



सत्यमेव जयते

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

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

(Tuesday the 19th day of October, 2021)

APPEAL No.677/2019
(Old No.675(7)2012)

Appellant : M/s.Malabar Gold Palace (P) Ltd
Ram Mohan Road
Kozhikode - 673004

By M/s.Menon & Pai

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

By Adv.(Dr.)Abraham P. Meachinkara

This case coming up for final hearing on 13.04.2021 and this Tribunal-cum-Labour Court on 19.10.2021 passed the following:

ORDER

Present appeal is filed from order no.KR/KK/17543/ENF-1(2)/2012/1258 dt.25.06.2012 assessing dues U/s 7A of the EPF & MP Act, 1952 (hereinafter referred to as 'the Act') in respect of trainees from 06/2007 to 07/2011. The total dues assessed is Rs.14,39,560/-.

2. The appellant is a private limited company registered under the Companies Act, 1956. The company is engaged in the sale of jewellery and allied products. The appellant enrolled all the eligible employees except trainees and was regular in compliance. The appellant after commencement of business prepared draft Standing Orders and forward the same to the certifying officer under the Industrial Employment Standing Orders Act, for certification. Accordingly the Standing Orders was certified and a copy of the Certified Standing Orders is produced and marked as Annexure A1. The respondent authority initiated an enquiry U/s 7A of the Act alleging non payment of contributions in respect of the trainees engaged by the appellant. A true copy of the notice is produced and marked as Annexure A2. The appellant appeared before the respondent authority and explained that the trainees are covered under the Standing Orders and therefore are excluded from enrollment to provident fund. The trainees have no obligation to join the appellant on regular basis or the trainees have no right to claim employment with the appellant establishment. It was also pointed out to the respondent that the trainees were paid only stipend. The appellant filed a detailed written statement before the respondent authority. A copy of the same is produced and marked as Annexure A3. The appellant is engaged in the sale of jewellery and allied products. Hence the employees are required to undergo some kind

of training before they are taken into regular service. Hence training is imparted in making, handling, purchase, billing, cash handling and dealing with customers. Before a person is taken on the rolls of the establishment, it is essential that the management has trust and confidence in the employee before entrusting expensive and delicate products. The Enforcement Officer who conducted inspection of the appellant establishment was clear that the persons who are not enrolled to the fund were actually trainees. As per the definition of employee U/s 2(f) of the Act, a trainee or apprentice engaged by an establishment under Standing Orders is excluded from making contributions. An apprentice is defined in Clause 2(g) as “ An apprentice is a learner who is paid an allowance during the period of training “. The Hon'ble Supreme Court of India in **Central Arecanut and Coco Marketing and Processing Company Ltd Vs RPFC, Mangalore**, 2006 (2) SCC 381 clarified that the trainees engaged under the Standing Orders or Model Standing Orders are excluded from enrollment to provident fund. The above decision is squarely applicable to the appellant establishment. The respondent ought not have questioned the authority of certification of Standing Orders. Engagement of trainees in terms of Standing Orders is purely a prerogative of the management. Trainees can be taken into regular engagement even after two months if they are found to be competent during the training. The question regarding the eligibility of the

trainees to be enrolled to the fund ought to have been decided under Para 26B of EPF Scheme. The stipulated period of training is one year. However the appellant offered employment to a large number of trainees and immediately enrolled them to provident fund membership.

3. The respondent filed counter denying the above allegations. The appellant is an establishment covered under the provisions of the Act. Large number of persons are employed in the appellant establishment as trainees on stipend. The Enforcement Officer who inspected the appellant establishment reported that the so called trainees are doing the same work as that of the regular employees and the appellant establishment is registered under Shops and Commercial Establishment Act, 1960. The respondent therefore summoned the appellant U/s 7A of the Act. A representative of the appellant attended the hearing. According to him the appellant establishment is registered under Central Sales Tax (Registration and Turnover) Rules, 1957 as a unit engaged in whole sale and retail business in gold and silver ornaments. Hence the appellant establishment comes within the schedule head of trading and commercial establishment. The respondent authority also found that the engagement of trainees is not under the Standing Orders of the appellant establishment but are engaged only to ensure the suitability for appointment. If the intention is to impart training, the trainees cannot be

regularised within a short period after the training. The engagement of the trainees are not governed by any Certified Standing Orders and they are not appointed under the Apprentices Act, 1961 also. The Standing Orders does not contain anything regarding the service conditions of trainees except that they will be paid allowance/stipend. The appellant is appointing persons as trainees only to ascertain their suitability to absorb in the regular services and not with an intention to imparting any training as claimed. The appointment orders would clearly show that the persons are appointed as employees and not as trainees. The appointment order of Sri.Anish Kumar who is appointed as trainee from 30.05.2008 would clearly indicate in para 8 of the appointment order that he will be provided a monthly stipend of Rs.5000/- during training and after satisfactory completion of training he will be entitled to salary and other benefits of regular staff. The stipend statement furnished by the Director on 31.03.2009 would show that the stipend of Sri.Anish Kumar is only Rs.4500/-. Sri.Saran M.K was appointed as a trainee w.e.f. 17.11.2009 on a stipend of Rs.3250/- and uniform allowance of Rs.300/-. The stipend is seen paid at that rate upto 03/2010. From 04/2010 onwards his stipend is increased to Rs.3500/- i.e. the stipend is increasing after completion of 4 months of service. Sri.K.K. Moideen Koya was appointed as General Manager on a stipend of Rs.10,000/- w.e.f. 01.05.2008. His stipend was increased to

Rs.12000/- w.e.f. 01.05.2009 and Rs.14500/- from 01.04.2010. Sri.Kammukutty was appointed on a stipend of Rs.7750/- w.e.f. 05.01.2004. His stipend is increased to Rs.8500/- w.e.f. 01.05.2009 and Rs.9000/- from 01.04.2010. From the above examples it is clear that the persons who are appointed as trainees are kept as trainees and their stipend went on increasing from year to year. Hence it is clear that the appellant establishment is appointing persons as trainees only to flout the provisions of the Act and Schemes thereunder. The Standing Orders do not have any legal validity as the appellant establishment falls under Shops and Commercial establishment which is not a notified activity under the Industrial Employment Standing Orders Act. It is proved by evidence beyond any shadow of doubt that all the trainees are regular employees and they are eligible and required to be enrolled to provident fund membership. The decision of Hon'ble Supreme Court in **Central Arecanut and Coco Marketing and Processing Company Ltd** (Supra) is not applicable to the present case as the establishment in that case was covered by Industrial Employment Standing Orders Act.

4. The main issue involved in this appeal is whether the persons appointed under the Certified Standing Orders of the appellant establishment are required to be enrolled to provident fund from their date of eligibility. The appellant establishment at relevant point of time was engaging 93

employees who were extended the benefit of provident fund membership. 58 persons who were working in the appellant establishment at the relevant point of time were not extend the benefit of provident fund on the ground that they are trainees appointed under the Certified Standing Orders of the appellant establishment. The Enforcement Officer who conducted inspection of the appellant establishment furnished the details of 43 trainees along with details of payments made to them for the period from 01/2004 to 01/2009. The respondent initiated an enquiry U/s 7A of the Act to assess the dues in respect of trainees, if they are eligible to be enrolled. A representative of the appellant attended the hearing and pointed out that the trainees need not be enrolled to the fund as they are appointed under the Certified Standing Orders of the appellant establishment. The respondent authority examined the Certified Standing Orders, the reports of the Enforcement Officer, the copies of appointment orders of some trainees and probationers and the certificate issued to the trainees on completion of training. The appellant has taken a specific stand that the trainees are appointed on stipend under the Certified Standing Orders and therefore they are excluded employees as per the provisions of the Act. According to the learned Counsel for the appellant these persons are required to be trained in the field of analysing purity of ornaments, repair of ornaments, billing etc., since they are handling very

sensitive and expensive ornaments and jewellers. The learned Counsel also submitted that all the trainees are in the first instance trained in their institute called Malabar Institute of Management. It was also pointed out that the dictum laid down by the Hon'ble Supreme Court in **Central Arecanut and Coco Marketing and Processing Company Ltd** (Supra) is squarely applicable to the appellant in this case. The respondent authority in this case did not ignore the Certified Standing Orders of the appellant establishment though he was of the view that the Industrial Employment Standing Orders Act is not applicable to the appellant establishment. After examining all the submissions and documents produced by the appellant and the report furnished on behalf of the respondent, the respondent authority came to the conclusion that the so called trainees are employees engaged in the work of establishment and therefore are liable to be enrolled to provident fund.

5. According to the learned Counsel for the appellant, the appellant establishment is having a Certified Standing Orders and trainees are engaged as per the provisions of the said Standing Orders. According to the learned Counsel for the respondent, the appellant is misusing the provisions under the Certified Standing Orders to engage maximum number of persons as trainees instead of regular employees to claim the benefit of exclusion. The learned Counsel for appellant relied on the decision of the Hon'ble Supreme Court in

RPFC, Mangalore Vs Central Arecanut and Coco Marketing and Processing Company Ltd, Mangalore, 2006 2 SCC 381 to argue that the trainees are only learners who are paid stipend during the training period and they cannot be considered as employees under the provisions of the Act. According to the learned Counsel for the respondent, the dictum laid down in the above case is not applicable to the present case as the Hon'ble Supreme Court was considering the case as an industrial establishment as defined under the Industrial Employment (Standing Orders) Act and also was considering whether the Model Standing Orders will be applicable when the Standing Orders of the industrial establishment is not certified by the competent authority. That was a specific case where the establishment used to take 40 trainees every year after following a procedure and they were given exclusive training and not allowed to work as regular employees of the establishment. In the present case the appellant is engaging trainees who worked as regular employees and they were paid stipend almost equal to the wages paid to the regular employees. It is seen that the appellant establishment is engaging number of trainees. The respondent also found that all these trainees are extended ESI coverage and there is no uniformity in the stipend paid to the employees who are appointed on the same day and worked for equal number of days. The respondent also found that the so called trainees and the regular employees are doing the same

and similar kind of work and therefore the trainees can be treated as employees for the purpose of membership under the Act. In **Rajasthan Prem Kishan Goods Transport Co. Ltd Vs RPFC**, 1996 9 SCC 454 the Hon'ble Supreme Court held that the Regional Provident Fund Commissioner is authorised to pierce the veil and read between the lines within the outwardliness of the two apparents. The Hon'ble High Court of Madras in **MRF Ltd Vs Presiding Officer, EPF Appellate Tribunal**, 2012 LLR 126 (Mad.HC) held that " the authority constituted under the 7A of EPF & MP Act has got power to go behind the terms of appointment and find out whether they were really engaged as apprentices. The authority U/s 7A can go behind the term of appointment and come to a conclusion whether the workman are really workmen or apprentices. Merely because the petitioner had labelled them as apprentices and produces the orders of appointment that will not take away the jurisdiction of the authority from piercing the veil and see the true nature of such appointment ". The Hon'ble High Court of Madras in the above case also held that though the apprentices appointed under the Apprentices Act or Standing Orders are excluded from the purview of the Act they cannot be construed as apprentices, if the major part of the workforce comprised of apprentices. In this case as already pointed out, the appellant establishment is engaging 93 regular employees and 58 trainees. In **Ramnarayan Mills Ltd Vs**

EPF Appellate Tribunal, 2013 LLR 849 (Mad.DB) the Division Bench of the Hon'ble High Court of Madras held that if the apprentices are engaged for doing regular work or production, they will come within the definition of employees U/s 2(f) of the Act. In another case, the Division Bench of the Hon'ble High Court of Madras in **NEPC Textile Ltd Vs APFC**, 2007 LLR 535 (Mad) held that the person though engaged as apprentice but required to do the work of regular employees is to be treated as the employee of the mill. In this case the respondent authority has concluded that the so called trainees were actually doing the work of regular employees and hence they cannot claim exclusion U/s 2(f) of the Act.

6. In this particular case and in view of the dictums laid down by various Courts discussed above, it is required to be examine whether the so called trainees engaged by the appellant are actually trainees or they are named as trainees only to seek the exclusion of social security benefits. According to the learned Counsel for the appellant, the trainees are appointed under the Certified Standing Orders and therefore they are excluded from the provisions of provident fund benefits. As per Sec 2(f), the trainee engaged by an establishment is also an employee except those trainees who are engaged under the Apprentices Act or under the Standing Orders of the establishment. As rightly pointed out by the learned Counsel for the respondent, the only

reference in the Certified Standing Orders with regard to trainees is “ An apprentice/trainee is a learner who is paid an allowance/stipend during the period of his training ”. There is no further service conditions or training scheme or training schedule available as far as these trainees under the Certified Standing Orders are concerned. Hence if the appellant claim that some stipend is paid to the employees he will have to be treated as a trainee under the Standing Orders. It will be too harsh an interpretation to classify a major class of employees in this category to exclude social security benefits to them. As already pointed out, the appellant is engaging 93 employees and 58 trainees who were not extended the benefit of provident fund membership. The learned Counsel for the respondent has taken this Tribunal elaborately through the appointment order of the trainees to explain the strategy adopted by the appellant establishment while engaging trainees. Though the appellant claims that the trainees have no right to employment, even if they satisfactorily completed the training, Clause 3 of the appointment order of trainees would clearly show that there would be an initial training for one year and on successful completion of training period they will be posted as probationers for a minimum period of 12 months and on satisfactory completion of probation they will be absorbed in regular service. Hence it is very clear that on completion of training and probation they will be taken into regular service of

appellant establishment. The impugned order also discussed elaborately few appointment orders as trainees and how the so called stipend paid to the trainees are increased substantially from year to year. This will also show that the so called trainees are retained for years together as trainees and they were paid stipend which is equivalent to wages and substantial increase is also given annually. There are cases of HR Executives appointed on a stipend of Rs.9000/- per month, Assistant Marketing Manager appointed on a payment of Rs.12500/- and Assistant Company Secretary on payment of Rs.15000/- per month in the list. It is also seen that General Managers are appointed as trainees and the payment made to them are also being classified as stipend. There is a specific case of Sri.Kammukutty who was appointed as a trainee on a stipend of Rs.7750/- in January 2004. He continued to be a trainee on a stipend of Rs.9000/- even in 2010. It is also pointed out by the respondent authority in the impugned order that the drivers and smiths are also appointed as trainees and are retained for years together as trainees before absorbing them into regular service and extending them social security benefits. Hence at the best the so called training imparted by the appellant establishment to these trainees can be treated as a pre-induction training to assess the suitability of the employees before regularisation. The Division Bench of the Hon'ble High Court of Madras in **Bharat Sanchar Nigam Ltd Vs Secretary to Govt., Ministry of**

Labour and Employment, 2015 LLR 893 (Mad.DB) held that for the purpose of coverage of employees under provident fund the service/pre-induction training is to be counted because the qualifying service cannot be excluded by not counting the period of training followed by a regular appointment. The appellant herein is trying to use a benevolent legislation like Industrial Employment Standing Orders Act, which is meant to protect the employees, to get exemption from payment of provident fund contribution to the detriment of very same employees. If that is allowed, the object and the legislative intention of the Standing Orders Act will be defeated.

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

Hence the appeal is dismissed.

Sd/-

(V. Vijaya Kumar)
Presiding Officer