory statutory requirement U/s 3 of Industrial Establishment (Standing Orders) Act by submitting draft Standing Orders within 6 months from the date of commencement of business for certification. The appellant had no case that he has submitted draft Standing Orders for

certification as per Sec 3. The preamble of the Standing Orders Act makes it clear that it is incumbent upto the employer to define with sufficient precision the conditions of the employment of their workers and make those conditions known to the workmen. It is only to protect and safeguard interest of workers. Though Sec 12A of Standing Orders Act stipulates that Model Standing Orders is applicable pending certification of draft standing orders section 12A can be applied by a worker to ensure his benefits and not by an employer who is seeking exemption from payment of contribution to provident fund. Such a contention will only defeat the very purpose of the Standing Orders Act. Hence it is clear from a reading of the provisions of the Standing Orders Act, that Section 12 A does not permit an employer to circumvent the provisions of the Act by simply adopting the Model Standing Order indefinitely and does not absolve the employer of his statutory requirement to comply with the Sec 3 (1), 2 (2) and (3) of the Standing Orders Act. Hence it is clear that Sec 12A of the Standing Orders Act is applicable only to employers when they have applied for certification of the draft standing orders U/s 3. The Hon'ble High Court of Madras in **Cheslind Textiles Ltd Vs. Registrar Employees Appellate Tribunal**, 2020 (2) LLJ 326 (Mad) held that when the employer

failed to take action for certification of draft standing orders U/s 3 of the Standing Orders Act 1946, they cannot seek protection of the Model Standing Orders as per Sec 12A as it is a welfare legislation to protect and safe guard interest of the employees. The Hon'ble High Court in the above case also found that in **RPFC Mangalore Vs Central Arcanot Coca Marketing and Processing Company** (supra) the employer had applied for certification of draft standing orders U/s 3 of the Standing Orders Act and they claimed the benefit of Model Standing Orders pending certification by the competent authority.

8. As already pointed out the appellant establishment has taken a defiant attitude by not producing any records and documents before the respondent authority U/s 7A. It was upto the appellant to produce the relevant records, such as the training schedule, the training syllabus etc and plead that the so called bond nurses were only learners and the payments made were only stipend. Having failed to do so the appellant cannot come up in appeal and plead that the bond nurses are covered under Model Standing Orders and they will not come within the definition of employees under Section 2(f) of the Act.

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

Hence the appeal is dismissed.

Sd/-

(V. Vijaya Kumar)
Presiding Officer