



सत्यमेव जयते

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

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

(Monday the 2nd day of November, 2020)

APPEAL No.26/2019
(Old No.723(7)2012)

Appellant : M/s.Hercules Automobile
International Pvt Ltd
Chungam
Alappuzha - 688011

By Adv.R. Sankarankutty Nair

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

By Adv.Sajeev Kumar K.Gopal

This case coming up for final hearing on 20.10.2020 and this Tribunal-cum-Labour Court on 02.11.2020 passed the following:

ORDER

Present appeal is filed from order no.KR/KC/19457/ENF-2(5)/2012/5571 dt.12.07.2012 assessing dues U/s 7A of EPF & MP Act (hereinafter referred to as 'the Act') on dearness allowance for the period from 08/2011 to 03/2012 and the dues in respect of 35 non enrolled employees for the period from 03/2011 to 03/2012. The total dues assessed is Rs.7,49,424/-.

2. The respondent initiated an enquiry U/s 7A of the Act on the basis of the report of an Enforcement Officer dt.03.05.2012. On the basis of the report of the Enforcement Officer, there were 35 nonenrolled employees and the appellant was not paying contribution on dearness allowance. The respondent issued the impugned order without identifying the eligible employees. Out of the 35 persons identified by the Enforcement Officer, some are casual employees whose details and whereabouts were not known to the appellant. They left the service of the appellant and no information regarding those persons are available with the appellant. The respondent has no authority to assess dues in respect of employees who are not identifiable. The appellant had already enrolled persons who are identifiable. There is no justification in recovering amounts due to employees who cannot be identified. The Hon'ble Supreme Court in **Himachal Pradesh State Forest Corporation Vs RPFC**, 2009 (1) LLJ 141(SC) held that amount of provident fund contribution directed to be determined should only in respect of employees identifiable and whose entitlement can be proved. So temporary and casual employees are not entitled to become members of PF. The appellant was remitting provident fund contribution on basic wages and dearness allowance but the impugned order is claiming a huge amount being outstanding against dearness allowance. This amount is determined without any factual basis.

3. The respondent filed counter denying the above allegations. During the course of an inspection conducted by a squad of Enforcement Officers of respondent organisation, it was noticed that the appellant establishment had not enrolled all the eligible and entitled employees under EPF Scheme as mandated under the Act. It was observed that 35 eligible employees had not been enrolled. It was further noticed that provident fund was not deducted on dearness allowance paid to its employees. This squad of Enforcement Officers furnished a list of the 35 employees with their date of joining and the wages paid to them. The list of employees was also countersigned by the authorised signatory of the appellant establishment. The squad of officers also reported month wise details of the number of employees and wages on which contributions are payable for the period from 03/2011 to 03/2012. The details of dearness allowance on which provident fund dues are payable have also been reported for the period from 08/2011 to 03/2012. The appellant was therefore directed to comply with the observations in the inspection report of the squad. Since the appellant failed to comply, an enquiry U/s 7A of the Act was initiated and the appellant was directed to appear before the respondent on 15.06.2012 along with the necessary records. On the request of the appellant, the enquiry was adjourned to 26.06.2012. Sri. E.G.Manoj Kumar, Manager (HR & Administrator) appeared in the enquiry before the respondent.

He did not produce any records. However he admitted the observations made by the squad of Enforcement Officers during their inspection. Hence the respondent issued the impugned order on the basis of the reports submitted by the squad of Enforcement Officers.

4. As per the definition of 'employee' U/s 2(f) of the Act, an 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 person employed by or through a contractor in or in connection with the work of the establishment and also includes trainees engaged as apprentices. However apprentices engaged under Apprentices Act, 1961 or under the standing orders of the establishment are excluded. Hence the definition of 'employee' under the Act recognises only trainees and apprentices who are engaged under Apprentices Act or under the standing orders of the establishment. All other persons who are employed in or in connection with the work of the establishment are liable to be enrolled under PF Scheme. It is seen that as per Exbt.R1, the appellant has furnished the name of 35 employees who were not enrolled to the Fund along with date of joining and salary paid to these employees. It is seen that these employees were working from 01.03.2011 onwards and drawing monthly salary ranging from Rs.2500-6500. Hence the

claim of the learned Counsel for the appellant that these 35 employees are not identifiable is not correct. Exbt.R2 produced by the respondent clearly indicates the salary structure of the appellant establishment. Exbt.R2 clearly indicates the basic pay, dearness allowance and other components and also the provident fund contribution paid by the appellant. Exbt.R2 statement clearly establishes the fact that the appellant has not contributed provident fund on the dearness allowance component of wages and therefore the assessment made on the dearness allowance cannot be disputed by the appellant. According to Sec 2(b) of the Act, 'basic wages' means all emoluments which are earned by an employee while on duty or on leave in accordance with terms of contract of employment and which are paid or payable in cash, but does not include the cash value of food concession and dearness allowance, house rent allowance, over time allowance, bonus, commission or any other allowance payable to the employee in respect of the employment. As per Sec 6 of the Act, contribution shall be paid by the employer on basic wages, dearness allowance and retaining allowance. A combined reading of the above 2 provisions, it is clear that the appellant is liable to pay contribution on dearness allowance also and the assessment of dues on dearness allowance cannot be disputed by the appellant. As rightly pointed out by the learned Counsel for the respondent, the appellant did not raise any of the above

contentions before the respondent, 7A authority and has fairly conceded that the nonenrollment and dues reported by the squad is correct. It is a basic principle of law that the factual issues which were not agitated before the lower forums cannot be agitated before the appellate authority. Even in this appeal, the appellant failed to produce any supporting evidence to substantiate their claims.

5. Considering all the facts, circumstances, evidence and pleadings, I do not find any merit in the appeal.

Hence the appeal is dismissed.

Sd/-
(V. Vijaya Kumar)
Presiding Officer