



सत्यमेव जयते

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

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

(Wednesday the 03rd day of November, 2021)

APPEAL No.637/2019

(Old No.260(7)2013)

Appellant : M/s.Matha Gurupoornnima Mayi
432, Narayani Madham
Aranmula
Pathanamthitta – 689533

By Adv.C.M.Stephen

Respondent : The Assistant PF Commissioner
EPFO, Regional Office, Pattom
Trivandrum - 695004

By Adv.Ajoy P.B.

This case coming up for final hearing on 04.08.2021 and this Industrial Tribunal-cum-Labour Court 03.11.2021 passed the following:

ORDER

Present appeal is filed from order no.KR/22728/ENF-1(5)/2011 dt.09.08.2011 assessing dues U/s 7A of EPF & MP Act, 1952 (hereinafter referred to as 'the Act') against non enrolled employees for the period from 06/2010 to 05/2011 and regular dues for the period from 04/2010 to 04/2011. The total dues assessed is Rs.75,898/-.

2. The appellant establishment is promoted by Sree Vijayananda Guru Deva Charitable Trust. The appellant school is registered under Central Board of Secondary Education. The appellant was regular in compliance. An Enforcement Officer visited the appellant establishment, conducted an inspection and gave an inspection report dt.08.06.2011, a copy of the said report is produced as Annexure A2. According to the report, the school kept 7 of their eligible employees un-enrolled. The persons for whom contributions were alleged to have been not paid were neither the employees of the school nor paid any remuneration during the relevant period. They were devotees of the appellant who used to assist in administration of the trust. They offered Veda and Vedanta classes to the students of the school. The 7 un-enrolled employees were not teachers and they gave a written statement stating that they had not received any remuneration to qualify for membership under EPF Scheme. Copies of the statement are produced as Annexure A3 series. The respondent authority ought to have decided the eligibility of these employees under Para 26B of EPF Scheme before assessing the dues. The respondent has not issued any notice or summons to the appellant before conducting the enquiry. The date of joining shown in the report and the wages paid are only imaginary figures and not based on any records. The allegation that the appellant has not paid contribution for wage months April, May 2010 and March, April 2011 is

without any basis. The impugned order issued by the respondent authority is in complete violation of the principles of natural justice, equity and fairness. A copy of the report of the Enforcement Officer was not provided to the appellant.

3. The respondent filed counter denying the above allegations. An Enforcement Officer of the respondent authority after inspection of the appellant establishment submitted a report dt.08.06.2011 stating that the appellant establishment is in default. It was also reported that 7 employees of the appellant were not enrolled to the fund. The inspection report is provided to the appellant with a direction to remit the dues as quantified by the Enforcement Officer. The receipt of the inspection report was acknowledged by the appellant. Hence an enquiry U/s 7A of the Act was initiated and a summons dt.24.06.2011 was issued to the appellant directing the appellant to appear before the respondent authority on 03.08.2011. The appellant did not appear on 03.08.2011 nor submitted any objection regarding the inspection report. The receipt of the summons was acknowledged by the appellant. The Enforcement Officer submitted his report after inspection on the basis of the records maintained by the appellant establishment. The claim of the appellant that she was not the employer is denied. The appellant establishment, at the time of coverage had submitted the statutory documents in Form 5A and also

the Proforma for Coverage, wherein the name of the appellant is mentioned as the employer. A copy of the Proforma and Form 5A submitted by the appellant is produced and marked as Exbt.R1 and R2. The contention of the appellant that the impugned order is issued without giving an opportunity to the appellant is not correct. The summons dt.24.06.2011 was sent by registered post fixing the enquiry on 03.08.2011. The appellant acknowledged the receipt of the summons. A copy of the acknowledgement card is produced and marked as Exbt.R3. A copy of the inspection report was directly given by the Enforcement Officer to the appellant and the same was acknowledged by the appellant. A copy of the inspection report duly acknowledged by the appellant is produced and marked as Exbt.R4. The appellant never raised any contention or objection regarding the inspection report. The appellant never disputed the eligibility of the 7 employees to be enrolled to the fund. Since no dispute is raised, there was no question of deciding the eligibility under Para 26B of EPF Scheme. The Enforcement Officer during the inspection has taken the names of the non enrolled employees from the register maintained by the appellant establishment. Even while accepting the report of non enrollment, the appellant did not raise any objection.

4. The Enforcement Officer of the respondent who conducted the inspection of the appellant establishment submitted a report stating that there

was some short remittance made by the appellant during 04/2010 to 04/2011. Further the Enforcement Officer also reported that 7 employees were not enrolled to the fund. A copy of the inspection report was provided to the appellant for compliance. The appellant did not raise any objection regarding the report. Since there was no compliance, the respondent authority initiated an enquiry U/s 7A of the Act. The respondent issued summons to the appellant which was acknowledged by the appellant establishment. The respondent authority thereafter issued the impugned order directing the appellant to enroll the 7 non enrolled employees and also quantifying the dues. In this appeal the appellant has taken a contention that they were not provided adequate opportunity before the impugned order is issued. The learned Counsel for the respondent submitted that the Exbt.R3 acknowledgement card would clearly prove that the summons was acknowledged by the appellant and they were aware of the proceedings. According to him, there is no violation of principles of natural justice. Another ground pleaded by the appellant is that a copy of the report of the Enforcement Officer is not provided to the appellant. According to the learned Counsel for the respondent, a copy of the report of the Enforcement Officer was provided to the appellant at the time of inspection and the same was acknowledged by the competent authority in the appellant establishment. It is also admitted in Para 3 of the appeal memo that

“A copy of the report submitted by one Mr.K.Muralidas, Enforcement Officer, Employees Provident Fund Organization, Regional Office, Thiruvananthapuram dated the 08th of June, 2011 is produced herewith and marked as Annexure A2”. Hence the contention of the appellant that copy of the report is not provided to the appellant is not correct. A copy of the report of the Enforcement Officer with acknowledgement is produced as Exbt.R4. The 3rd contention raised by the appellant is that the eligibility of the 7 employees not enrolled to the fund ought to have been decided in an enquiry under Para 26B of EPF Scheme. According to the learned Counsel for the respondent, since no objection was raised by the appellant regarding the eligibility of employees to be enrolled to the fund, there was no question of deciding the eligibility of employees under Para 26B. The appellant produced statements from the non enrolled employees stating that they were trainee teachers and they were not receiving any salary during the relevant point of time. The learned Counsel for the respondent pointed out that it is not open to this Court to examine the contents of the letters or statements which were not produced at the time of enquiry before the respondent authority. The learned Counsel for the respondent relied on the decision of the Hon'ble Supreme Court of India in **Ramji Dayawala and sons Pvt Ltd Vs Invest Import**, 1981 KHC 490 where in the Hon'ble Supreme Court held that the truth or otherwise of the facts or contents so stated would have to

be proved by admissible evidence i.e. by the evidence of those persons who can vouch for the truth of the facts in issue. The appellant ought to have produced any of the teachers before the respondent authority to substantiate the statement given by them. According to the learned Counsel for the respondent the details of non enrolled employees and the salary paid were taken from the books of account and registers maintained by the appellant and therefore they cannot deny the same.

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

Hence the appeal is dismissed.

Sd/-

(V. Vijaya Kumar)
Presiding Officer