



सत्यमेव जयते

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

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

(Tuesday the 07<sup>th</sup> day of September,2021)

**Appeal No. 718/2019**  
(Old No.ATA-582(7)2012)

Appellant M/s. Blossom Gold Collections (P) Ltd.,  
Kondotty  
Malappuram -673 638.

By Adv. M/s. Menon & Pai

Respondent The Assistant PF Commissioner  
EPFO, Sub Regional Office.  
Eranhipalam  
Calicut – 673006.

By Adv. (Dr.) Abraham P. Meachinkara

This case coming up for hearing on 09/04/2021 and this  
Industrial Tribunal-cum-Labour Court issued the following order  
on 07/09/2021 .

**ORDER**

Present appeal is filed from order No. KR / KK / 28280/  
Enf-1(4) / 2012 / 1019 dt.15/06/2012 assessing dues U/s 7A of the  
Act of EPF & MP Act, 1952 (hereinafter referred to as ‘the Act’)

assessing dues on non- enrolled employees from 08/2011 to 04/2012 . The total dues assessed is Rs.4,49,237/-.

2. The appellant is a Private Limited Company registered under the Companies Act 1956 and engaged in the sale of jewellery and allied products. The appellant establishment is covered under the provisions of the Act and regular in compliance. The appellant prepared a Draft Standing Orders and forwarded the same for certification to the Certifying Officer under Industrial Employment (Standing Orders) Act. The Standing Orders was certified by the Certifying Officer after complying with the formalities. A true copy of the certified standing order is produced and marked as Annexure A1. The respondent authority initiated an enquiry U/s 7A of the Act on the basis of the report of the Enforcement Officer that the appellant failed to enroll trainees. A true copy of the inspection report is produced and marked as Annexure A2. The appellant appeared before the respondent authority and explained that the trainees are covered under Standing Orders and hence not coverable under the Act as they are appointed under the Standing orders of the appellant establishment. The appellant is having a training centre

namely Malabar Institute of Management for training employees. The appellant was paying only stipend and not wages. It was also pointed out to the respondent authority that immediately on commencement of operations, the appellant prepared draft Standing Orders and the same was sent for certification. It was also contended that until the Standing Orders are certified Model Standing Orders are applicable as per Sec 12A of the Standing Orders Act. A copy of the written statement dt. 20/03/2012 is produced and marked as Annexure A3. The appellant establishment is engaged in the sale of jewellery and allied products hence some degree of training is required for persons to be taken on roles of the appellant. Hence training was being imparted in making, handling, purchase, billing, cash handling, product knowledge and to deal with the customers. Before a person was taken on the rolls of the establishment it is also essential that the management has trust and confidence in the employee as otherwise such expensive and delicate products cannot be entrusted with employees. As per Annexure A2 inspection report, the Enforcement Officer of the respondent has also admitted that the non-enrolled persons are only trainees. An apprentice only a learner who is paid only allowance during the period of training. The

trainees, even if, engaged for a period of 6 months, if they are found to be good and competent they could be appointed as employees even after 2 months. After the stipulated period of training of 1 year the appellant offered employment to large number of trainees. It can be seen from Annexure A4 order that the appellant has submitted draft standing orders before the Certifying Officer and got it certified.

3. The respondent filed counter denying the above allegations. Appellant is an establishment engaged in trading and commerce and is therefore covered under the provisions of the Act. The appellant establishment is engaged in wholesale and retail of gold, silver, diamond and platinum ornaments and in the sale of gold coins, gold optical frames etc. The appellant establishment employed 30 regular employees and engaged another 39 persons as trainees as trainees as on 21/08/2011. The designation in respect of 39 persons are shown as trainees and they are paid stipend ranging from Rs.3250/- to Rs.5000/-. The Enforcement Officer of the respondent in his report dt.14/09/2011 informed that there are 39 trainees in addition to 30 regular employees. As the trainees were not appointed under the

Standing Orders of the establishment or under Apprentice Act, 1961, the employer was instructed to enroll all the trainees to provident fund. It is clear that these 39 persons were shown as trainees only to verify their suitability for the job. It is seen that many of the trainees are regularized after a period of 10 days, 1 month, 2 months, 3 months etc. Whatever be the justification given by the appellant, there cannot be any justification to retain 39 trainees when the appellant is employing 30 regular employees. The appellant establishment is not having any Certified Standing Orders and there is no proof otherwise. Hence the decision of the Hon'ble Supreme Court of India in **Regional PF Commissioner Vs Central Arecanut Cocoa Marketing Processing Co-operative Ltd., Mangalore**, 2006 108 FLR 805 is not applicable to the present case. The appellant failed to produce the Certified Standing Orders during the enquiry or during a series of correspondence with the respondent organization. The appellant also failed to produce any proof to show that they submitted draft Standing Orders before the certifying authority. If the appellant's claim that the trainees are appointed under Certified Standing Orders they ought to have produced evidence to substantiate the same. It is clear from the statements of

the appellant that they are engaging employees who were trained in Malabar Institute of Management. Hence there is no justification for keeping these employees as trainees for a further period of one year. The respondent authority or the Enforcement Officer who conducted the inspection has never admitted that the non- enrolled persons are trainees. 39 trainees were appointed on 21/08/2011. One trainee was regularized on 01/11/2011, another trainee was regularized on 01/12/2011 and a third employees was regularized on 01/02/2011, 6 employees were regularized on 01/03/2012 and 7 employees on 01/04/2012. One Sirajudin appointed as trainee on 01/09/2011 is made permanent on 01/11/2011 and another employee Muhammed Mustafa appointed as trainee on 11/02/2012 is made permanent on 01/03/2012 within 20 days. If these persons are actually trainees whose services regulated under Certified Standing Orders they cannot be regularized within 20 days. Though more than adequate opportunities were provided to the appellant during the Sec 7A proceedings, the appellant never produced a copy of the draft Standing Orders submitted for certification or the Certified Standing Orders.

4. The appellant establishment is employing 30 regular employees and 39 trainees according to the learned Counsel for the appellant the 39 trainees are engaged under Certified Standing Orders and are therefore excluded as per the provisions of the Act. The case of the appellant is that they filed draft Standing Orders before the certifying authority immediately on commencement of their business and later the authority certified the Standing Orders after completing the procedural requirement. The respondent authority and also the learned Counsel for the respondent were very categorical that the appellant failed to produce any certified Standing Orders or proof for having submitted draft Standing Orders before the certifying authority. The appellant produced a copy of Standing Orders, Annexure A1, claiming to be a Certified Standing Orders in this appeal. On a perusal of Annexure A1 it is clear that it is not certified by anybody leave alone the certifying authority. The appellant has taken a consistent stand that their Standing Orders is approved and certified by the certifying authority. If that be the case it is not clear as to why the appellant failed to produce a copy of the Certified Standing Orders atleast in this appeal. As already pointed out the respondent authority in the impugned order itself

categorically pointed out that the appellant failed to produce any Certified Standing Order during the course of 7A or during the correspondence with the respondent authority. That being the case, I don't have any reason to disbelieve the respondent authority, particularly in view of the fact that the appellant failed to produce a certified copy of the Standing Orders even in this appeal. The learned Counsel for the appellant relied on the decision of the Hon'ble Supreme Court in **Bharat Petroleum Corporation Ltd Vs Maharashtra Kamgar Union and Others** ,. 1999 (1) LLJ 352 (SC) to argue that Model Standing Orders will be applicable to an Industrial establishment during the period commencing on the date on which the Act becomes applicable to the establishment till the date on which the Standing Orders are finally certified under the Act comes into operation U/s 12A of the Standing Orders Act. To rely on the above judgment, the appellant will have to first establish that industrial Employment ( standing Order) Act is applicable to the appellant, Since they are employing only 30 employees whereas the Standing Orders Act prescribes a minimum employment strength of 50 to be covered under the said Act. Further, as pointed out earlier, there is no proof for having submitted a draft Standing Order before



the certifying authority, to invoke Sec 12A of the Industrial Employment Standing Orders Act. He has also relied on the decision of **Regional PF Commissioner Vs Central Aracanut Cocoa Marketing Processing Company Ltd Managalore** (Supra). For the reasons stated above, the dictum laid down by the Hon'ble Supreme Court in the above case also cannot be extended to the appellant establishment. The learned Counsel for the appellant also relied on the decision of the Division Bench of the High Court of Kerala in **The Employees Provident Fund Organization Vs Malabar Business Centre Pvt. Ltd**, Writ Appeal No. 746/2014. In all these cases relied on by the learned Counsel for the appellant the issue decided was that once a draft Standing Order is submitted before the certifying authority, the appellant establishment can invoke Sec 12A of the Industrial Employment (Standing Orders) Act. However the appellant miserably failed to prove the same before the respondent authority. Further the appellant is engaging only 30 regular employees and therefore it will not come under the provisions of the Industrial Employment (Standing Orders) Act unless it is proved otherwise. In a recent decision in **Cheslind Textiles Vs Registrar, EPF Appellate Tribunal**, 2020 (II) LLJ 326

, the Hon'ble High Court of Madras held that an employer cannot invoke Sec 12A of (Standing Order) Act unless they comply with mandatory requirement U/s 3 of said Act.

5. Though there is no pleading the learned Counsel for the appellant also argued that the respondent authority ought to have conducted an enquiry under Para 26 (B) of EPF Scheme before assessing the dues U/s 7A of the Act.

6. Coming to the facts of the case, the claim of the appellant is that the appellant is engaging 39 trainees as against 30 regular employees. In the case of **MRF Ltd Pondicherry Vs Presiding Officer EPF Appellate Tribunal**, 2012 LLR 126 (Mad) the Hon'ble High Court Madras held that though the apprentices appointed under the Apprentice Act or Standing Orders are excluded from the purview of the Act, they cannot be construed as apprentices if the major part of the workforce comprises of apprentices. The employer cannot have unlimited right of engaging the service of workers in the grab of trainees because Model Standing Orders did not provide any fixed number or period for engagement of apprentices. The learned Counsel for the respondent also elaborately

explained the details of 39 trainees and how they are regularized in service. According to him some of the trainees are regularized within 20 days and some others were regularized in 1 month, 2 months, 3 months etc. Hence it is very clear that there is no training schedule or training imparted to the so called trainees by the appellant establishment. Huge number of persons are engaged as trainees only for the purpose of avoiding social security benefits to these people. It is clear from the averments and pleadings of the appellant that these persons are engaged initially at the best for imparting pre-induction training. In **Bharat Sanchar Nigam Ltd., Vs Union of India**, 2015 LLR 893 (Mad,DB) the Division Bench of the Hon'ble High Court of Madras held that the expression employee includes a trainee also and hence the orientation training period as pre-induction trainee cannot be excluded for the purpose of provident fund contribution.

7. Considering the facts, circumstances, pleadings and evidence in this appeal, I am inclined to hold that all these so called trainees will come within the definition Sec 2(f) of the Act and are required to be enrolled to provident fund membership from their date of eligibility.

Hence the appeal is dismissed.

Sd/-

**(V. Vijaya Kumar)**  
Presiding Officer