



सत्यमेव जयते

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

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

(Tuesday the 16<sup>th</sup> day of November, 2021)

**APPEAL No.185/2019**

(Old no.337(7)2015)

Appellant : M/s.Popular Vehicles and Services Ltd  
Mamangalam  
Kochi - 682025

By Adv.Benny P. Thomas

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

By Adv.Sajeev Kumar K. Gopal

This case coming up for final hearing on 16.07.2021 and this Industrial Tribunal-cum-Labour Court on 16.11.2021 passed the following:

**ORDER**

Present appeal is filed from order no.KR/KCH/10333/ENF-2(4)/2015/RB No.218-135 dt.11.03.2015 assessing dues U/s 7A of EPF & MP Act, 1952 (hereinafter referred to as 'the Act') for the period from 06/2003 to 02/2013. The total dues assessed is Rs.71,60,935/-.

2. Appellant is a public limited company registered under the Companies Act, 1956. The establishment is covered under the provisions of the Act. The appellant covered all the employees under the provisions of the Scheme from the date of commencement, except the trainees. After commencement of business the appellant got the Standing Orders of the appellant establishment certified by the competent authority. A copy of the Certified Standing Orders dt.30.06.1998 is produced and marked as **Annexure A1**. Enforcement Officer of the respondent organisation verified the records of the appellant and issued a notice stating that trainees are not covered under the provisions of the Act. True copy of the notice dt.15.03.2013 is produced and marked as **Annexure A2**. Thereafter the respondent authority initiated an enquiry U/s 7A of the Act to decide whether the trainees are coverable under the Act and quantified the dues. The representative of the appellant appeared before the respondent and filed a detailed statement explaining that the trainees are covered by the Industrial Employment (Standing Orders) Act and the trainees appointed under the Standing Orders are not coverable under the Act. A true copy of the statement is produced and marked as **Annexure A3**. Ignoring the contentions of the appellant, the respondent issued the impugned order, a copy of which is produced and marked as **Annexure A4**. The respondent authority ought have decided the eligibility of the employees to be enrolled under Para 26B of EPF

Scheme. The service centres of the appellant establishment are registered under Factories Act and the trainees engaged under Certified Standing Orders are excluded U/s 2(f) of the Act. The trainees are paid only stipend and cannot be treated as wages. The respondent issued the impugned order based on the report of the Enforcement Officers. The Enforcement Officers were not examined before the respondent. The respondent misinterpreted the clauses in the attendance card. The letter given to the trainees were also not considered in its proper spirit. The number of trainees never exceeded 20% of the total number of employees. The Hon'ble Supreme Court of India in **RPFC Vs Central Arecanut and Cocoa Marketing & Processing Co-Operative Ltd, Mangalore, 2006 1 CLR 861** held that Model Standing Orders in terms of Sec 12A is applicable while deciding the eligibility of an employee to be enrolled to the fund. Though the stipulated period of training is 6 months to one year, some of the trainees are regularized in the appellant establishment before the completion of the training, depending on their suitability.

3. The respondent filed counter denying the above allegations. The appellant failed to enroll all the eligible employees to provident fund benefit and therefore an enquiry U/s 7A of the Act was initiated. A summons dt.02.03.2012 was issued to the appellant. After few adjournments, on 10.07.2012 the appellant filed a written statement, according to which the

trainees engaged by them are only learners and they were appointed under Standing Orders of the appellant establishment. A certified copy of the Standing Orders was also submitted by the appellant. The Enforcement Officers attached to the office of the respondent visited various branches, collected the details of the non enrolled employees and mahazars were prepared along with list of employees duly signed by the authorised representative of the appellant. In the list, the non enrolled employees were identified with proper designation of the work charge, the duty given and the wages paid. Few of these reports are attached to the impugned order at page 56-58. From the detailed documents placed before the respondent, it was noticed that out of 622 non enrolled employees only 18 were classified specifically as trainees. Even to those trainees salary was paid. The claim of the appellant is that all the non enrolled employees are trainees but they failed to prove that even a single case is appointed under Standing Orders of the appellant establishment. Some of these so called trainees are working for years together as trainees. In spite of providing more than adequate opportunities the appellant failed to establish their contention that these employees are appointed under the Standing Orders of the appellant establishment. As per Sec 2(f) of the Act, all the trainees appointed by the appellant establishment are employees except those who are appointed under the Standing Orders of

the establishment or under the Apprentice Act, 1961. The appellant establishment was given sufficient opportunities for proving their case that the trainees are engaged under the Standing Orders of the appellant establishment. However the appellant failed to prove their case. Since the appellant failed to produce documents to substantiate their case, the respondent authority relied on the documents seized by the Enforcement Officers and also information collected from the various service centres under the seal and signature of the authorized representatives. The so called trainees were attending to the regular work of the establishment and the identification cards would clearly prove their job description. It is also seen that emoluments paid to the so called trainees are also accounted against salary in the Balance sheet of the appellant establishment.

4. The appellant establishment has a regular employment strength of 2497 during the relevant period of time. They engaged 622 persons as trainees or contract employees. The respondent conducted a detailed investigation and found that all these employees are engaged in regular work and the emoluments paid to them, though are stated to be stipend, is booked under the salary head by the appellant establishment. The respondent authority therefore initiated an enquiry U/s 7A of the Act. In the 7A enquiry, the appellant took a stand that the appellant establishment is having a

Certified Standing Order and all these trainees are engaged under the Standing Orders of the establishment and are therefore excluded as per Sec 2(f) of the Act. The respondent authority examined the details of non enrolled employees in various service centres and came to the conclusion that there are 622 persons working with the appellant establishment but not enrolled to provident fund membership. He also found that some of them are designated as trainees but they are doing the regular work of the establishment. He has also discussed in detail the work allocation given to these employee. He further found that there are lot of employees who are engaged as contract employees but not enrolled to the fund. It was also seen that there are lot of temporary employees engaged by the appellant who are not given any social security protection. In the absence of any evidence to the contrary, the respondent authority decided that all the so called trainees, contact employees and temporary employees engaged by the appellant will come within the definition of the employees and therefore quantified the dues in the detailed speaking order issued by him.

5. It is seen that the appellant produced a copy of the Certified Standing Orders and contended that all the non enrolled employees are trainees appointed under Certified Standing Orders and are therefore not eligible to be enrolled to provident fund benefits. The claim of the appellant is

basically wrong as the so called trainees forms only a part of the employees who are not enrolled to the fund. The appellant has not disputed the none enrollment of the contract and temporary employees. The respondent authority examined the records available before him and found that the work allocation given to the trainees is clearly available in the identification cards issued to these employees. The respondent authority has attached few copies of the attendance cards to point out that the so called trainees are assigned specific work and not treated as trainees under Standing Orders. He has also produced a list of non enrolled employees of Pottakulangara unit to show that those employees are assigned specific work of washing and house keeping. The said statement is given under the seal and signature of the authorized representative of the appellant establishment. As already pointed out against 622 non enrolled employees only 18 employees were categorised as trainees however the emoluments paid to them is shown as salary in the books of account and not as stipend as claimed by the appellant.

6. It may be relevant to examine the statutory and legal provisions concerned in the engagement of trainees or apprentices under the Act. As per Sec 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 an

establishment and who gets his wages directly or indirectly from the employer and includes any persons:-

1. employed by or through a contractor in or in connection with the work of the establishment
2. engaged as an apprentice, not being an apprentice engaged under the Apprentices Act, 1961 (52 of 1961) or under the Standing Orders of the establishment

Hence it is clear from the above provision that trainees or apprentices engaged by an employer will also come within the definition of employee under the Act with the specific exclusion of apprentices engaged under Apprentices Act, 1961 or under the Standing Orders of the establishment. According to the learned Counsel for the respondent, the definition of 'employee' as per Sec 2(f) of the Act treats apprentices also as employee, the specific exclusion being the apprentices engaged under the Apprentices Act, 1961 or under the standing orders of the establishment. The Hon'ble High Court of Kerala in **Indo American Hospital Vs APFC**, W.P.(C) no.16329/2012 vide its judgment dt.13.07.2017 in Para 7 held that

“ It is to be noted that an apprentice would come within the meaning of an employee unless he falls within the meaning of apprentice as referred under the Apprentices Act, 1961 or under the standing order



of the establishment. If the trainees are apprentices and they can be treated as apprentices under the Apprentices Act or under the standing orders of the establishment, certainly, they could have been excluded but, nothing was placed before the authority to show that they could be treated as apprentices within the meaning of Apprentices Act or under the standing orders of the establishment. Therefore, I do not find any scope for interfering with the impugned order “.

Going by the observation of the Hon’ble High Court as reproduced above, the appellant herein also failed to substantiate their claim that the trainees are apprentices engaged under the certified standing orders of the appellant establishment. The appellant ought to have produced the training scheme, the duration of training, the scope of training and also the evidence to show that they are appointed as apprentices under the standing orders, before the authority U/s 7A of the Act. This is particularly relevant in the facts of the case as the appellant establishment is engaging almost 1/4<sup>th</sup> of the total employment strength as trainees. As held by the Hon’ble High Court of Delhi in **Saraswathi Construction Co Vs CBT**, 2010 LLR 684 it is the responsibility of the employer being the custodian of records to disprove the claim of the department before the 7A authority. The Hon’ble High Court of Kerala in

**Sivagiri Sree Narayana Medical Mission Hospital Vs Regional Provident Fund**

**Commissioner**, 2018 4 KLT 352 anticipated the risk of allowing establishments and industries to engage apprentices on the basis of standing orders. Considering the possibility of misuse of the provisions the Hon'ble High Court held that

“ of course, there would be many cases, where the employers for the sake of evading the liabilities under various labour welfare legislations, may allege a case which is masquerading as training or apprenticeship, but were infact it is extraction of work from the skilled or unskilled workers, of course the statutory authorities concerned and Courts will then have to lift the veil and examine the situation and find all whether it is a case of masquerading of training or apprentice or whether it is one in substance one of trainee and apprentice as envisage in the situation mentioned herein above and has dealt within the aforesaid judgment referred to herein above “ .

In facts and circumstances of the observation of the Hon'ble Court cited above, is required to be applied in all fours. Though it is denied by the appellant, there is a clear finding by the respondent authority that the so called trainees are doing the work of regular employees. There is also a clear finding that the so called stipend paid to these trainees are almost same as wages paid to the

regular employees. As already pointed out it was upto the appellant to produce the documents to discredit the report of the Enforcement Officers that the trainees are not engaged in the regular work and also that they are only paid stipend and not wages as reported by the Enforcement Officers. The appellant also should have produced the training scheme/schedule and also the duration of training which will clearly indicate whether the trainees are engaged as regular employees. The Hon'ble High Court of Madras in **MRF Ltd Vs Presiding Officer, EPF Appellate Tribunal**, 2012 LLR 126 (Mad.HC) held that " the authority constituted under the 7A of EPF & MP Act has got power to go behind the terms of appointment and find out whether they were really engaged as apprentices. The authority U/s 7A can go behind the term of appointment and come to a conclusion whether the workman are really workmen or apprentices. Merely because the petitioner had labelled them as apprentices and produces the orders of appointment that will not take away the jurisdiction of the authority from piercing the veil and see the true nature of such appointment ". The Hon'ble High Court of Madras in the above case also held that though the apprentices appointed under the Apprentices 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 comprised of apprentices. In **Ramnarayan Mills Ltd Vs EPF Appellate Tribunal**, 2013 LLR

849 (Mad.DB) the Division Bench of the Hon'ble High Court of Madras held that if the apprentices are engaged for doing regular work or production, they will come within the definition of employee U/s 2(f) of the Act. In another case, the Division Bench of the Hon'ble High Court of Madras in **NEPC Textile Ltd Vs APFC**, 2007 LLR 535 (Mad) held that the person though engaged as apprentice but required to do the work of regular employees is to be treated as the employee of the mill. In this particular case the respondent authority has concluded that the so called trainees were actually doing the work of regular employees and hence they cannot claim exclusion U/s 2(f) of the Act.

8. The appellant relied on the decision of the Hon'ble Supreme Court in **Central Arecanut and Coco Marketing and Processing Company Ltd Vs RPF**, AIR 2006 SCC 971 to argue that the trainees engaged by are apprentices under the Act. In the above case, the establishment is an industry coming under the Industrial Employment (Standing Orders) Act and they were having a training scheme under which 40 trainees are taken every year after notifying in news papers and after conducting interview regarding suitability of trainees. In the present case as already pointed out the appellant failed to produce any training scheme and also prove that the trainees are actually apprentices and therefore the decision of the Hon'ble Supreme Court in the above case cannot be relied on by the appellant to support its case.

9. The Hon'ble High Court of Kerala in a recent decision dt.04.02.2021 in **Malabar Medical College Hospital & Research Centre Vs RPFC, O.P. no.2/2021** considered the above issues in detail. In this case also the issue involved was whether the trainees engaged by a hospital can be treated as employees U/s 2(f) of the Act. After considering all the relevant provisions the Hon'ble High Court held that

“ Para 8. A bare perusal of the above definition makes it clear that apprentice engaged under the Apprentices Act, 1961 or under the standing orders of the establishment cannot be termed as ‘employee’ under EPF Act. It is also clear that in the absence of certified standing orders, model standing orders framed under the Industrial Employment (Standing Orders) Act, 1946 hold the field and the model standing orders also contain the provision for engagement of probationer or trainee. However, the burden for establishing the fact that the persons stated to be employees by the Provident Fund organisation are infact apprentices, lies on the establishment because that is a fact especially within the knowledge of the establishment which engages such persons ”.

10. In this case the appellant has taken a contention that all the non enrolled employees identified by the respondent are appointed as trainees

under the Certified Standing Orders of the appellant establishment. Strangely the appellant ignored the fact that many of these employees are contract and temporary employees according to their own admission and will not come under the category of trainees, in the first instance. Now the question is whether the trainees engaged by the appellant is appointed under the Certified Standing Orders of the appellant establishment. The respondent authority has specifically stated in the impugned order that out of the 622 non enrolled employees only 18 employees are termed as trainees in the appointment orders and the rest of the employees are engaged in the specific work which is elaborately narrated in the impugned order. If at all the appellant was serious about its contention regarding trainees, the appellant ought to have produced records before the respondent authority to substantiate their case. The respondent authority has clearly stated in the impugned order that the appellant failed to produce any document to substantiate their claim that the trainees are appointed under the Standing Orders of the appellant establishment except for producing a copy of the Standing Orders of the appellant establishment. Even if it is accepted for argument sake that some trainees were enrolled by the appellant establishment, it is not possible to accept the argument of the learned Counsel for the appellant that trainees were engaged for washing vehicles, house keeping etc., for years together.

Industrial Employment (Standing Orders) Act is a welfare legislation to ensure that the employees engaged by an industrial establishment is aware of their service conditions. It is meant to protect the employees. The provisions of the said Act cannot allowed to be misused by an employer against the employees for denying social security benefits to large number of employees engaged by them. If that is allowed the object of the Industrial Employment (Standing Orders) Act, 1946 will get defeated. It is only on the basis of the available evidence on record that the respondent authority came to the conclusion that the so called trainees are infact employees of the appellant as per the provisions of the Act. As already pointed out the impugned assessment is not only with regard to trainees but with regard to the contract and also temporary employees engaged by the appellant.

10. 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