



सत्यमेव जयते

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

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

(Monday the 15th day of November, 2021)

APPEAL No.443/2019

(Old no.16(7)2016)

Appellant : M/s.Jayalakshmi Silks (P) Ltd
M.G. Road
Kochi – 682035

By Adv.Anil Narayan

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

By Adv.Sajeevkumar K. Gopal

This case coming up for final hearing on 27.08.2021 and this Industrial Tribunal-cum-Labour Court on 15.11.2021 passed the following:

ORDER

Present appeal is filed from order no.KR/KC/15880/ENF-5(2/BB No.15/5/2013/RB no.44/272/2015/6941 dt.04.09.2015 assessing dues U/s 7A of EPF & MP Act, 1952 (hereinafter referred to as 'the Act') against non enrolled employees for the period from 10/2011 to 03/2013. The total dues assessed is Rs.37,56,767/-.

2. The appellant is engaged in the business of retail sales of clothes. The appellant is an establishment covered under the provisions of the Act. The respondent authority initiated an enquiry U/s 7A of the Act based on an inspection conducted by the Enforcement Officer. As per the report of the Enforcement Officer 163 employees were not enrolled to the fund for the period from 10/2011 to 03/2013. A copy of the report dt.20.07.2012 is produced and marked as Exbt. A3. A representative of the appellant along with an Advocate attended the hearing. The appellant requested that all these 163 employees may be heard as per Para 26B of EPF Scheme. A specific request was filed before the respondent authority which was not considered. Application dt.15.05.2013 is produced and marked as Exbt. A4. The respondent authority ought to have examined the Enforcement Officers who conducted the inspection. The list of excluded employees produced by the appellant was also not considered by the respondent authority. The appellant was not provided adequate opportunity to adduce both oral and documentary evidence. The impugned order does not contain the details of the alleged non-enrolled employees. Para 2(f) of the Scheme defines excluded employees, according to which any employee drawing more than Rs.6500/- are excluded employees. Non-identification of employees will adversely affect the finding of the respondent authority.

3. The respondent filed counter denying the above allegations. The appellant establishment was covered under the provisions of the Act w.e.f. 22.09.1997. The Enforcement Officer who conducted inspection on 14.03.2008 found that 189 employees were not enrolled to the fund on the ground that they were trainees. The respondent authority conducted an enquiry U/s 7A and found that 189 all these employees are required to be enrolled to the fund and the appellant establishment remitted the contribution. During the year 2012, the appellant vide its letter dt.07.07.2012 requested for a certificate to be produced before the Kerala Motor Transport Workers Welfare Board for exempting them from paying contribution under the scheme in respect of three drivers. The appellant was directed to produce copies of wage registers for verification of salary details. On verification of wage registers it was observed that the appellant had not enrolled all eligible and entitled employees under the Act. Accordingly a letter dt.20.07.2012 was issued to the appellant directing them to enroll all the eligible employees to provident fund membership as required under Para 26 of EPF Scheme. A list showing the employee code and name of the employees were also forwarded to the appellant for their information and verification. The appellant vide their letter dt.03.08.2012 informed that all these employees are excluded employees as they are drawing a salary exceeding Rs.6500/-. In the meanwhile a squad of

Enforcement Officers visited the appellant establishment on 21.08.2012 and reported the discrepancies and violations of the provisions of the Act. Accordingly an enquiry U/s 7A of the Act was initiated by issuing summons dt.01.04.2013 directing the appellant to attend the hearing on 22.04.2013. None appeared in the enquiry and the enquiry was adjourned to 15.05.2013. A representative of the appellant attended the hearing and produced a letter dt.14.05.2013. The appellant failed to produce any records called for from him. The enquiry was thereafter adjourned to 02.07.2013, 23.07.2013, 19.08.2013, and 24.11.2013. It is clear from the list of employees prepared on the basis of the wages registers that none of the non-enrolled employees were drawing pay beyond the statutory limit to be treated as excluded employees. They are all daily waged employees. This squad of officers who conducted the inspection has perused the documents made available, including Balance sheet and Profit & Loss account for the year 2010-11, wage registers for 2011-12 and print out of punching records of 21.08.2012 for attendance register. The appellant was directed to produce copies of appointment letters and Form 11 of all the so called excluded employees. The appellant produced offer letters of 163 employees and Form 11 of 108 employees. On verification of the offer letters, it could be seen that those documents are freshly prepared and only gross salary of Rs.6600/- is mentioned in the offer letters. On random verification of the

offer letters, it is seen that in the case of Ms.Rekhamol P.R, the offer letter is dt.27.12.2011 whereas the interview is conducted on 27.12.2012. It is seen that the date of the offer letter is corrected. In the case of Ms.Dhanya M.S, the date of interview and offer letters are dt.27.02.2012 whereas the person has drawn salary in the month of January 2012 as per the salary register. Hence it is clear that all these offer letters and Form 11 produced during the course of 7A are forged documents. All the details such as non enrolled employees, their wages etc., were taken from the records of the appellant establishment as verified by the Enforcement Officers. However the subsequent documents produced before the 7A authority are all forged and therefore could not be accepted. The list of employees prepared by the Enforcement Officer based on the records of the appellant would clearly show that none of these employees were drawing a pay beyond the statutory limit. They were being paid a consolidated salary. Subsequently the wages of the employees were bifurcated as basic, DA and conveyance allowance. The appellant has violated the provisions of Para 26 by not enrolling these employees and also paying their contribution to the fund. The appellant never raised the issue that these employees are drawing salary beyond Rs.6500/- before the respondent authority. The details of the non enrolled employees are included in the

impugned order itself and therefore the appellant cannot contented that the employees are not identified.

4. The basic question raised in this appeal is with regard to non enrollment of 163 employees engaged by the appellant in their premises. According to the learned Counsel for the appellant these 163 employees are excluded employees as defined under Para 2(f)(2) of the EPF Scheme as they were drawing salary beyond the statutory limit of Rs.6500/-. It is seen that the respondent authority initiated the enquiry on the basis of a report which stated that the appellant has not enrolled all the eligible employees to the provident fund membership. A copy of the report was also given to the appellant. The learned Counsel for the respondent pointed out that the appellant had a track record of not enrolling eligible employees to provident fund. On an earlier occasion it was noticed that the appellant had not enrolled 189 employees stating that they were trainees. The matter was taken U/s 7A, quantified the dues and the same was remitted by the appellant establishment subsequently. In the present case the appellant failed to enroll 163 employees on the ground that they are drawing a salary of Rs.6600/- which was beyond the statutory limit of Rs.6500/- at that point of time. The squad of Enforcement Officers who inspected the appellant establishment collected the details available with the appellant establishment at the time of their inspection.

Subsequently the appellant produced some offer letters showing that the consolidated salary of these employees as Rs.6600/- and claimed that they are all excluded employees. However the respondent authority found that none of these employees were drawing a salary beyond the statutory limit of Rs.6500/- from the records seized by the Enforcement Officers at the time of their inspection. The respondent authority in a well considered order has examined in detail why he is not in a position to accept the records produced during the course of the enquiry. He compared the documents produced by the appellant for 21.08.2012 and the attendance sheet extracted for the same day from their punching machine maintained by the appellant. He has compared the same and proved that the new attendance register produced by the appellant is a forged document. The respondent authority also verified the appointment letters, wage registers etc., and found that there is variation in signatures in those documents in respect of atleast 60 employees. He has also extracted the signatures of a few employees in the impugned order to substantiate his case. The respondent authority also found that in number of cases the wages and date of joining mentioned in the appointment letter of employees differ with that in the wage register. There are cases where employees were getting wages as per the wage register even before they are appointed. The respondent authority also found that even assuming that the

wages are shown as Rs.6600/- in the offer letter, none of the employees are getting a salary beyond Rs.6500/- as the wages are worked out on daily wages depending on the number of days they worked with the appellant establishment. The respondent authority also found that 3 employees namely Sri.Narayanan C.V, Sri.Rajkumar and Sri.Vipin Kumar were actually drawing salary beyond the statutory limit and they were therefore excluded from the assessment. The respondent authority also examined the liability of certain security guards engaged through M/s.Rakshak Associates. He found that, the appellant as principal employer is liable to remit contribution, if the contractors failed to pay contribution of the employees engaged by them.

5. It can be seen from the impugned order that the appellant establishment resorted to all kind of mischief to avoid enrolling the poor and hapless employees engaged by them. Actually these poor employees engaged as sales girls in these big showrooms actually deserve social security. Finding ways and means to exclude them from the benefit of social security, even by forging documents, cannot be legally accepted.

6. Having understood the actual position the learned Counsel for the appellant argued only on the ground that the respondent authority ought to have decided the eligibility of the employees to be enrolled to the fund under Para 26B of EPF Scheme. The question is whether Para 26B enquiry is

contemplated for resolving the dispute between the appellant and provident fund department. Any dispute regarding outstanding dues will have to be decided U/s 7A of the Act. When there is a dispute between the employer and employees with regard to the eligibility of employees to be enrolled to the fund, the same shall be decided by the Regional Provident Fund Commissioner under Para 26B after hearing both the employer and employee and the decision of Regional Provident Fund Commissioner shall be final. The Hon'ble High Court of Delhi considered the above issue in **Glamour Vs Regional Provident Fund Commissioner**, 1975 1 LLJ 514 (Del). The Hon'ble High Court held that

“ Para 9. In this view of the matter, it is not necessary to determine the scope of Para 26B of the Scheme finally. As at present advised, it appears to me that the controversy envisaged by this paragraph relates to a dispute between the employer and employee and in respect of particular employees to an establishment, which is admittedly governed by the Scheme or the Act. This paragraph has no reference to dispute arising between the Provident Fund Commissioner and the employer with regard to the direction of the Commissioner to the employer to pay the amount due under the Act. This view also finds support from the fact that U/s 7A, there is no express provision for hearing an employee, (although there is no bar to the authorities hearing

employees) still an express provision is only for affording and opportunity to the employer. On the other hand, in Para 26B, the dispute is to be resolved after hearing both the employer and the employees. The Act further accords a finality to the decision U/s 7A of the Act, but no such express provision is found in Para 26B”.

It is clear from the above decision that an enquiry U/s 26B is contemplated only when there is a dispute regarding the eligibility of an employee or employees to be enrolled to the fund, between the employer and employees. In this case the appellant was serious about contesting the matter they ought to have produced some of the employees as their witness to substantiate their case in the enquiry. Hence I am not impressed by the argument of the learned Counsel for the appellant that the matter ought to have been taken up under Para 26B to decide the eligibility of these 163 employees to be enrolled to the fund.

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

Hence the appeal is dismissed.

Sd/-

(V. Vijaya Kumar)
Presiding Officer