



सत्यमेव जयते

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

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

(Monday the 8th day of February, 2021)

APPEAL No.540/2019

(Old No.163(7)2010)

Appellant : M/s.The Kerala State Cashew
Development Corporation Ltd
Cashew House, P.B.No.13
Kollam - 691001

By Adv.Vipin P. Varghese

Respondent : The Assistant PF Commissioner
EPFO, Regional Office
Kollam - 691001

By Adv.Pirappancode V.S.Sudheer &
Megha A.

This case coming up for final hearing on 03.02.2021 and this Tribunal-cum-Labour Court on 08.02.2021 passed the following:

ORDER

Present appeal is filed from order no.KR/1251/ENF-1(3)/2009/6902 dt.18.01.2010 assessing dues U/s 7A of EPF & MP Act (hereinafter referred to as 'the Act') in respect of trainees for the period from 10/2007 to 10/2009. The total dues assessed is Rs.7,74,906.70.

2. The appellant is a fully owned Govt of Kerala company running 30 cashew factories in various districts in the State of Kerala. The appellant provides employment for around 20,000 workers. In the year 1999-2000 the appellant suffered a severe set back in its business due to price fluctuation of cashew nut in the international market. This caused heavy losses to the appellant. The day to day activities of the appellant was being carried out with the financial assistance from Govt of Kerala. It was therefore decided to run the full capacity of production and therefore it is decided to take some additional hands initially engaging them as trainees/apprentices for 180 days, paying them some allowances. It was also decided that after satisfactory completion of training, they will be taken as permanent employees of the factory. Cashew factories are not getting experienced workers for cashew processing works. Each cashew kernel costs more than Rs.1/-. If untrained persons handled the cashew nuts there is every possibility that it will be broken. This will be huge loss and wastage for the appellant. In order to avoid such a situation, the management took a decision to engage few persons as trainees and appointed them on regular basis after completion of training of 180 days. The respondent issued a notice to the appellant in respect of factory no.17 for assessing dues in respect of the trainees engaged by the factory. These trainees are engaged on the basis of the certified standing orders, a copy of which is produced and marked as

Annexure A3. The respondent initiated action U/s 7A(1) of the Act to assess the dues. The appellant entered appearance and filed a detailed counter which is produced and marked as Annexure A4. Without considering the submissions, the respondent issued an order under Para 26B of EPF Scheme holding that trainees are employees coming within the purview of the Act. A copy of the order dt. 05.02.2009 is produced and marked as Annexure A5. The appellant approached the EPF Appellate Tribunal U/s 7(I) of the Act. The EPF Appellate Tribunal observed that no appeal is provided from an order issued under Para 26B of EPF Scheme. The Enforcement Officer of the respondent organisation conducted an inspection and submitted an inspection report quantifying the dues for the trainees for the period from 10/2007 to 10/2009. The appellant challenged the inspection report in W.P.(C) no.16366/2009 before the Hon'ble High Court of Kerala. The Hon'ble High Court of Kerala vide order dt.15.06.2009 allowed the respondent to continue the 7A proceedings. After hearing the appellant, the respondent issued the impugned order.

3. The respondent filed counter denying the above allegations. The Enforcement Officer attached to the respondent during the course of the inspection found that 192 employees were not enrolled to provident fund from 10/2007 to 10/2009 on the ground that they were trainees. Hence an enquiry U/s 7A was initiated. After hearing the appellant the respondent came to the

conclusion that the so called trainees will come within the definition of Sec 2(f) of the Act and therefore quantified the dues. The so called trainees were selected after calling for application. The qualification was also specified in the notification. The appellant also conducted test before selecting the trainees. It is made clear that the selected persons will be appointed as trainees for 180 days and the persons so appointed will be on daily wages till they are regularised. Though the appellant claims that no remuneration is given, it is seen that the employees are actually given payment on piece meal basis. In the above circumstances the employees engaged by the appellant cannot be treated as apprentices or trainees under certified standing orders. Though the appellant is having a certified standing order w.e.f. 21.07.1975, the trainees were not appointed under the standing orders of the appellant. The conditions of appointment stipulated under the office order are that they shall be appointed as trainees in the beginning for 180 days, their work will be appraised, they will be given training allowance equal to the salary of the post and if the performance is satisfactory, they shall be made permanent. As per Sec 2(f) of the Act an employee means any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an establishment, who gets his wages directly or indirectly from the employer and includes any person engaged as an apprentice, not being an apprentice

engaged under the Apprentices Act, 1961 or under the standing orders of the establishment. It can be seen that Sec 2(f) of the Act includes even trainees and apprentices. By applying the above test, it is clear that the trainees engaged by the appellant are only employees and the so called allowance paid can only be treated as wages paid to the employees.

4. When the matter was taken up for hearing it was pointed out that the respondent issued similar orders in respect of various other units holding that the trainees engaged by them will be treated as employees and also quantifying the dues in respect of them. Those orders were challenged before EPF Appellate Tribunal. The EPF Appellate Tribunal, New Delhi set aside the orders of the respondent authority. The respondent authority challenged those orders before the Hon'ble High Court of Kerala in W.P.(C) no.22536/2011. The Hon'ble High Court of Kerala vide order dt.19.08.2011 disposed of the above writ petition holding that

“ A reading of Exbt.P7, the order passed by the Tribunal, shows that as per the certified standing orders, the company could have appointed trainees. The Tribunal found that U/s 2(f) of the Act, a trainee is not an employee and there was no material to show that these trainees were doing the work of the regular employees. It was in such circumstances, the Tribunal held that the persons

appointed under the certified standing orders are only trainees and that they were not doing the work of regular employees and hence cannot be treated as employees of the Corporation. There is no reliable material to hold that these factual findings arrived at by the Tribunal erroneous for any reason, warranting interference in a proceedings under Article 226 of the Constitution of India “.

The W.A. no.1893/2011 filed against the above judgment was also dismissed by the Division Bench of the Hon'ble High Court of Kerala on similar grounds. Since no SLP was filed by the respondent, the matter had attained finality. The learned Counsel for the respondent argued that the above decision of the Hon'ble High Court shall not restrain this Tribunal from deciding the question afresh whether the trainees can be treated as employees on the basis of the pleadings and evidence in this appeal. I don't find any additional material relied on by the respondent to substantiate their claim that the so called trainees are only employees. Hence the above decisions of the Hon'ble High Court of Kerala are binding in this appeal also.

Considering the facts, pleadings and evidence, I am inclined to interfere with the impugned order.

Hence the appeal is allowed.

Sd/-
(V. Vijaya Kumar)
Presiding Officer