



सत्यमेव जयते

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

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

(Thursday the 4<sup>th</sup> day of November, 2021)

**APPEAL No.584/2019**

(Old no.664(7)2012)

Appellant : M/s.Malabar Gold Ornament  
Makers Pvt Ltd  
Ram Mohan Road  
Kozhikode - 673004

By M/s.Menon & Pai

Respondent : The Assistant PF Commissioner  
EPFO, Sub Regional Office  
Eranjipalam  
Kozhikode – 673006

By Adv.(Dr.)Abraham P. Meachinkara

This case coming up for hearing on 13.04.2021 and this Industrial Tribunal-cum-Labour Court on 04.11.2021 passed the following:

**ORDER**

Present appeal is filed from order no.KR/KK/23151/ENF-1(2)/2012/1189 dt.22.06.2012 assessing dues U/s 7A of EPF & MP Act, 1952 (hereinafter referred to as 'the Act') in respect of non enrolled employees for the period from 01/2009 to 07/2011. The total dues assessed is Rs.5,34,634/-.

2. The appellant is a private limited company registered under Companies Act, 1956. The company is engaged among other things in the manufacture of jewellery and allied products. The appellant enrolled all eligible employees except trainees. Soon after commencement of business, the appellant prepared draft Standing Orders and forwarded the same for certification. The true copy of the Certified Standing Orders are produced and marked as Annexure A1. The respondent initiated proceedings U/s 7A of the Act alleging non payment of contribution for trainees engaged by the appellant during the period 01/2009 to 07/2011. A true copy of the inspection report dt.31.05.2011 is produced and marked as Annexure 2. A representative of the appellant appeared before the respondent and filed a detailed reply explaining that the trainees are covered under Standing Orders and hence not coverable under the EPF Act. It was also clarified that the trainees appointed under the Standing Orders have no obligation to join as employee on regular basis. The appellant is having a training centre called Malabar Institute of Management meant for providing training. It was also pointed out to the respondent authority that the appellant was paying only stipend to these trainees. A copy of the Certified Standing Orders is also produced before the respondent and it was also contended that till the Standing Orders are certified, the Model Standing Orders are applicable to the establishment in terms of Sec 12A of the

Industrial Employment Standing Orders Act. A copy of the reply dt.27.01.2012 is produced and marked as Annexure A3. Ignoring the contentions of the appellant the respondent issued the impugned order, a copy of which is marked as Annexure A4. The appellant establishment commenced its operation in the year 2008. The appellant is engaged in the business of manufacturing and wholesale of jewellery and allied products. Some degree of training is required for a person to be taken on the rolls of the establishment as jewellery cannot be handled and sold by persons who have no knowledge of the product. Before a person is taken on the rolls of the establishment, it is also essential that the management has trust and confidence in the employee as they are entrusted with expensive and delicate products. From Annexure A2, it is clear that the non enrolled persons are only trainees and excluded U/s 2(f) of the Act. The Hon'ble Supreme Court of India in **Central Arecanut and Coco Marketing and Processing Company Ltd Vs RPFC, Mangalore**, 2006 (3) SCC 381 held that in terms of Sec 12A of the Standing Orders Act, the Model Standing Orders are deemed to be applicable. Sec 2(f) of the Act defines an employee to include an apprentice and makes an exclusion in the case of apprentice engaged under the Apprentice Act or under the Standing Orders of the establishment. The respondent could not have questioned the authority of the certification of Standing Orders and the engagement of trainees in terms of Standing Orders.

The finding of the respondent with regard to the number of trainees and the period of training etc., are beyond the scope of jurisdiction of the respondent.

The trainees, even if engaged for a period of 6 months, if they are found to be good and competent, even after two months or less, they could be appointed as employees and this could not be considered as a ground for holding coverage.

The eligibility of the trainees to be enrolled under the Scheme ought to have been decided under Para 26B of EPF Scheme.

3. The respondent filed counter denying the above allegations. The appellant establishment is covered under the provisions of the Act. The Enforcement Officer who conducted inspection of the appellant establishment reported that a large number of persons are employed in the appellant establishment as trainees. The establishment is having a Standing Order certified by the Deputy Labour Commissioner, Kozhikode. It was also reported by the Enforcement Officer that Standing Orders are not applicable to an establishment registered under Shops & Commercial Establishment Act, 1960. On the basis of the report, the appellant was summoned U/s 7A of the Act. A representative of the appellant establishment attended the hearing and submitted that the establishment is registered under Central Sales Tax (Registration & Turnover) Rules, 1957 as a unit engaged in wholesale and retail business in gold and silver ornaments and it is an establishment engaged in

trading and commercial activity. It was also submitted that the engagement of persons is only for verifying their suitability for appointment. If the intention was to impart training, the so called trainees cannot be regularised after few days or few months of training. The Certified Standing Orders of the appellant establishment do not state anything regarding the service conditions of the trainees. The appellant is appointing people as trainees to ascertain their suitability to be absorbed in their regular service and not with an intention of imparting training. The conditions of appointment of these people would show that they are appointed as employees and not as trainees. Some of these trainees appointed are kept as trainees for years together and allowed increments yearly which is not as per the Standing Orders of the establishment. The claim of training by the appellant is only a subterfuge to avoid the benefits of social security to the so called trainees. The Standing Orders of the appellant certified by the Deputy Labour Commissioner, Kozhikode is not a valid order since it is sanctioned in the case of an establishment falling under Shops & Commercial Establishment Act. All the persons employed as trainees are regular employees and they are doing the regular work of the establishment. The dictum laid down by the Hon'ble Supreme Court in **Central Arecanut and Coco Marketing and Processing Company Ltd** (Supra) is not applicable to the facts of the present case as the facts of the present case are entirely different.

The appellant is a trading and commercial establishment registered under Central Sales Tax (Registration & Turn over) Rules, 1957 and is registered as a retail sale outlet of gold ornaments.

4. An Enforcement Officer of the respondent office during inspection found that 72 employees were not enrolled to provident fund membership and therefore directed the appellant establishment to enroll them from the date of eligibility. Since the appellant failed to enrol them, the respondent authority initiated an enquiry U/s 7A of the Act. In the 7A enquiry, the appellant took a stand that all these non enrolled persons are engaged as trainees under Certified Standing Orders and they are excluded as per the definition of employee in Sec 2(f) of the Act. The respondent authority after verifying the books of accounts of the appellant establishment, Standing Orders, the list of trainees and details of stipend paid to those persons came to the conclusion that the Industrial Employment Standing Orders Act, 1946 will not apply to the appellant. According to the respondent authority the appellant establishment will not come within the definition of Sec 2(e) of the Industrial Employment Standing Orders Act, 1946 as the appellant establishment is engaged in wholesale and retail business of gold ornaments, diamond, silver ornaments etc. The registration certificate under the Central Sales Tax (Registration & Turnover) Rules, 1957 shows that the appellant is engaged only in trading business. The

Labour Registration Certificate also reveals that the appellant establishment is registered under Shops & Commercial Establishment Act, 1960. Therefore the respondent authority concluded that the appellant establishment is only a trading and commercial establishment and therefore will not come within the definition of industrial establishment as defined U/s 2(e) of Industrial Employment Standing Orders Act, 1946. He also found that the name of the appellant establishment Malabar Gold Ornament Makers Pvt Ltd is misleading as there is no industrial activity involved in the appellant establishment. The respondent authority therefore ignored the Certified Standing Orders and proceeded to conclude that all the trainees engaged by the appellant establishment will come within the definition of employee U/s 2(f) of the Act and therefore quantified the dues. The above action of the respondent is strongly contested by the learned Counsel for the appellant. According to him, the respondent authority U/s 7A of the Act cannot challenge the competence of the appropriate authority to certify the Standing Orders and therefore argued that the impugned order fails on that ground alone. There is some merit in the contention of the learned Counsel for the appellant. It is seen that Annexure A1 Standing Orders of the appellant establishment is certified by the competent authority on 08.01.2010. The respondent authority is not competent to decide the correctness of the certification given by the

competent authority. The learned Counsel for the appellant also argued that pending certification of the Standing Orders, the Model Standing Orders will be applicable as per Sec 12A of the Standing Orders Act. The respondent authority failed to examine the terms of engagement, the nature of the jobs done by the trainees, the details of the scheme of training etc., to confirm whether the so called trainees are actually engaged as per the provisions of Standing Orders and work being done by the trainees are as per training scheme if any of the appellant establishment. The learned Counsel for the appellant pointed out that the trainees are initially trained in their training institute at Malabar Institute of Management and thereafter they are trained in the appellant establishment on various aspects of handling and trading of gold and gold ornaments. This is strongly contested by the learned Counsel for the respondent stating that in their pleadings itself they admitted that the so called trainees are regularised at the convenience of the appellant establishment and there is no proper training being given to these so called trainees. It was also argued by the learned Counsel for the respondent that the so called trainees are doing the regular work of the employees and there is no distinction between the work done by a trainee and a regular employee. However, as already pointed out the impugned order is confined only to the finding that Industrial Employment Standing Orders Act is not applicable to the



appellant establishment and therefore denied the claim of exclusion of the trainees. If the respondent feels that the Standing Orders are wrongly certified, it is upto him to take up the matter with the competent authority, the Certifying Officer under the Industrial Employment Standing Orders Act to confirm the correctness of the certification. The respondent authority may also consider whether the benevolent provisions of the Industrial Employment Standing Orders Act, 1946 is being misused by the appellant so as to deny social security benefits to a huge number of persons designated as trainees working in the appellant establishment. As rightly pointed out by the learned Counsel for the respondent, the only provision in the Standing Orders with regard to apprentices/trainees is in the definition. In Clause (F) of the Standing Orders, an apprentice/trainee is defined as a learner who is paid an allowance/stipend during his period of training. No other conditions are stipulated for trainees in the Standing Orders. If we go by the Standing Orders, the payment if any, to a person is classified as allowance/stipend, the appellant establishment can claim that he is a trainee and therefore will not come within the definition of employee U/s 2(f) of the Act. It is for the respondent authority to go deep into the matter and lift the veil to see the terms of engagement of trainees, the period of training, the nature of work/training done by the trainees, the training scheme if any, the nature of accounting of the so called

stipend etc., before arriving at a final conclusion whether the trainees can be classified as employees under the Act. The Hon'ble High Court of Kerala in **Sivagiri Sree Narayana Medical Mission Hospital Vs RPF**, 2018 4 KLT 352 anticipated the misuse of the clause in the Standing Orders and held that

“ Of course, there would be many cases, where the employers for the sake of evading the liabilities under various labour welfare legislations, may allege a case which is masquerading as training or apprenticeship, but were infact it is extraction of work from the skilled or unskilled workers. Of course the statutory authorities concerned and Courts will then have to lift the veil and examine the situation and find out whether it is a case of masquerading of training or apprentice or whether it is one in substance one of trainee and apprentice as envisaged in the situation mentioned herein above and has dealt with in the aforesaid judgment referred to hereinabove “ .

5. Considering the facts, circumstances and pleadings in this appeal, I am not inclined to accept the finding of the respondent authority.

Hence the appeal is allowed, the impugned order is set-aside and the matter is remitted back to the respondent to re-decide the matter within a period of 6 months after issuing notice to the appellant. If the appellant fails to appear or produce the records called for, the respondent authority is at liberty to decide the matter according to law. The pre-deposit made by the appellant U/s 7(O) of the Act as per the direction of the Hon'ble High Court may be adjusted or refunded after the conclusion of the enquiry.

Sd/-

(V. Vijaya Kumar)  
Presiding Officer