



सत्यमेव जयते

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

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

(Wednesday the 7<sup>th</sup> day of April, 2021)

**APPEAL No.112/2018**  
(Old No.A/KL-73/2016)

Appellant : M/s.White Fort Hotels (P) Ltd  
By Pass Road, Maradu  
Kochi - 682304

By C.B.Mukundan

Respondent : The Assistant PF Commissioner  
EPFO, Regional Office, Kaloor  
Kochi – 682017

By Adv.S. Prasanth

This case coming up for final hearing on 22.02.2021 and this Tribunal-cum-Labour Court on 07.04.2021 passed the following:

**ORDER**

Present appeal is filed from order no.KR/KC/19039/ENF-3(2)/2016/3972 dt.19.07.2016 assessing dues U/s 7A of EPF & MP Act,1952 (hereinafter referred to as 'the Act') on non enrolled employees for the period from 04/2010 to 10/2012. The total dues assessed is Rs.1,60,491/-.

2. The appellant establishment is engaged in hotel business. The appellant received a notice from the respondent U/s 7A of the Act. The appellant appeared before the respondent and produced the records called for. The respondent vide order dt.21.06.2016 claimed an amount of Rs.1,60,491/- on the ground of alleged non enrolled employees for the period from 04/2010 to 10/2012. The respondent failed to furnish the details of the individual employees including their names on whose behalf the assessment is made. The respondent assessed the dues on the basis of some imaginary figures. The appellant was not aware of the basis of the assessment and sought the information under Right to Information Act. The details furnished by the respondent is produced and marked as Annexure A2 and A3. From Annexure A3 it could be seen that the assessment is made on behalf of 101 non enrolled employees. Out of 101 employees 95 employees were already enrolled to provident fund. Three of the employees are totally unknown to the appellant. The appellant produced the relevant records before the respondent. The monthly pay in respect of 3 employees were beyond the statutory limit of wage ceiling. In view of the loss of pay leave being availed by those employees the salary for the month is shown as below Rs.6500/-. As such they will become excluded employees under the provisions of the Act. The respondent has made additional assessments in

respect of 95 employees. The appellant produced the compliance details with regard to these 95 employees before the 7A authority. From Annexure A3 it can be seen that the appellant has assessed the dues on the basis of uniform salary paid to the employees.

3. The respondent filed counter denying the above allegations. The appellant is covered under the provisions of the Act w.e.f. 18.09.1999. During the course of inspection conducted by the Enforcement Officer, he found that 321 eligible employees were not enrolled to provident fund. Therefore he submitted a report indicating the provisional assessment of dues for 321 employees. An enquiry U/s 7A of the Act was initiated vide notice dt.20.11.2013. During the enquiry the appellant produced copies of letters from various institutions requesting to send their students for training in the appellant establishment. The representative of the appellant also admitted their liability with regard to the contract employees engaged by them. They also produced the list of trainees along with the letters issued by the respective institutions. During the enquiry the representative of the appellant produced the wage and attendance register from 04/2010 to 10/2012, a reconciliation statement of wages and salary expenses for the year 2010-11 and 2011-12. The attendance and wages register of M/s.Kripa Enterprises from 04/2010 to 10/2012, attendance and wages register of

M/s.Grand Force Securities and the attendance and wages register of trainees and probationers. The representative of the appellant submitted that the industrial exposure trainees are students from various institutions and requested them to exclude them from the assessment. After verifying the records produced by the respondent and report of the Enforcement Officer it is seen that 216 of the non enrolled employees, as reported by the Enforcement Officer, are students of various institutions and does not come under the definition of employee. On further verification of the attendance and wage register of the contractors submitted by the appellant it was noticed that 75 employees of M/s.Kripa Enterprises, 30 employees of M/s.Grand Force Securities and 3 employees of M/s.Hotel White Fort are to be extended benefits under the Act. Hence on the basis of the documents produced by the appellant, the enquiry was concluded assessing the dues after accounting the remittance already made by the appellant. The claim of the appellant that the respondent has not furnish the details of employees is not correct. As the impugned order itself contains the name of 101 employees against whom the assessments are made. It is further submitted that the remittance details of the provident fund contribution is provided by the representative of the appellant himself. The claim of the appellant that 3 of the employees included in the list are excluded

employees since they were drawing more than Rs.6500/- as salary is not correct. As per the records produced by the appellant those employees were drawing less than Rs.6500/- as on the date of eligibility and they will have to be enrolled to provident fund membership. All the employees engaged by the appellant directly or through contractors are required to be enrolled to the fund from their date of eligibility. From 01.11.2019, after amendment of Para 26 of EPF Scheme there is no minimum eligibility period for membership and therefore all the employees will have to be enrolled to the fund from their date of appointment. In **J.P.Tobacco Products Vs UOI**, 1996 (1) LLJ 822 SC the Hon'ble Supreme Court of India while upholding the amendment to Para 26 for one day membership held that it is the duty of the employer/principle employer to ensure that all eligible employees are enrolled to the fund from their date of eligibility. In **M/s.P. M. Patel and Sons Vs UOI**, 1986 (1) LLJ 88 SC the Hon'ble Supreme Court held that the term of definition of employees in the Act is wide enough to include not only the persons directly employed by the employer but also persons employed through a contractor.

4. The enquiry U/s 7A of the Act was initiated by the respondent on the report of the Enforcement Officer that the appellant establishment failed to enroll 321 employees working in the establishment. From the

impugned order it can be seen that the appellant was given 27 opportunities starting from 20.12.2013 to 21.6.2016 before the impugned orders were issued. It is seen that the copy of the report of the Enforcement Officer was provided to the appellant during the course of enquiry. The appellant also produced all the relevant records including the wages register, the reconciliation statement of wages and salary and wages register of M/s.Kripa Enterprises, salary, attendance and wages register of M/s.Grand Force Securities and attendance and stipend paid to the trainees during 04/2010 to 10/2012. After verifying all the records, the respondent came to the conclusion that out of 321 employees reported by the Enforcement Officer, 216 were only students and they will not come under the definition of employees and therefore were excluded from the assessment. Out of the balance 105 employees the respondent has issued assessment for 101 employees who according to him and as per the records produced before him are eligible to be enrolled to the fund. According to the learned Counsel for the appellant the appellant establishment have already enrolled 95 employees to the fund and remitted the contribution. 3 employees were not working with the appellant establishment and 3 other employees were excluded employees since they were drawing more than the statutory limit of Rs.6500/- as wages. Hence the appellant admitted their liability to enroll

these employees to provident fund. According to the learned Counsel for the respondent the names are taken from the documents produced by the appellant and hence there is no possibility for the appellant to dispute the number of employees working with them. With regard to the excluded employees, the learned Counsel for the appellant argued that those 3 employees were drawing more than Rs.6500/- as their salary and since they were on loss of pay leave, the wages for that particular month is shown below Rs.6500/- in the books of account of the appellant establishment. According to the learned Counsel for the respondent the claim of the appellant is not correct as the records produced by the appellant would clearly show that those employees were drawing less than Rs.6500/- and therefore they are liable to be enrolled to provident fund.

5. The other dispute raised by the appellant in this appeal is with regard to the quantum of wages on which the assessment is made. According to the learned Counsel for the appellant the wages of employees taken by the respondent authority while assessing the dues is on the higher side and therefore the assessment of dues is also more than the statutory dues payable by the appellant establishment. As already pointed out the appellant was given 27 opportunities over a period of 3 years to produce the records relevant for the assessment. The appellant also produced the

relevant records showing the attendance and wages register and the balance sheet for the relevant period of time. The appellant also produced a reconciliation statement of wages paid to the employees. The respondent issued the impugned order on the basis of the records produced by the appellant and not on the basis of the report of the Enforcement Officer. The Enforcement Officer has reported non enrollment of 321 employees whereas the respondent authority has taken only 101 employees for the purpose of assessment. Hence it is clear that the assessment is based on the books of account maintained by the appellant and the present claim of the appellant and also the statement now produced by the appellant cannot be taken into account for the purpose of assessment of provident fund dues. Hence I don't find any irregularity in the assessment of dues made by the respondent authority.

6. 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