



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

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

(Wednesday the 9<sup>th</sup> day of March, 2022)

**Appeal No. 739/2019**  
(Old No.ATA-966(7)2012)

Appellant M/s. Holiday Projects Kerala (P) Ltd,  
Holiday House, 33/2379 –B,  
N.H. Bypass Road,  
Thammanam P.O, Kochi – 682 032.

By Adv. K.K. Premlal

Respondent The Regional PF Commissioner  
EPFO, Sub Regional Office  
Kaloor, Kochi– 682017.

By Adv. Sajeev Kumar K. Gopal

This case coming up for hearing on 11/11/2021 and this Industrial Tribunal-cum-Labour Court issued the following order on 09/03/2022.

**ORDER**

Present appeal is filed from order No. KR/KC/24345/Enf-1(6)/2012/7424 dt. 04/10/2012 assessing dues U/s 7A of EPF & MP Act (hereinafter referred to as ‘the Act’) against non enrolled employees for the period 03/2008 to 09/2011. Total dues assessed is Rs.8,55,982/-.

2. The appellant is a establishment registered under Companies' Act 1956 and engaged in construction industry. As per Para 2(f)(2) of the EPF Scheme 1952 an employee whose pay at the time he is otherwise entitled to become a member of the fund exceeds Rs.6500/- per month is an excluded employee. Pay for the purpose of the definition includes basic wages, DA, retaining allowance, if any, and cash value of food concession. As per Para 26 every employee employed in or in connection with the work of the establishment to which the scheme applies other than excluded employees shall be entitled and required to become a member of the fund. The appellant started its office in February 2008. The employment strength of the appellant was 26 as on March 2008, out of which only a few were eligible to be enrolled to the fund. The fact is evident from the register of wages maintained verified and signed by the Enforcement Officer on 08/07/2008. A true copy of the register of wages for the month of March 2008 having the signature and seal of the Enforcement Officer is produced and marked as Annexure 1. After the inspection, the appellant received a coverage memo dt.05/08/2008 from the respondent. A true copy of the said notice is produced and marked as Annexure 2. On

receipt of the coverage memo the appellant remitted the contribution in respect of eligible employees other than the excluded employees for the period from March 2008 to November 2008. A copy of the demand draft dt. 23/12/2008 is produced and marked as Annexure 3. The appellant also remitted interest amounting to Rs.1007/-. A true copy of the demand draft is produced and marked as Annexure 4. The appellant deducted contribution from the salary of the excluded employees for the period from March 2008 to October 2008. On confirmation that excluded employees need not be enroll to the fund, the entire amount deducted from the salary has been repaid to the concerned employees. Consequently fresh wage register were also prepared for the period. The appellant received a summons dt.11/01/2012 for production of records for the period from March 2008 to October 2011. The representative of the appellant attended the hearing and produced the newly prepared wage registers after the repayment of the contribution deducted from the salary of the employees. Without considering the objections of the appellant the respondent issued the impugned order, a copy of which is produced and marked as Annexure 5. Though the appellant deducted contribution in respect of the excluded employees, the same was not remitted to the respondent organization. The

respondent ought to have found that Para 26A regarding the retention of membership has no application in the case of excluded employees of the appellant establishment. The respondent authority has no jurisdiction U/s 7A(B) of the Act to enroll the excluded employees as members of the Scheme. The question of determination of amount arises only in cases where the amount is due from the employer under the provisions of the Act .

3. The respondent filed counter denying the above allegations. The appellant establishment is covered under the provisions of the Act with effect from 03/03/2008. On an inspection by an Enforcement Officer of the respondent organization who is the inspector appointed U/s 13 (1)(iii) reported that the appellant establishment was remitting contribution only from 03/2010 and not from the date of coverage on 03/03/2008. Only two regular employees were contributing towards provident fund and 17 employees were excluded. Moreover it is also reported that the salaries of 2 employees were split into wages and allowance and provident fund was deducted only on wages. The respondent authority therefore initiated an enquiry U/s 7A of the Act vide notice dt. 11/01/2012 and fixing the date of enquiry on 27/01/2012. A representative of

the appellant attended the hearing on 08/03/2012. He produced 2 wage registers from 03/2008 onwards. However it was noticed by the respondent authority that the registers produced were not tallying with the zerox copy of the wages register submitted by the appellant at the time of coverage. In the wages register submitted earlier, there were 28 employees on 03/2008 and provident fund was deducted for 26 employees limiting the salary to Rs.6500/-. The register was signed by all the employees on the revenue stamp. A copy of the wage register is produced and marked as Exbt R1. In the wages register produced by the representative of the establishment during the course of enquiry, it was noticed that one wages register contained the name of 23 employees and other one contained the names of 6 employees. Further it was also noticed that provident fund was not recovered in respect of most of the employees and the register was not signed by all the employees. A copy of the wage register is produced and marked as Exbt.R2. Since the respondent authority suspected some mischief, the Enforcement Officer was directed to conduct a fresh inspection of the appellant establishment. The appellant thereafter failed to produce any further records for verification by the respondent authority. Therefore the respondent authority concluded that the records produced by the representative of the appellant were different from

that produced before the Enforcement Officer during the coverage of the establishment. In the wages register submitted during coverage, provident fund was seen deducted in respect of all employees except 2. One employee was drawing salary above the statutory limit of Rs.6500/- whereas the other employee was eligible to be covered under the provisions of the scheme. However the documents produced before the respondent authority during the course of 7A, provident fund was deducted from the wages of only few employees. It was also seen that provident fund was not deducted from the wages of some eligible employees. It was very clear that the appellant manipulated the wages paid to the employees engaged by them, purposefully with sole objective of avoiding statutory liability under the Act to the detriment of the beneficiaries. The documents produced before the respondent authority was clearly manipulated. The same can be noticed in the wages of many employees. In the case of Shri. Ronald C Kurian, serial No.3 of the old register and serial No. 16 of new register, the wages earlier was Rs. 4875/- (basic Rs.3000/-+ DA Rs.1875/-) whereas in the new salary register produced before the 7A authority, the salary of Shri. Ronald C Kurian was shown as Rs. 7500/-. Similarly in the case of Shri. Jasheer P.A, serial No. 9 of the old register and serial No.11 of the new register the wages

shown earlier was Rs.4875/- (Basic Rs.3000+DA Rs.1875/-) whereas now the wages is shown as Rs.7500/- Hence it is very clear that the appellant establishment produced manipulated records which were rejected by the respondent authority. The assessment is made restricting the wage limit to Rs.6500/-. The month wise employees' strength from March 2007 submitted by the appellant at the time of coverage is produced and marked as Exbt R3. Para 2 (f) of EPF Scheme excludes employees whose pay at the time when he is otherwise entitled to become a member of the fund exceeds Rs.6500/- per month. Hence an employee whose pay at the time when he is otherwise to become a member of the fund does not exceed Rs. 6500/- per month is not an excluded employee and consequently he is entitled to be cover under by the Act and Schemes. Para 26 of EPF Scheme requires to enroll all the employees whose paying is not in excess of Rs.6500/- to EPF membership on joining the service of the establishment and provisions under Para 26A requires that such a member whose pay exceed Rs. 6500/- during the currency of membership, the contribution payable by him and in respect of him by the employer shall be limited to Rs. 6500/- and therefore the appellant is liable under the statute to remit the contribution in respect of all the employees whose pay was less than Rs.6500/- per month at the

time he was eligible and entitled to become a member of provident fund. The dues in respect of all employees are determined limiting the wages to the statutory limit in respect of employees drawing wages more than Rs.6500/-and on actual wages in respect of other eligible employees.

4. The appellant establishment defaulted in remittance of contribution. The appellant was covered under the provisions of the Act with effect from 03/2008 and the appellants started compliance only from 03/2010. The respondent authority also found that the contribution is being paid only for 2 regular employees and in respect of 17 employees no contribution was being paid. The respondent authority therefore initiated an enquiry U/s 7A of the Act. The representative of the appellant attended the hearing and produced the salary register which is produced and marked as Exbt R2. It was noticed that the wage register is split into two: One register contained the name of 23 employees and the other register contain the name of 6 employees. On verification of the original salary register submitted by the appellant at the time of coverage there were 28 employees in one register and provident fund was also deducted from the salary of 26 employees. A copy of the original salary register produced at the time of coverage is



produced and marked as Exbt R1. On a comparison of the 2 salary registers, the respondent authority found that the wages in respect of many of the employees were increased, so that they will become excluded employees as per the provisions of this Scheme. The respondent authority also noticed that the salary registers produced during the course of 7A are not signed by many of the employees whereas the original register produced at the time of coverage was signed by all the employees. On the basis of these conclusions the respondent authority assessed the dues in respect of all employees restricting the salary Rs. 6500/- in the case of employees drawing more than Rs.6500/- and actual wages in respect of other eligible employees.

5. The above said assessment of the respondent is being challenged in this appeal. According to the learned Counsel for the appellant, when the appellant establishment was covered under the provisions of the Act, they deducted provident fund contribution in respect of all the employees. However no contribution was remitted with the respondent authority. On legal advice the appellant establishment found that the employees who were drawing salary beyond the statutory limit of Rs.6500/- are excluded employees and therefore the appellant returned the provident fund

contribution deducted from the excluded employees. It was also pointed out by the learned Counsel for the appellant that thereafter they reconstructed the salary register removing the provident fund deduction and the revised registers were produced before the respondent authority at the time of 7A.

6. According to the learned Counsel for the respondent the salary registers produced by the appellant are clearly manipulated as it does not tally with the original salary register. Even if we take into account the return of the provident fund contribution in respect of the so-called excluded employees. If pointed out by the appellant increase in salary of the employees as per the new registers does not tally and they are manipulated in such a way so that they will become excluded employees. He also pointed out some specific examples to drive home his point.

7. Exbt.R1 is the original salary register for the month of March 2008 produced by the appellant at the time of coverage of the appellant establishment. As per Exbt R1 register, there are 28 employees and provident fund deduction is shown in respect of 26 employees. Shri. Stiji Alexander is an excluded employee and no provident fund deduction is made. Smt.Divya K is drawing a salary below the statutory limit and therefore she is required to be

enrolled to provident fund membership. Accordingly there are 27 employees who are required to enroll to the fund as per Exbt R1. It is also relevant to pointed out that all the employees signed on revenue stamps as an acknowledgement of their salary. Exbt R2 is a salary register produced by the appellant before the respondent authority during the course of the Sec 7A enquiry. It is, in fact, two separate salary registers. The first salary register start from serial No. 11 and closes with serial No. 23. The 2<sup>nd</sup> register starts serial No. 1 and ends the serial No. 6. So there are total 29 employees as per these registers. If you go by the salary/wages as per Exbt. R2 there are only 4 employees eligible to be enrolled to the fund. It is seen that salary of many of the employees were increased in such a way that they can claim exclusion under Para 2 (f) (ii) of the EPF Scheme. It is also seen that Exbt R2 is signed by only very few employees. The manipulation of Exbt R2 salary register is very clear if you verify the salary of some employees in these two registers. In the case of Shri. Ronald C Kurien, serial No. 3 of the old register and serial No.16 of new register, the wages as per the original wage register was Rs.4875/- (Basic 3000 + DA Rs.1875/-). In the Exbt R2 register the salary is shown as Rs.7500/-.In the case of Shri. Jasheer P.A, serial No. 9 of old register and serial No 11 of new register, the wages shown earlier was Rs.4875/- (Basic

Rs.3000+ DA Rs. 1875/- and as per Exbt R2 register the wages is shown as Rs.7500/-. It is a clear manipulation by the appellant establishment which required to be view very seriously. As per Annexure A1 produced by the appellant in this appeal the total number of employees for the month of March 2008 is shown as 29 and the total number of eligible employees is 17. In view of the above facts, the respondent authority cannot be blamed for assessing the dues for all the employees ignoring the manipulated documents produced by the appellant during the course of the enquiry.

8. According to the appellant, the employees' share of contribution deducted from the salary of employees from March 2008 to October 2008 was not deposited with the respondent. In Para 6 (viii) of the appeal memo it is specifically pleaded. Hence it is clear that the appellant establishment was illegally withholding the contribution deducted from the salary of employees for 8 long month. This an offence of breach of trust U/s 405& 406 of Indian Penal Code. The learned Counsel for the appellant pleaded that the employees share deducted from the salary of employees is returned to the employees as the employees are excluded employees. As already pointed, the claim of the appellant that they are excluded

employees has n basis in evidence as the claim is on forged documents. Further there is no evidence on record to substantiate the claim of the appellant that the deducted provident fund contribution is returned to the employees.

9. The learned Counsel for the respondent succeeded in clearly establishing the fact that the appellant establishment filed this appeal on the basis of forged documents. It is an appropriate case where prosecution action ought to have been initiated against the appellant establishment. This is a typical case where an employer can go to any extent to deny the minimum social security benefits to its employees.

10. Considering the facts, circumstances, evidence 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