



सत्यमेव जयते

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

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

(Monday the 1st day of March, 2021)

APPEAL No.661/2019

(Old No.43(7)2013)

Appellant : M/s.Mujahidheen Higher
Secondary School
PMAC Campus, Parli
Palakkad – 678612

By Adv.K. K. Premalal &
Vishnu Jyothis Lal

Respondent : The Assistant PF Commissioner
EPFO, Sub Regional Office
Eranhipalam P.O.
Kozhikode – 673006

By Adv.(Dr.)Abraham P. Meachinkara

This case coming up for final hearing on 28.01.2021 and this Tribunal-cum-Labour Court on 26.02.2021 passed the following:

ORDER

Present appeal is filed from order no.KR/KK/28039/ENF-2(3)/2012-13/1550 dt.11.07.2012 U/s 7A of EPF & MP Act, 1952 (hereinafter referred to as 'the Act') preponing the coverage and also assessing the dues for the period from 06/2001 to 05/2003. The total dues assessed is Rs.2,75,382/-.

2. Appellant is a minority education institution constituted with the objective of uplifting the upcoming generation of backward community. The school is not receiving any aid from the Govt. The school is run utilising the charity funds received from the general public. An Enforcement Officer of the respondent conducted an inspection and informed the appellant that the appellant is required to be covered under the provisions of the Act w.e.f. 01.06.2001 as the employment strength reached 20 as per the records maintained by them. The Enforcement Officer also directed the appellant to remit the contribution from 01.06.2001. The respondent thereafter initiated an enquiry U/s 7A of the Act and confirmed the coverage w.e.f. 01.06.2001 and also assessed the dues w.e.f. 06/2001 to 05/2003. The appellant during the course of 7A pointed out that the teachers are appointed on a temporary basis for one year and none of the teachers are willing to contribute under the provisions of the Act.

3. The respondent filed counter denying the allegations in the appeal memorandum. An Enforcement Officer of the respondent during the regular inspection of the appellant establishment noticed that the employment strength of the appellant reached 20 in 06/2001 as per the salary register maintained by them. Accordingly he recommended that the coverage is to be preponed from 06/2003 to 06/2001. An enquiry U/s 7A was initiated to confirm the coverage

and also to assess the dues from 06/2001 to 05/2003. The only contention taken by the appellant was that the employees are appointed on a year to year basis and they are not willing to be enrolled to provident fund. Since both the above contentions are not sustainable, the respondent issued an order preponing coverage to 06/2001 and also assessing the dues for the said period.

4. When the matter was taken up for hearing the learned Counsel for the respondent submitted that the appeal is barred by limitation. The impugned order is dt.11.07.2012 and the appeal is filed only on 17.01.2013.

5. As per Rule 7(2) of EPF Appellate Tribunal (procedure) Rules 1997 which is still applicable for filing of appeals under Section 7(I) of EPF & MP Act, 1952, any person aggrieved by an order passed under the Act, may prefer an appeal to the Tribunal within 60 days from the date of issue of order provided that the Tribunal may if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the prescribed period, extend the said period by a further period of 60 days. As per the above provision, appeal from an order issued under the provisions of the Act need to be filed within 120 days. There is no power to condone delay beyond 120 days under the provisions of the Act.

6. The Hon'ble High Court of Kerala considered the issue in **Dr.A.V.Joseph Vs APFC**, 2009 (122) FLR184. The Court observed that

“maximum period of filing appeal is only 120 days from the date of impugned order. When the statute confers the power on the authority to condone the delay only to a limited extent, it can never be widened by any court contrary to the intention of the law makers”.

The Hon’ble High Court of Delhi in **APFC Vs Employees Appellate Tribunal**, 2006 (108) FLR 35 held that in view of the specific provisions under Rule 7(2) the Tribunal cannot condone the delay beyond 120 days. As a general proposition of law whether the Courts can condone the delay beyond the statutory limit provided under a special Act was considered by Hon’ble Supreme Court in **Commissioner of Customs & Central Excise Vs Hongo India Pvt Ltd**, (2009) 5 SCC 791 and held that whenever a statutory provision is made to file an appeal within a particular period the Court shall not condone the delay beyond the statutory limit applying Limitation Act. In **Oil & Natural Gas Corporation Ltd Vs Gujarat Energy Transmission Corporation**, (2017)5 SCC 42 the Hon’ble Supreme Court held that “the Act is a special legislation within the meaning of Section 29(2) of the Limitation Act and therefore, the prescription with regard to the limitation has to be the binding effect and same has to be followed, regard being had to its mandatory nature. To put it in a different way, the prescription of limitation in a case of present nature, when the statute commands that this Court may condone the further delay not beyond 60 days, it would come within the

ambit and sweep of the provision and policy of legislation. Therefore it is uncondonable and cannot condone taking recourse to Article 142 of the constitution". The Hon'ble High Court of Patna considered the implication of the limitation U/s 7(I) of the EPF & MP Act read with Rule 7(2) of Employees Provident Fund Appellate Tribunal Procedure Rule, 1997 in **Bihar State Industrial Development Corporation Vs EPFO**, (2017) 3 LLJ 174. In this case, the Employees Provident Fund Appellate Tribunal, New Delhi rejected an appeal from an order issued by Regional Provident Fund Commissioner, Bhagalpur on the ground of limitation. The Hon'ble High Court after examining various authorities and provisions of law held that,

"Para 15. Thus in view of the fact that the limitation is prescribed by specific Rule and condonation has also to be considered within the purview of the Rule alone and the provision of Limitation Act cannot be imported into the Act and Rules. This Court is of the view that the Tribunal did not had the powers to condone the delay beyond the period of 120 days as stipulated in Rule 7(2) of the Rules. "

The Hon'ble High Court of Kerala also examined the issue whether the EPF Appellate Tribunal can condone the delay beyond 120 days in **Kerala State Defence Service Co-operative Housing Society Vs Assistant P.F.Commissioner**, 2015 LLR 246 and held that the employer is precluded from approaching the

Tribunal after 120 days and Section 5 of Limitation Act, 1963 is not applicable to proceedings before the Tribunal. In **M/s.Port Shramik Co-operative Enterprise Ltd Vs EPFO**, 2018 LLR 334 (Cal.HC), the Hon'ble High Court of Calcutta held that the limitation provided under Rule 7(2) of the Appellate Tribunal(Procedure) Rules, 1997 cannot be relaxed. In **EPFO represented by Assistant P.F. Commissioner Vs K. Nasiruddin Biri Merchant Pvt Ltd**, 2016 LLR 367(Pat.HC), the assessment of dues U/s 7A of the Act to the tune of Rs.3,36,30,036/- was under challenge. EPF Appellate Tribunal condoned the delay in filing the appeal and set aside the order. The Hon'ble High Court of Patna set aside the order of the Tribunal holding that the Tribunal has no power to condone delay beyond 120 days.

7. Even going by merits in this appeal, it is seen that the appellant has not disputed that the employment strength reached 20 in 06/2001. Hence there is absolutely no error illegality in the finding of the respondent authority that the appellant establishment is coverable under the provisions of the Act w.e.f. 01.06.2001. The other contention taken by the appellant that the employees are not willing to be enrolled to provident fund also merits no legal scrutiny as the appellant or its employees have no choice regarding the enrolment under the provisions of the Act. If the appellant establishment is coverable, all the employees eligible to be covered are required to be covered

under the provisions of the Act. Another contention raised by the appellant is with regard to the wages taken for the purpose of assessment. It is seen that no such contention was taken before the respondent authority. The appellant also failed to produce any documents in this appeal to substantiate their claim regarding the wages on which the assessment is made.

Hence the appeal is not maintainable as barred by limitation. The appeal also fails on merits for the reasons stated above.

Hence the appeal is dismissed.

Sd/-

(V. Vijaya Kumar)
Presiding Officer