



सत्यमेव जयते

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

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

(Tuesday the 1<sup>st</sup> day of June, 2021)

**APPEAL No.397/2019**  
(Old no.1096(7)2015)

Appellant : The Managing Director  
The Society for Promotion of Nature  
Tourism and Sports  
Union Territory of Lakshadweep  
Kavaratti - 682555

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

This case coming up for final hearing on 30.03.2021 and this Tribunal-cum-Labour Court on 01.06.2021 passed the following:

**ORDER**

Present appeal is filed from order no.KR/KC/12373/ENF-1(4)/2014/9369-A dt.19.11.2014 assessing dues U/s 7A of EPF & MP Act, 1952 (hereinafter referred to as 'the Act') for the period from 01/2010 to 05/2012 and 03/2013 to 12/2013. The total dues assessed is Rs.75,56,716/.

2. The appellant establishment is covered under the provisions of the Act w.e.f. 30.09.1987 under code no.KR/12373. The respondent authority initiated action for assessing dues in respect of non enrolled employees and vide the impugned interim order the appellant was directed to remit an amount of Rs.75,56,716/-. The regular employees under the appellant establishment are already enrolled to EPF Scheme. As far as casual employees are concerned, there is frequent rotation of employees on completion of 89 days of service and therefore were not enrolled to provident fund. The casual labourers used to be engaged and on completion of 89 days of service another batch will takeover. The new batch may or may not include the members of earlier batch. This is done with the object of ensuring minimum employment for maximum number of persons. Maximum such casual labourers are engaged during the tourist season. There is no fixity of tenure for these employees. In the year 2007, a squad of officers of the respondent conducted an inspection of Cochin office of the appellant. As per the direction of the squad, the appellant enrolled all contract and casual employees. Another squad of officers visited the appellant establishment in January 2012. The squad in its report dt.30.03.2012 reported that the appellant establishment is engaging 196 daily wage employees in its various units and head office. During the

hearing, the respondent authority informed that the casual labourers are also covered under the EPF Scheme and the appellant enrolled 250 casual labourers though the report of the squad was only to enroll 196 casual labourers. Altogether more than 450 casual employees are enrolled to the benefits of EPF Scheme. The appellant is liable to remit only 12.5% of the statutory wage limit of Rs.6500/-. However the appellant remitted contribution on actual wages paid even beyond the statutory limit in majority of the cases. The request of the appellant to refund the excess amount remains unanswered even today. The appellant during the course of hearing gave the names of more than 200 casual labourers engaged by them and provide the wages drawn by them per day. The respondent arrived at the monthly wages by multiplying the daily wages by 20 where as all the employees are getting wages for more than 28 days in a month. Hence majority of these employees were drawing more than Rs.6500/- per month during the relevant period and were not covered under the Scheme provisions. The respondent assessed the dues on the wrong presumption that these employees must be drawing less than Rs.6500/- per month at the time they joined the service of the appellant establishment. The appellant submitted the details of salary drawn by these employees from 06/2012 to 02/2013 but the respondent issued an interim order on

08.10.2013 assessing an amount of Rs.30,34,716/- ignoring the details furnished by the appellant during the course of the 7A enquiry. The respondent also recovered the above said amount by attaching the Bank account of the appellant. Since the money was already transferred and since final adjudication was pending the appellant did not prefer any appeal against the interim order dt.08.10.2013. The respondent thereafter directed the appellant for the details of the employees engaged and the wages paid for the year 2010-13. In view of the delay in furnishing the details another interim order was issued assessing the dues for the period from 01/2010 to 05/2012 and from 03/2013 to 12/2013. On 21.01.2014, the Managing Director of the appellant appeared and produced the wage statement of all employees. The appellant also produced the details of all the employees enrolled in 12/2013 and the wage statement of 270 employees from 01/2013 to 12/2013. On 28.05.2014 a representative of the appellant appeared before the respondent and produced the wage details of 01/2010 to 05/2012. Without considering any of the details furnished by the appellant, the respondent issued the impugned interim order. The appellant establishment is working under the direct control of Central Govt., the Union Territory of Lakshadweep Administration and such an authority will not Act in the adverse interest of the employees. In the

interim order issued by the respondent, the respondent has finally decided the liability. However the impugned order is silent on the number of employees and also the wages drawn by the non enrolled employees. On a perusal of the impugned order, it can be seen that there is huge variation in wages in consecutive months. Such a variation is possible only when there is difference in number of employees and monthly salary of each employee. The respondent relied on the report of the Enforcement Officer to arrive at the impugned interim order, a copy of which has not been provided to the appellant. It is clear from the impugned order that the respondent has included all the excluded employees for assessing the dues without giving adequate opportunity to the appellant. The policy of rotating employees on completion of 89 days is approved by the Hon'ble High Court of Kerala in O.P.(CAT) No.133/2012 and 606/2012. The daily wage employees are drawing a daily wage at the rate of 278.60 and will be drawing more than Rs.6500/- per month and therefore they are excluded employees as per the provisions of the Act and Schemes. It is true that the appellant could not produce the whole records before the respondent at the time of the hearing.

3. The respondent filed written statement denying the above allegations. A squad of Enforcement Officers during their inspection of the

appellant establishment located that there were large scale evasion of statutory provision by the appellant establishment, by not enrolling all eligible and entitled employees under EPF Scheme. It was also reported that the appellant establishment was engaging daily wage employees in various units. The squad submitted a list of 196 employees. The dues for the period 06/2012 to 02/2013 was assessed and recovered from the appellant. The enquiry continued for assessing dues for prior and subsequent periods. On the request of the appellant the hearing schedule on 20.11.2013 was adjourned to 21.01.2014. The Managing Director of the appellant attended the hearing and stated that some of the employees are excluded employees and therefore they are not enrolled to the fund. He also produced details of employees enrolled in 12/2013 and wages statement of 275 employees from 01/2013 to 12/2013. He further sought some time to produce records prior to 06/2012. The enquiry was adjourned on various dates and a representative of the appellant on 28.05.2014 produced the wage statements from 01/2010 to 05/2012. He also informed that no further documents are available for the period prior to 06/2012. The dues were assessed on the basis of the records and documents produced by the appellant. The claim of the appellant that the casual workers worked for 28 days with a daily wage of Rs.278.60 is not correct. Hence the claim that

these employees are excluded cannot be accepted. As per Para 26 of EPF Scheme, all the employees other than excluded employees who are working in or in connection with the work of the establishment are required to be enrolled to the fund. The assessment of dues are made on the basis of the wages details furnished by the appellant and therefore if there is vast difference in wages in consecutive month the appellant can only explain the same. As per the statement submitted by the appellant for the period from 01/2010 to 05/2012 and 01/2013 to 12/2013 there is difference in wages during the different months and the appellant only will be the position to explain the difference. The claim of the appellant that the appellant remitted contribution on amounts beyond statutory limit and their claim of refunding the contribution was declined by the respondent on the ground that the amount remitted by the appellant had already been credited to the members account with cumulative interest in some cases the employees had already withdrawn the amount. It was also pointed out that many of the employees had taken advances from the said amount and therefore it is not possible to adjust the amount already remitted by the appellant. The philosophy of the Act was expounded???? by the Hon'ble Supreme Court in **Maharashtra State Co-operative Bank Ltd Vs RPFC**, 2009 10 SCC 123 as follows. " Since the Act is a social welfare legislation intended to protect

the interest of a weaker section of the society, that is, the workers employed in factories and other establishments, it is imperative on the part of Courts to give a purposive interpretation to the provisions “.

4. The appellant is an establishment covered under the provisions of the Act. A squad of inspectors who conducted the inspection of the appellant establishment noticed that the appellant failed to enroll the daily wage casual employees engaged by the appellant. Accordingly an enquiry U/s 7A of the Act was initiated. Through an interim order the respondent assessed the dues in respect of these employees for the period from 06/2012 to 02/2013 being Rs.30,34,716/-. The amount was also recovered by the respondent as per Sec 8 of the Act. The enquiry further continued for assessment of dues for the period from 01/2010 to 05/2012 and 01/2013 to 12/2013. The respondent again issued another interim order directing the appellant to deposit an amount of Rs.75,56,716/-. The appellant has taken a view that the impugned interim order issued in a hurry without providing them a proper opportunity for producing the records. However it is seen that the appellant was given more than adequate opportunity before issuing the impugned order. The appellant has taken a contention that many of these employees are excluded employees in view of the fact that they were being paid Rs.278.60 as daily wages and a person

working for 30 days will be getting a monthly salary of Rs.8358/- and therefore these employees will have to be treated as excluded employees. However on perusal of the impugned order it is seen that the respondent authority has not done any such calculation as claimed by the appellant. It can also be seen that the impugned order is issued on the basis of the records furnished by the appellant before the respondent authority at the time of the enquiry U/s 7A of the Act. The learned Counsel for the respondent also pointed out that the impugned order is issued on the basis of the documents produced by the appellant and none of the excluded employees as claimed by the appellant are included in the assessment. He further pointed out that though the proceedings are initiated on the basis of the report of the Enforcement Officer, the assessment is made on the basis of documents produced by the appellant.

5. Since it is very clear from the impugned order that the assessment of dues is based on the records produced by the appellant, I am not inclined to interfere with the impugned order.

Hence the appeal is dismissed.

Sd/-  
(V. Vijaya Kumar)  
Presiding Officer