



सत्यमेव जयते

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

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

(Wednesday the 23rd day of February, 2022)

Appeal No.757/2019
(Old No. ATA-933(7) 2012)

Appellant : St. Thomas College of Engineering &
Technology,
Kozhuvallur, Venmony,
Chengannur,
Alappuzha - 689521.

By Adv. C.B. Mukundan

Respondent : The Assistant PF Commissioner
EPFO, Kaloor
Kochi - 682 017

By Adv.Sajeev Kumar K. Gopal

This case coming up for final hearing on 10/11/2021
and this Tribunal-cum-Labour Court on 23/02/2022 passed the
following:

ORDER

Present appeal is filed from order No. KR/KC/ 273455
/ Enf-2(5) / 2012 /4046 dt. 14/06/2012 assessing dues U/s 7A
of EPF & MP Act, 1952 (hereinafter referred to as 'the Act') on
non-enrolled employees for the period from 09/2010 to 11/2011
and contract employees from 03/2011 to 11/2011.

Total dues assessed is Rs.1,80,928/-. The impugned order dt.14/06/2012 issued by the respondent under challenge is produced and marked as Annexure A1. The order issued by the respondent in the review application U/s 7B of the Act dt.07/09/2012 is produced as Annexure A2.

2. The appellant is an education institution run by a charitable society. The appellant establishment is covered under the provisions of the Act. An Enforcement Officer of the appellant visited the appellant establishment on 23/06/2011 and reported that the appellant establishment has remitted contribution upto 05/2011. A copy of the report is produced and marked as Annexure A3. After 6 months, on 10/01/2012 another Enforcement Officer inspected the appellant establishment. The Enforcement Officer in his report indicated that an amount of Rs.1,13,010/- is required to be remitted in respect of eight non-enrolled employees and an amount of Rs. 67,918/- is required to be paid against the security guards engaged through an independent security agent. A copy of the inspection report 12/01/2011 is produced and marked as Annexure A5. The respondent initiated an enquiry U/s 7A of the Act. It was brought to the notice of the respondent authority that the non-enrolled

employees were drawing salary in excess of Rs. 6500/- from the very first month of their appointment. To substantiate the claim the appellant produced the salary register, vouchers, cash book and ledger which will show that those eight employees had drawn pay more than Rs.6500/-, if the additional increment DA paid every month is taken into account. As per Para 2(f)(2) of EPF Scheme, an employee drawing a pay exceeding Rs.6500/- is an excluded employee. The contention of the respondent authority in the impugned order that allowances will not form part of basic wages is not legally sustainable. The finding of the respondent authority with regard to the additional payment as increment DA is also not legally sustainable. The existing loss do not prohibit any additional payments to the employees through vouchers. The respondent authority also failed to accept the fact that the difference in voucher numbers in original voucher and the cash book are due to some technical errors. Shri.Raju worked with the appellant establishment only for two months. However the respondent authority assessed the dues for the entire period of assessment.

3. The other claim of the respondent authority is with regard to the assessment made in respect of six security guards

engaged through an independent contractor, M/s. Safe and Secure Services. M/s Safe & Secure Services, is independently covered under code No KR/22762. A true copy of the coverage memo issued to the contractor is produced and marked as Annexure A6. All the employees deputed by the contractor are already covered under the provisions of the Act and the contractor also remitted their contribution for the period 03/2011 to 11/2011. Due to duty reshuffling, six more security guards are deployed by the contractor and they are also covered under the provisions of the Act. True copy of the communication dt.29/02/2012 issued by M/s Safe and Secure Services is produced and marked as Annexure A8. The contractor has remitted the contribution in respect of all the security guard deployed by them to the appellant establishment. True copies of the challans showing remittance by the contractor is produced and marked as Annexure A9. Since the contractor failed to remit the contribution in respect of the substituted security guards for one month, the Enforcement Officer reported the dues in respect of the employees for the entire period. The respondent failed to implead the contractor in Sec. 7A proceedings. A true copies of the notice of demand dt 27/12/2012 issued by the respondent to the contractor is produced and marked as Annexure A7. Aggrieved by the order of

the respondent U/s 7A, the appellant filed a review application U/s 7B of the Act. A copy of the review application is produced as Annexure A11. The respondent dismissed the review application.

4. Respondent filed counter denying the above allegations. Appellant is an establishment covered under the provisions of the Act. The Enforcement Officer, who conducted inspection of the appellant establishment on 10/01/2012 reported the non-enrollment of eligible employees for the period from 09/2010 to 11/2011. Since the appellant failed to comply with the inspection observations of the Enforcement Officer, the respondent initiated an enquiry U/s 7A of the Act vide notice dt. 02/02/2012 fixing the enquiry on 06/03/2012. A representative of the appellant attended the hearing and disputed the observations of the Enforcement Officer in the inspection report. The appellant was directed to produce cash book and ledger for 2010-2011 to substantiate their contentions. Regarding the security guards deployed through the contractor, the appellant was directed to produce documentary evidence for the wages paid. The enquiry was also attended by the Enforcement officer who conducted the inspection of the appellant establishment. The representative of the appellant produced copies of Form 9, Form 5, Form 10, Form

3A/ 6A, bank statement , salary statement, vouchers in respect of regular employees for the month of 09/2010, 10/2010 and 11/2010, cash book for 2010-2011 and the attendance register for 09/2010 to 03/2012 in respect of the appellant establishment. The Enforcement Officer submitted that six security guards deployed by M/s Safe and Secure Services were present during the period of inspection. But representative of the appellant submitted that there were only 4 security guards as on that date. On the basis of the submissions made and the documents produced by the appellant as well as the Enforcement Officer, the respondent issued the impugned order U/s 7A. The appellant also filed an application for review U/s 7B of the Act which was rejected by the respondent authority.

5. U/s 2(f) of the Act 'employee' means any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of the establishment and who gets his wages directly or indirectly from the employer, and includes any person employed by or through a contractor in or in connection with the work of the establishment. As per Para 26 of EPF Scheme every employee employed in or in connection with the work of establishment to which the Scheme applied, other than an

excluded employee, shall be entitled and required to become a member of the fund from the day this paragraph comes into force in such establishment. The term 'excluded employee' is defined under Para 2(f) of EPF Scheme, 1952 according to which 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. With regard to the eight non-enrolled employees the salary as on the date of joining was Rs.6000/- and it is claimed that an increment DA of Rs.750/- is being paid through voucher. As stated by the Enforcement Officer, this is only an afterthought and the increment DA vouchers were not produced during the course of inspection. The respondent authority also found that the voucher numbers are not consistent and the appellant was only trying to camouflage it as an inadvertent error. It is also seen that these employees are given an increment DA within one month of joining the service. As per Para 30 & 36 of EPF Scheme. It is the responsibility of the principal employer in respect of employees engaged through contractor. The appellant cannot escape the liability under the Act in the event of default by the contractor. It is the statutory obligation of every employer to ensure that all the employees working with them on regular basis or on contract are extended the benefits

under the Act and Schemes. The Act effectuates the economic message of the Constitution as articulated in the directive principles of the state policy.

6. The learned Counsel for the appellant raised two issues in this appeal. The 1st issue is with regard to non-enrollment of eight regular employees working with the appellant establishment. The 2nd issue is with regard to non-enrollment of six security guards employed through an independent covered security agency.

7. With regard to the first issue regarding the coverage of eight regular employees, the contention of the learned Counsel for the appellant is that they are excluded employees in view of Para 2 (f) of EPF Scheme since those employees were drawing salary beyond Rs. 6500/- from the date of their appointment. According to the learned Counsel for the respondent the salary of these eight employees as on the date of their appointment in August 2010 was only Rs. 6000/- which is within the statutory limit and hence they are liable to be covered from that month. According to him within one month of their appointment on 09/2010, a DA increment of Rs.750/- is given to these employees and that through voucher. The respondent authority insisted for the

original vouchers and found that there is huge discrepancies between the voucher numbers in the original voucher and also in the cash book. The respondent authority re-produced these discrepancies in the impugned order and concluded that the increment DA within one month of appointment and payment through vouchers and the discrepancy with regard to these payment in vouchers and cash book clearly show that it is an afterthought by the appellant to claim exclusion of these employees from the provisions of the Act and Schemes. The learned Counsel for the appellant argued that there is no prohibition in law to give an increment in DA within one month of joining the appellant establishment. In the facts and circumstances of the case as explained above I am not in a position to agree with the contentions of the learned Counsel for the appellant. The date on which these employees were appointed, their salary was Rs. 6000/- which is within the statutory limit and all the subsequent action by the appellant is only an exercise in futile to justify the exclusion of these employees from the benefits of the social security benefits.

8. The next issue is with regard to the non-enrollment of six security guards deployed through a security agency. According

to the learned Counsel for the appellant, all the security guards deployed by the agency to the appellant establishment are covered under the provisions of the Act as evidenced from Annexure A8 letter dt.29/02/2012 from the contractor, M/s. Safe and Secure Services. He also pointed out that the security agency being an independently covered establishment, the respondent authority ought to have summoned the contractor also in the enquiry to confirm compliance before fixing the liability in respect of contract employees on the principal employer. According to the learned Counsel for the respondent, Sec 2(f) and 8A of the Act read with Para 30 & 36 of EPF Scheme mandates that it is the responsibility of the principal employer to secure compliance of the contract employees engaged by them, through contractors. However in this case the contention of the appellant is that the contractor has already complied with respect to the contract employees deployed by him to the appellant establishment. Unless the contractor is also summoned in the enquiry and confirmed the remittance made by him in respect of the contract employees deployed by the contractor to the appellant, principal employer, it is not correct to fix the liability on the principal employer. It is true that the principal employer cannot escape the liability in the event of default by the contractor. It is further seen that the

contractor is covered in the jurisdiction of Regional Office, Trivandrum and they have already started action to secure compliance in respect of these employees vide Annexure A10, letter dt. 27/04/2012 addressed to the contractor. In the above circumstances the assessment of dues in respect of the contract employees cannot be sustained.

9. Considering the facts, circumstances pleadings and evidence in this appeal, I am inclined to uphold the assessment of dues in respect of eight regular employees. The assessment of dues in respect six contract employees cannot be legally sustained and the same is set aside.

Hence the appeal is partially allowed setting aside the assessment of dues in respect of contract employees engaged by the appellant. However the dues assessed against eight regular employees is upheld.

Sd/-

(V. Vijaya Kumar)
Presiding Officer