सत्यमेव जयते

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

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

(Monday the 3rd day of May, 2021)

APPEAL No.210/2019
(Old No.1306(7)2015)

Appellant : M/s.Malabar Gold (P) Ltd
(Formerly Malabar Gold
Ornament Makers Pvt Ltd)
17/1491C, 2nd Floor
Malabar Gate, Ram Mohan Road
Puthiyara Post
Kozhikode - 673004

By M/s.Menon & Pai

Respondent : The Assistant PF Commissioner
EPFO, Sub Regional Office
Eranhipalam P.O.
Kozhikode – 673006

By Adv.(Dr.)Abraham P. Meachinkara

This case coming up for final hearing on 22.01.2021 and this Tribunal-cum-Labour Court on 03.05.2021 passed the following:

O R D E R

Present appeal is filed from order no.KR/KK/23151/ENF-1(4)/2015/7099 dt.01.10.2015 assessing dues U/s 7A of the EPF & MP Act, 1952 (hereinafter

referred to as 'the Act') on non enrolled employees for the period from 09/2014 to 03/2015. The total dues assessed is Rs.23,62,920/-.

2. The appellant is engaged in manufacturing of gold ornaments, jewels and allied products. The company is supplying gold and jewel ornaments to other units of Malabar Group of Companies. The appellant is also providing training for manufacture of gold, platinum and jewel ornaments, software technologies for weighing and analysing the purity, repair of ornaments, billing and cash handling by using software devices, displaying of ornaments and developing good public relationships. The trainees are initially provided training from Malabar Institute of Management, a training centre of Malabar Group of Companies. During the training period, trainees are provided only stipend and no other monetary benefits. The conditions of employment of regular employees are not applicable to trainees. No other allowances are being paid to the trainees. The trainees also have no vested right to claim employment in the appellant establishment. The appellant is having a Certified Standing Orders and trainees are engaged under Certified Standing Orders. A true copy of the Certified Standing Orders of the appellant establishment is produced and marked as Annexure A1. An Enforcement Officer inspected the appellant establishment. On the basis of his report, the respondent issued a notice U/s 7A of the Act for examining whether the trainees are required to be covered

under the provisions of the Act. A representative of the appellant attended the hearing and pleaded that the trainees are engaged under Standing Orders Act and hence they are not coverable under EPF. The Hon'ble Supreme Court of India in **RPFC, Mangalore Vs Central Arecanut and Coco Marketing and Processing Company Ltd, Mangalore**, 2006 2 SCC 381 held that trainees are only learners who is paid stipend during the training period and that they cannot be treated as employees as defined under the provisions of the Act.

3. The respondent filed counter denying the above allegations. The appellant is covered under the provisions of the Act w.e.f. 01.04.2006. On a routine inspection of the records of the appellant establishment, it was found that the appellant failed to enroll 211 employees to provident fund membership. Hence an enquiry U/s 7A was initiated. According to the appellant, all these 211 employees are trainees appointed under the Certified Standing Orders of the establishment. It is true that the appellant establishment is having a Certified Standing Order. However the appellant cannot be allowed to misuse the provisions to engage any number of persons as trainees merely on the strength of Standing Orders. It is also seen that there is no training scheme and all these trainees are working in the production line and are giving the same work that have been given to the regular employees. The appellant establishment is not a training institute and all these trainees are

engaged in the regular course of business of the appellant establishment. What is paid to them as remuneration is nothing but wages as provided under the Act. The decision of the Hon'ble Supreme Court of India in **Central Arecanut and Coco Marketing and Processing Company Ltd** (Supra) is not applicable to the facts of the present case as the appellant is neither an industry nor a training institute.

4. The only issue involved in this appeal is whether the trainees engaged by the appellant can be treated as employees for the purpose of provident fund membership. According to the learned Counsel for the appellant, the appellant establishment is having a Certified Standing Orders and trainees are engaged as per the provisions of the said Standing Orders. According to the learned Counsel for the respondent on the other side the appellant is having a management training institute and the students of the management training institute are being trained by the appellant both in theory and practice. According to the learned Counsel for the respondent, the appellant is misusing the provisions under the Certified Standing Orders to engage maximum number of these persons as trainees instead of regular employees to claim the benefit of exclusion. The learned Counsel for appellant relied on the decision of the Hon'ble Supreme Court in **RPFC, Mangalore Vs Central Arecanut and Coco Marketing and Processing Company Ltd, Mangalore**, 2006 2 SCC 381 to argue

that the trainees are only learners who are paid stipend during the training period and they cannot be considered as employees under the provisions of the Act. According the learned Counsel for the respondent, the dictum laid down in the above case is not applicable to the present case as the Hon'ble Supreme Court was considering the case as an industrial establishment as defined under the Industrial Employment (Standing Orders) Act and also was considering whether the Model Standing Orders will be applicable when the Standing Orders of the industrial establishment is not certified by the competent authority. That was a specific case where the establishment used to take 40 trainees every year after following a procedure and they were given exclusive training and not allowed to work as regular employees of the establishment. In the present case the appellant is engaging trainees who worked as regular employees and they were paid stipend almost equal to the wages paid to the regular employees. It is seen that the appellant establishment is engaging number of trainees almost equal to the regular employees. For example, for the month of 01/2015 the appellant establishment was having 268 regular employees and they were engaging 200 persons as trainees. Similarly for the month of 02/2015 the appellant was having 266 regular employees and they were engaging 202 trainees. For the month of 03/2015 the total number of regular employees were 267 whereas the number of trainees were 211. The respondent also

found that all these trainees are extended ESI coverage and there is no uniformity in the stipend paid to the employees who are appointed on the same day and worked for equal number of days. The respondent also found that the so called trainees and the regular employees are doing the same and similar kind of work and therefore the trainees can be treated as employees for the purpose of membership under the Act. In **Rajasthan Prem Kishan Goods Transport Co. Ltd Vs RPFC**, 1996 9 SCC 454 the Hon'ble Supreme Court held that the Regional Provident Fund Commissioner is authorised to pierce the veil and read between the lines within the outwardliness of the two apparents. 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.

5. The appellant relied on the decision of the Hon'ble Supreme Court in **Central Arecanut and Coco Marketing and Processing Company Ltd Vs RPFC**, AIR 2006 SCC 971 to argue that the trainees engaged by the hospital 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.

6. 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 ".

In this case the appellant failed to produce any document other than the Certified Standing Orders to prove their claim that all these so called trainees are engaged under the Certified Standing Orders. They failed to produce any training scheme to show how long these trainees are engaged or what is the process of evaluation of their performance etc. The appellant also failed to explain why the trainees who are engaged on a same day and engaged for the same number of days were given different remuneration. The Hon'ble High Court of Kerala in a recent decision in **Sivagiri Sree Narayana Medical Mission Hospital Vs RPFC**, 2018 4 KLT 352 considered the possibility of misuse of the provisions of Model Standing Orders or Certified Standing Orders by industrial establishments under Industrial Employment (Standing Orders) Act. 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 hereinabove " .

It is clear from the above discussion that the appellant failed to conclusively prove that the trainees engaged by the appellant are only apprentices and they are not entitled to be enrolled to provident fund membership. The facts as discussed above leads to the irresistible conclusion that the so called trainees engaged by the appellant are only employees as per Sec 2(f) of the Act.

7. 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