



सत्यमेव जयते

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

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

(Tuesday the 19<sup>th</sup> day of January, 2021)

**APPEAL No.36/2017**

Appellant : M/s.Daya General Hospital Ltd  
Shornur Road, Viyyur Bridge  
Thrissur - 680022

By Adv.K. K.Premalal

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

By Adv.Thomas Mathew Nellimoottil

This case coming up for final hearing on 12.01.2021 and this Tribunal-cum-Labour Court on 19.01.2021 passed the following:

**ORDER**

Present appeal is filed from order no.KR/KC/4578/ENF4(1)/2017/5091 dt.24.07.2017 U/s 7A of EPF & MP Act (hereinafter referred to as 'the Act') assessing dues on non-enrolled employees for the period from 07/2001 to 05/2016. The total dues assessed is Rs.1,43,93,851/-.

2. The appellant establishment is covered under the provisions of the Act. A squad of Enforcement Officers visited the appellant establishment and

reported that 370 employees were not enrolled to the Fund from 07/2001 to 05/2016. The inspection was carried out on a complaint made by Kerala State United Nurses Association. The appellant/management omitted to enroll certain employees who were drawing more than Rs.6500/- salary when the salary limit was enhanced to Rs.15,000/-. The management enrolled all such employees who became eligible from 10/2014. The arrear contribution is being paid in instalments without deducting the employees' share. The appellant appeared before the respondent authority, the details of payment were also made available during the enquiry. Due to software upgrading process the appellant could not furnish the actual wage particulars before the authority. It is seen that in the provisional assessment given by the Enforcement Officer employees drawing more than Rs.6500/- ceiling at that time was also included in the assessment. Apart from that, the appellant had included the apprentices who were drawing stipend during the relevant point of time. The appellant vide letter dt.15.11.2016 disputed the eligibility and liability of payment of contribution in respect of the trainees as well as the employees who were drawing more than Rs.6500/- as salary at that point of time. A true copy of the communication is produced and marked as Annexure 3. The list containing the alleged non-enrolled employees showing their actual date of entry in service and the first salary drawn during the month of their appointment is produced and

marked as Annexure 4. The respondent issued the impugned order without relying any documents. It is stated that the enquiry U/s 7A is initiated on the basis of a complaint filed by Kerala State United Nurses Association but the respondent has not disclosed a copy of the complaint to the appellant. The appellant was not provided the list of documents relied on by the 7A authority. The copy of statement of Enforcement Officer referred to in the impugned order is not furnished to the appellant. The appellant establishment is a multy specialty hospital having various super speciality departments. The nursing students are required to undergo internship for a period of one year as prescribed by the University. The internship is part of their studies. These students are apprentices and there is no contract of employment between the appellant and the nursing students. Some nursing students after completion of their course are permitted to undergo practical training in various speciality and super specialty departments of the hospital. These apprentices has no right of employment in the appellant establishment. Stipend is paid to these apprentices as gesture of goodwill for their subsistence.

3. The respondent filed counter denying the above allegations. The respondent received a complaint form Kerala State United Nurses Association representing the employees of the appellant establishment stating that the appellant establishment employed more than 500 employees which includes

more than 250 nurses and that the provident fund benefits are not extended to majority of the employees. According to the union, more than 35 nurses now working there has started their career from 2008 onwards and more than 200 nurses who joined the hospital in 2010 are not extended the benefit of provident fund. The trade union also filed W.P.(C) no.19876/2016 before the Hon'ble High Court of Kerala for the same relief. Accordingly a squad of Enforcement Officers were deputed to investigate the complaint. The squad found that the establishment had not enrolled all eligible employees to the Fund and therefore the compliance position of the appellant establishment was not satisfactory. The squad after spot verification and after meeting the employees and trade union found that 370 employees were not enrolled to provident fund. They also found that another 48 employees were not enrolled to the Fund from the date of eligibility. The details were prepared and signed by the employees. The appellant was directed to furnish the statement of wages of every non enrolled or belatedly enrolled employees supported by relevant registers and vouchers. The appellant intimated that the records for far of back period was not available and those records were already produced from time to time during the course of inspection. The appellant sought one month time to produce the records called for by the respondent. The squad of Enforcement Officers thereafter vide report dt.12.07.2016 calculated the dues

in respect of non enrolled employees. In view of the detailed report submitted by the squad of Enforcement Officers and the failure on the part of the employer to enroll all eligible employees, an enquiry U/s 7A was initiated. A copy of the notice was also issued to the President, Kerala State United Nursing Association also. A representative of the appellant attended the hearing and requested for a copy of the report of the squad of Enforcement Officers and also sought some time for production of records. A copy of the report of the Enforcement Officers was sent to the Managing Director vide letter dt.09.08.2016. The enquiry was adjourned to 05.08.2016. Vide Annexure 2 letter dt.06.09.2016 the appellant informed that they could not locate the wage particulars of the non enrolled employees as they were in the process of software upgradation. The enquiry was further adjourned to 24.10.2016. The appellant vide letter dt.21.10.2016 requested for some more time for producing the records. The enquiry was further adjourned to 15.11.2016. The appellant vide letter dt.15.11.2016 informed that they could not trace the old records and as per the existing provisions of the law, they are not bound to keep employment records beyond three years. The enquiry was further adjourned to 28.03.2017 and it was also informed to the appellant that if the appellant failed to produce the records called for, the assessment will be made on the basis of the available records. The appellant again attended the hearing

and requested for time for production of records. The enquiry was adjourned to 22.06.2017. On 22.06.2017 a representative of the appellant appeared and submitted a statement showing arrear dues and provident fund arrear payment details for the period from 09/2014 to 09/2015 which was taken on record and the enquiry was concluded. The respondent examined the contention of the appellant regarding non enrollment of 370 employees and found to be baseless and inconsistent with statutory provisions. As per Sec 2(f) of the Act, 'an employee' is any person who is employed for wages in or in connection with the work of the establishment and includes persons engaged as apprentices not being engaged under the Apprentices Act or the standing orders of the establishment. As it is evident from Annexure 3, the appellant has not taken any plea before the respondent authority regarding the apprentices engaged by the appellant establishment. Since the appellant has not raised the issue before the 7A authority, the same cannot be taken up in this appeal.

4. The genesis of the proceedings U/s 7A of the Act is a complaint received from a trade union that the appellant establishment has not enrolled 500 employees who are otherwise eligible to be enrolled to the Fund. The respondent deputed a squad of Enforcement Officers to investigate the complaint. In spite of providing adequate time, the appellant failed to produce any records for inspection on the pretext that the software upgradation in the

appellant establishment is going on. However the squad of officers submitted a detailed report assessing the dues for different category of non enrolled employees. The respondent initiated an enquiry U/s 7A of the Act. Even in the enquiry, the appellant failed to produce any records on the pretext that the software upgradation is still going on and they are not in a position to produce the required documents before the respondent. After giving more than adequate opportunity, the respondent issued the impugned order on the basis of the report of the Enforcement Officers. The appellant has taken a stand that the report of the Enforcement Officers is not given to them during the course of Sec 7A enquiry. It was strongly contradicted by the learned Counsel for the respondent stating that it was forwarded to the Managing Director of the appellant establishment vide letter dt.09.08.2016. During the course of argument, the learned Counsel for the appellant submitted that the appellant has already remitted a substantial portion of the assessed amount being the admitted liability. The learned Counsel also submitted that the appellant may be given one chance to produce the records before the respondent for a proper assessment of the dues. As seen from the proceedings the respondent has already provided more than adequate opportunity for producing the records which were not availed by the appellant during the course of Sec 7A enquiry. However it is felt that in the interest of justice the appellant can be given one

more opportunity to produce the records before the respondent so that a correct and proper assessment of dues can be made.

5. In view of the above, the appeal is allowed, directing the respondent to give one final chance to the appellant to produce the records before them. In view of the decision to remand the matter I am not expressing my views on other issues such as excluded employees, trainees etc., raised by the appellant in this appeal. The appellant may be given one chance to produce the required documents in the enquiry. If the appellant fails to produce the documents required by the respondent or try to delay the proceedings by seeking adjournments, the respondent is entitled to take adverse presumption and proceed with the enquiry.

Hence the appeal is allowed, the impugned order is set aside and the matter is remitted back to the respondent to re-assess the dues within a period of 3 months after issuing notice to the appellant as well as the complainant trade union i.e., Kerala State United Nurses Association. The remittance made by the appellant U/s 7(O) of the Act shall be adjusted/refunded after finalization of the enquiry.

Sd/-

(V. Vijaya Kumar)  
Presiding Officer