



सत्यमेव जयते

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

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

(Monday the 26th day of April, 2021)

APPEAL No.424/2018
(Old no.857(7)2011)

Appellant : M/s.The Mangalam Publications
(India) Pvt Ltd
Mangalam Complex
S.H.Mount P.O.
Kottayam - 686006

By M/s.Menon & Menon

Respondent : The Regional PF Commissioner
EPFO, Sub Regional Office
Kottayam - 686001

By Adv.Joy Thattil Ittoop

This case coming up for final hearing on 09.02.2021 and this Tribunal-cum-Labour Court on 26.04.2021 passed the following:

ORDER

Present appeal is filed from order no.KR/KTM/5975/7A/ENF-1(1)/2011 dt.14.10.2011 assessing dues U/s 7A of EPF & MP Act, 1952 (hereinafter referred to as 'the Act') on evaded wages in respect of one of its employee

Sri.M. T. Mathai, for the period from 04/2008 to 09/2008. The total dues assessed is Rs.1,397/-.

2. The appellant is a newspaper establishment covered under the provisions of the Act w.e.f. 1982. The appellant had remitted contribution in respect of its employees as per Para 2(f) of EPF Scheme. The respondent initiated proceedings U/s 7A of the Act on the basis of one of its ex-employee Sri. M.T. Mathai alleging that though he was employed with the appellant establishment on regular basis from 01.08.1984 he was extended provident fund membership only w.e.f. 31.03.1988. He also complained that provident fund contribution was not deducted and paid on the arrears paid on the basis of Bachawat Award. It was also his allegation that contribution on the interim relief paid to him during the period 01.04.2008 to 30.09.2008 had not been remitted. Further it was also complained that though he was an employee of Mangalam Publications (India) Ltd, his provident fund was remitted in the account of M/s.MCM Press under code no.KR/5973 to avoid payment of contribution on full salary. The appellant submitted its written objection refuting the allegations contenting that the complaint is barred by limitation and also denied the allegation that the complainant joined the service of the appellant establishment on 01.08.1984. It was also contented that it is upto the complainant to prove that contribution had not been paid on the arrears

paid pursuant to implementation of Bachawat Award. The interim relief paid to the employees will not form part of basic wages and is only a recoverable advance. It was also clarified that the complainant was an employee of M/s.MCM Press. The respondent considered all the above issues and found that the complainant failed to discharge his burden of proving that he was employed in the service of the appellant establishment from 01.08.1984. The appellant is liable to pay contribution on the arrears paid on implementation of Bachawat Award and therefore the complainant is entitled to a minimum amount as per the settlement. The respondent rejected the claim of the appellant that the recoverable advance paid in anticipation of the interim relief to be declared by the Wage Board was not part of wages and held that the said amount paid as advance would have to be treated as an interim relief and would constitute wages as defined U/s 2(b) of the Act and thereby directed the appellant to remit an amount of Rs.896/- for the period from 05/2008 to 09/2008. The respondent also held that the appellant is liable to pay contribution on full wages payable to the employees in view of the earlier orders passed by the respondent U/s 7A. The respondent ought to have taken note of the fact that the claim of the employee that the appellant had not paid contribution on the arrears of wages paid pursuant to Bachawat Award is highly belated. The arrears pursuant to Bachawat Award was paid on 25.01.1990.

There is an inordinate delay of more than 20 years in claiming the benefit. The appellant is not liable to retain all the records of payment for such a long period. Hence the finding of the respondent that the appellant is liable to pay a contribution of Rs.501/- in respect of the complainant is not correct. The finding of the respondent authority to the effect that the appellant is liable to pay contribution on interim relief paid during the period from 01.05.2008 to 30.09.2008 is also not correct. It was made clear to the respondent that the amount paid during this period was only a recoverable advance pending determination of the interim relief to be declared subsequently by the Justice Narayana Kurup Wage Board. This amount paid as advance was to be recovered from the interim relief of the concerned employee upon declaration of interim relief by the Central Govt. Hence the finding of the respondent that the appellant is liable to remit an amount of Rs.896/- towards short remittance is also not correct. The respondent organization was not enforcing Para 80(2) of the EPF Scheme against the newspapers. After the decision of the Hon'ble Supreme Court in **Express Publications (Madurai) Ltd & another Vs UOI**, 2004 (2) LLJ 356 that the respondent organization started insisting for remitting contribution on full wages paid to the employees of news paper publications. The claim with regard to the contribution on full wages was first raised in the year 2007 which is disputed before the Hon'ble High Court of Kerala and is

pending. Hence there is no merit or basis in the finding of the respondent that the complainant is entitled to contribution on full wages. The respondent ought to have found that the appellant has not deducted employees' share of contribution from the wages of its employees as they were outside the ceiling limit. At this distance of time the respondent cannot demand and enforce Para 80(2) of EPF Scheme against the complainant. The appellant did not deduct the employees' share of contribution from the wages disbursed in excess of Rs.6500/- per month and it is not correct on the part of the respondent to direct the appellant to pay both the contributions of the complainant. It is true that the appellant is effecting contribution on full salary from the month of 05/2007 onwards in view of the earlier proceedings U/s 7A of the Act. The said order issued U/s 7A of the Act was stayed by the Hon'ble High Court of Kerala. The complainant has filed a petition before the Consumer Protection Forum seeking a direction to PF authorities to disburse him pension on the full amount paid by the appellant. The said petition is pending consideration before the District Forum.

3. The respondent filed counter denying the above allegations. The appellant establishment is covered under the provisions of the Act. The appellant establishment implemented Bachawat Award as per the Memorandum of Settlement dt.25.01.1990 entered between the management

and unions. Sri.M.T. Mathai one of the ex-employee of the appellant establishment filed a complaint before the respondent alleging non payment/short payment of contribution. The respondent initiated an enquiry U/s 7A to finally decide the matter. The appellant filed objections regarding the allegations raised by the complainant. After hearing the parties, the respondent issued the impugned order. The respondent found that the arrears were paid on implementation of Bachawat Award. However the appellant failed to prove that contributions were paid on the arrears amount paid to the employees. The respondent also found that there was no inspection observation regarding payment of contribution on arrears paid in the inspection report of the relevant period. The complainant also pointed out that no contribution is paid on the interim relief paid for the period from 01.05.2008 to 30.09.2008. The Enforcement Officer who conducted the inspection also confirmed that no contribution is paid on the interim relief as claimed by the complainant. The respondent took a view that any advance paid against the interim relief also will form part of basic wages and therefore the complainant is entitled for contribution on the interim relief paid for the period from 01.05.2008 to 30.09.2008. Newspaper establishment are mandated to remit contribution on the entire salary under Para 80(2) of EPF Scheme. Hence the appellant cannot plead ignorance as an excuse for not remitting contribution on

full wages. There was no undue haste in issuing the order. The enquiry was initiated in 12/2010 and the impugned order was passed in 10/2011. The appellant was provided adequate opportunity to establish and defend his case and also submit the documentary evidence to substantiate their case. Non recovery of employees' share of contribution cannot be cited as an excuse to deprive the employees from the benefit ensured as per the legislation.

4. One of the ex-employees Sri.M.T. Mathai, the complainant filed a complaint with the respondent making certain allegations against the appellant establishment. The allegations are

1. That the complainant was an employee of the appellant establishment from 01.08.1984 but he was extended provident fund membership only from 01.04.1988.
2. The appellant failed to pay contribution on the Bachawat Award arrears paid to him in two instalments.
3. The appellant failed to pay contribution on interim relief paid to him during 01.05.2008 to 30.09.2008.
4. Though he was an employee of M/s.Mangalam Publications, his contributions were made under code no.KR/5973 allotted to M/s.MCM Press in order to avoid provident fund contribution on full salary.

In response to the above allegations the appellant filed a detailed reply holding that the complaint made after 20 years is barred by limitation. The complainant is employed as a regular employee in M/s.MCM Press only in the year 1988. The allegation regarding non payment of contribution on Bachawat Award arrears is denied by the appellant. The records pertaining to the above payments could not be produced as the records pertaining to the period prior to 1996 were not available with the appellant establishment. With regard to the interim relief paid for the period 01.04.2008 to 30.09.08 the appellant claimed that it is only an advance against interim relief and hence will not form part of basic wages. The appellant also claimed that the complainant is an employee of M/s.MCM Press, however no documents were produced to substantiate the same.

5. The claim of the complainant that he was an employee of the appellant from 01.08.1984 was denied by the respondent and is not therefore an issue to be adjudicated in this appeal. With regard to the arrears of wages, it is admitted by the appellant that the arrears were paid in two instalments. But the appellant failed to prove that provident fund contributions were remitted on the arrears paid to the employees. The inspection reports of the relevant period also did not disclose to have paid the contribution on arrears paid to the employees. The appellant has taken a stand that they have no

records prior to 1996. Since the appellant failed to prove that the contribution is paid on arrears paid to the employees as per Bachawat Wage Board and the documents such as the inspection report do not disclose the remittance of contribution on arrears, the claim of the complainant that he was not paid contribution on arrears of wages is required to be admitted. With regard to the contribution on interim relief paid during the period from 01.05.2008 to 30.9.2008, it is admitted by the appellant that no contribution is remitted on the interim relief paid during the said period. It is also confirmed that from the month 10/2008 contributions were remitted on the interim relief. According to the learned Counsel for the appellant it was actually an advance against interim relief in anticipation of such relief was paid to the employees and therefore the interim relief will not attract provident fund deduction. It is difficult to accept the plea of the learned Counsel for the appellant since the interim relief paid is only part of wages to be adjusted against basic wages of the employees and if provident fund is not deducted on the interim relief or on advance in interim relief the same will not get reflected at the subsequent stage when the Govt of India notifies the award. Further the very fact that the appellant started paying contribution on interim relief from 10/2008 would clearly established the fact that the appellant is aware and liable to pay contribution on the interim relief paid to the employees. The issue whether

the employees of the appellant establishment are liable to pay contribution on full wages under Para 80(2) of EPF Scheme was subject matter of dispute on earlier occasions also. It is seen that the respondent issued two orders assessing dues on full wages for the period from 09/2005 to 01/2007 and from 02/2007 to 04/2007. According to the learned Counsel for the respondent in both these orders the name of the complainant is reflected. The respondent in the orders issued held that the appellant establishment is liable to pay contribution on full wages to its employees. According to the learned Counsel for the appellant the above referred orders were challenged before the Hon'ble High Court of Kerala and is still pending. Hence it do not require further clarification that the finding of the respondent regarding contribution on full wages is subject to the final judgment of the Hon'ble High Court of Kerala in the above writ petitions.

6. Considering the facts, circumstances, pleadings and evidence, I am not inclined to interfere with the impugned order.

Hence the appeal is dismissed.

Sd/-

(V. Vijaya Kumar)
Presiding Officer