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

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

(Tuesday the 4th day of May, 2021)

APPEAL No.276/2018
(Old no.A/KL-53/2017)

Appellant : M/s.Irinjalakuda Town
Co-operative Bank Ltd
Irinjalakuda
Thrissur - 680125

By Adv.K. K. Premalal

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

By Adv.Thomas Mathew Nellimoottil

This case coming up for final hearing on 09.03.2021 and this Tribunal-cum-Labour Court on 04.05.2021 passed the following:

O R D E R

Present appeal is filed from order no.KR/KC/13998/ENF-4(3)/2016-17/15979A dt.08.02.2017 assessing dues U/s 7A of EPF & MP Act (hereinafter referred to as 'the Act') in respect of non enrolled employees for the period 04/2012 to 03/2016. The total dues assessed is Rs.12,72,127/-.

2. The appellant is a co-operative bank registered under the provisions of Kerala Co-operative Societies Act, 1969. The service conditions and staff pattern are fixed under the said Act. The appellant is providing facilities for practical training for the educated and eligible youth in the locality. These apprentices are enrolled for a limited period and they have no claim for any post in the Bank. The appellant establishment is employing around 100 persons and therefore Model Standing Orders prescribed under Industrial Employment (Standing Orders) Act is applicable to the appellant establishment. The names of non enrolled employees reflected in the report of the Enforcement Officer are apprentices and the amount referred is the stipend paid to the apprentices. A representative of the appellant attended the hearing U/s 7A of the Act and filed a detailed written statement dt.01.10.2016 which is produced and marked as Annexure 1. Without considering the representation of the appellant, the respondent issued the impugned order. As per definition of 'employee' U/s 2(f) of the Act, the apprentices engaged under Standing Orders are specifically excluded. Simply because on completion of training or thereafter they have been given an appointment to a specified post, the period of training cannot be treated as employment. In **Employees State Insurance Corporation Vs Tata Engineering and Locomotive Corporation Ltd**, AIR 1976 SC 66 the Hon'ble Supreme Court of India held that by a contract of

apprenticeship a person is bound to another for the purpose of learning a training or calling the apprentice undertaking to serve the master for the purpose of being taught and the master undertaking to teach the apprentice. Whether teaching on the part of the master or learning on the part of the other person is not primary but only an incidental object, the contract is one of service rather than of apprenticeship. There is no dispute regarding the fact that 50 persons were being employed in the appellant establishment. As per Clause 2(g) of the Model Standing Orders, an apprentice is defined as a learner who is paid allowance during the period of training. The Hon'ble Supreme Court of India in **RPFC Vs Central Arecanut and Coco Marketing and Processing Company Ltd, Mangalore**, 2006 (2) SCC 381 held that the stipend paid to the trainees/apprentices will not be wages and no contribution is payable under EPF & MP Act.

3. The respondent filed counter denying the above allegations. The appellant establishment is covered under the provisions of the Act w.e.f. 31.03.1993. The appellant during the course of enquiry U/s 7A of the Act stated that the apprentices are engaged for limited period and they have no claim or lean for any post in the appellant establishment and there is no employer-employee relationship with these apprentices but the appellant failed to produce any documentary evidence to substantiate these claims. The

Enforcement Officer of the respondent during their routine inspection found that 53 employees were not enrolled by the appellant from their respective dates of eligibility. During the enquiry the appellant failed to produce any records to substantiate their claim. In the hearing on 06.01.2017 the representative of the appellant stated that the appellant has no documents to produce relating to the claim that the non enrolled employees are apprentices as per the Standing Orders of the appellant establishment or as per the Model Standing Orders. The appellant failed to produce any document to substantiate their claim that the trainees are excluded employees U/s 2(f) of EPF Act, 1952. In **Rajesh Krishnan Vs APFC**, 2009 122 FLR 180/495 the Hon'ble High Court of Kerala held that in order to exclude from the definition of employee an apprentice should be one who was appointed to pursuant to the provisions in the Standing Orders of an establishment. If the establishment does not have Standing Orders even though appointed as apprentice cannot be excluded from the purview of employees under the Act.

4. The main issue adjudicated U/s 7A of the Act and also in this appeal is whether the so called trainees engaged by the appellant establishment can be treated as excluded employees for the purpose of enrollment under the provisions of the Act. It is reported during the inspection of the appellant

establishment that the appellant establishment is having around 100 regular employees and was engaging 53 trainees. According to the learned Counsel for the appellant, these trainees are engaged under Model Standing Orders and therefore they are excluded as per Sec 2(f) of the Act. According to the learned Counsel for the respondent, the appellant was given adequate opportunity to substantiate their claim that Industrial Employment (Standing Orders) Act is applicable to them and also to prove that the trainees are engaged under Model Standing Orders. This assumes importance in view of the fact that 53 trainees are engaged by the appellant against around 100 regular employees. The appellant failed to avail the opportunity and produce any document to substantiate the claim. It is seen that the appellant was given opportunities to produce documents relating to the claim of the appellant that the non enrolled employees were engaged as per the provisions of Standing Orders of the appellant establishment or Model Standing Orders. The representative of the appellant specifically submitted that they were not having any document to substantiate their claim.

5. 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 1/4th 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 same view was taken in **C. Engineering Works Vs RPFC**, 1986(1) LLN 242 wherein the Hon'ble High Court held that the documents to prove the employment strength is available with the establishment to discredit the report of the Enforcement Officer and if the employer fails to produce the documents, the authority U/s 7A can take an adverse inference. A similar view was taken by the Hon'ble Delhi High Court in **H.C Narula Vs RPFC**, 2003 (2) LLJ 1131.

6. In **Sivagiri Sree Narayana Medical Mission Hospital Vs RPFC,** 2018 4 KLT 352 Hon'ble High Court of Kerala 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 hereinabove " .

This is a fit case wherein the test given by the Hon'ble High Court of Kerala in **Sivagiri Sree Narayana Medical Mission Hospital** (Supra) cited above is required to be applied in all fours. 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.

7. 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 appellant 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.

8. 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 view of the above discussion and in view of the fact that the appellant failed to produce any documents regarding the engagement, training schedule, training scheme etc., it is not possible to accept the claim of the appellant that the 53 non enrolled employees are apprentices engaged under Model Standing Orders. The appellant failed to produce any documents to substantiate their claims even in this appeal. As pointed out by the learned Counsel for the respondent, trainees will come within the definition of employees with specific exclusion of trainees appointed under Apprentices Act and also under the

standing orders of the establishment. The provisions of a benevolent legislation like Industrial Stands Orders Act cannot be allowed to be misused to deny social security benefits to huge number of employees, in the absence of any evidence to support the claim of the appellant.

9. Considering the facts, circumstances and pleadings in this appeal, I am not inclined to interfere with the impugned order.

Hence the appeal is dismissed.

Sd/-

(V. Vijaya Kumar)
Presiding Officer