



सत्यमेव जयते

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

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

(Tuesday the 27<sup>th</sup> day of April, 2021)

**APPEAL No.678/2019**

(Old no.480(7)2012)

Appellant : M/s.Prasad Hotels Pvt Ltd  
Door No.11/726, P.M.G. Jn.  
Trivandrum – 695033

By Adv.K.V.Hemaraj

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

By Adv.Nita N. S.

This case coming up for admission on 04.03.2021 and the this Tribunal-cum-Labour Court on 27.04.2021 passed the following:

**ORDER**

Present appeal is filed from order no.KR/12244/ENF-1(4)/2012/155 d.04.04.2012 assessing dues U/s 7A of EPF & MP Act, 1952 (hereinafter referred to as 'the Act') on evaded wages for the period from 05/2010 to 06/2011 and against 20 non enrolled employees from 03/2011 to 06/2011. The total dues assessed is Rs.2,48,011/-.

2. The appellant is a company registered under the Companies Act and engaged in restaurant and hotel business. The appellant is covered under the Act from 01.03.1989. The company has in its rolls both employees as well as trainees. The regular employees of the company are paid consolidated pay. The appellant is also engaged in 20 persons as apprentice trainees who joined for professional training in various activities associated with hotel business. They are not paid salary but were paid allowances which is permissible in law. The said apprentice trainees are engaged without any guarantee of absorption into the service of the appellant establishment. An Enforcement Officer of the respondent inspected the appellant establishment. He was provided with all the records. After inspection he reported that 20 apprentice trainees are to be enrolled to the fund from 03/2011. It was also reported that the appellant will have to remit provident fund contribution on minimum wages as notified under Minimum Wages Act in respect of regular employees from 05/2010 to 06/2011. Since the appellant objected to the inspection observations of the Enforcement Officer, the respondent summoned the appellant U/s 7A of the Act. The appellant appeared before the respondent authority and produced the salary register and balance sheet dt.31.03.2011, cash book and ledger for the relevant period. The appellant contended before the respondent authority that the 20 persons engaged by the appellant cannot be treated as employees as they are

engaged as trainees. A separate trainee allowance register is maintained and the same was also produced before the respondent authority. Even if they are treated as employees their contribution ought to have been determined on the actual payment made and not on assumed wages as per Minimum Wages Act. The respondent authority failed to accept the wage register produced before him as the register does not contain the signature of the Labour Officer. Therefore the respondent presumed that the wage register is maintained and produced only for provident fund inspection. No material evidence is produced in the enquiry to disbelieve the wage register and other records and documents produced before the respondent authority. A mere perusal of the documents produced before the respondent authority ought to have confirmed that there was no discrepancy in the salary register. The appellant is liable to pay contribution only on the basic wages as defined U/s 2(b) of the Act. In **APFC Vs M/s G4S Security Services India Ltd**, CWP no.15443/2009 the Hon'ble High Court of Punjab and Haryana examined the question of payment of contribution on minimum wages. The respondent authority in an enquiry U/s 7A should have confined to the assessment of dues as per Sec 6 of the Act. The respondent authority while determining the contribution have gone beyond the jurisdiction.

3. The respondent filed counter denying the above allegations. The appellant establishment is covered under the provisions of the Act. The Enforcement Officer appointed U/s 13 of the Act, inspected the appellant establishment and reported non enrollment of 20 employees to EPF from 03/2011 and evasion of provident fund dues w.e.f. 05/2010 to 06/2011. The Enforcement Officer submitted the list of 20 non enrolled employees with their name, date of joining and monthly salary duly signed and attested by the appellant. The Enforcement Officer further reported that the appellant was not paying provident fund on minimum wages and the wages register produced before him does not contain the signature of Labour Officer and accordingly it was apprehended that the wages register produced was maintained only for provident fund inspection and hence the wages shown in the register is not the actual wages paid by the appellant. An enquiry U/s 7A of the Act was initiated and the appellant was summoned to appear before the respondent authority with relevant documents. A representative of the appellant attended the hearing. The Enforcement Officer has produced the list of 20 non enrolled employees with their name, date of joining and salary signed and attested by the appellant under his office seal. The dues have been determined on the basis of the records produced before the respondent authority. With regard to the non payment of contribution on minimum wages,

the register of wages produced for the relevant period clearly shows that no minimum wages is paid to its employees. The appellant establishment is a bar hotel in the city centre of Trivandrum and Minimum Wages Act is applicable to the establishment. From the register produced by the appellant it is seen that out of 31 employees 21 employees are drawing a monthly salary of Rs.2000/- per head. The salary structure appears to be very low and unbelievable. No basic wages or DA component is seen in the wage register. The said register is not seen or verified by the Labour Officer. The Enforcement Officer reported that the salary is divided into components such as basic, basic arrears, HRA, HRA arrears, conveyance, other allowance, other allowance arrears, medical allowance, performance allowance, performance allowance arrears etc. There is no DA reflected in the salary statement. The payroll statement of the establishment shows that the salary is split into various allowances. The wage register is devised for the purpose of evading provident fund contribution.

4. There are two issues involved in this appeal. The first issue is with regard to non enrollment of 20 persons engaged by the appellant establishment and assessment of their dues. The second issue is with regard to non remittance

of provident fund contribution notified under the Minimum Wages Act in respect of 31 regular employees of the appellant establishment.

5. With regard to the first issue, the contention of the appellant is that they are trainees and the payment made to them is only allowances and no wages are being paid to these trainees. According to the learned Counsel for the respondent, the definition of 'employee' as per Sec 2(f) of the Act treats apprentices also as employee, the specific exclusion being the apprentices engaged under the Apprentices Act, 1961 or under the standing orders of the establishment. The Hon'ble High Court of Kerala in **Indo American Hospital Vs APFC**, W.P.(C) no.16329/2012 vide its judgment dt.13.07.2017 in Para 7 held that

“ It is to be noted that an apprentice would come within the meaning of an employee unless he falls within the meaning of apprentice as referred under the Apprentices Act, 1961 or under the standing order of the establishment. If the trainees are apprentices and they can be treated as apprentices under the Apprentices Act or under the standing orders of the establishment, certainly, they could have been excluded but, nothing was placed before the authority to show that they could be treated as apprentices within the meaning of

Apprentices Act or under the standing orders of the establishment.

Therefore, I do not find any scope for interfering with the impugned order “.

Going by the observation of the Hon'ble High Court as reproduced above, the appellant herein also failed to substantiate their claim that the trainees are apprentices engaged under the certified standing orders of the appellant establishment. The appellant ought to have produced the training scheme, the duration of training, the scope of training and also the evidence to show that they are appointed as apprentices under the standing orders, before the authority U/s 7A of the Act. This is particularly relevant in the facts of the case as the appellant establishment is engaging almost 1/4<sup>th</sup> of the total employment strength as trainees. As held by the Hon'ble High Court of Delhi in **Saraswathi Construction Co Vs CBT**, 2010 LLR 684 it is the responsibility of the employer being the custodian of records to disprove the claim of the department before the 7A authority. The same view was taken in **C. Engineering Works Vs RPFC**, 1986(1) LLN 242 wherein the Hon'ble High Court held that the documents to prove the employment strength is available with the establishment to discredit the report of the Enforcement Officer and if the employer fails to produce the documents, the authority U/s 7A can take an

adverse inference. A similar view was taken by the Hon'ble Delhi High Court in **H.C Narula Vs RPFC**, 2003 (2) LLJ 1131.

6. The Hon'ble High Court of Kerala in **Sivagiri Sree Narayana Medical Mission Hospital Vs RPFC**, 2018 (4) KLT 352 anticipated the risk of allowing establishments and industries to engage apprentices on the basis of standing orders. Considering the possibility of misuse of the provisions the Hon'ble High Court 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 all whether it is a case of masquerading of training or apprentice or whether it is one in substance one of trainee and apprentice as envisage in the situation mentioned herein above and has dealt within the aforesaid judgment referred to hereinabove “ .

As already pointed out, it was upto the appellant to produce the documents to discredit the report of the Enforcement Officers that the trainees are not engaged in the regular work and also that they are only paid stipend and not



wages as reported by the squad of Enforcement Officers. The appellant also should have produced the training scheme/schedule and also the duration of training which will clearly indicate whether the trainees are engaged as regular employees. 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 **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 employee 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 particular 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.

7. The Hon'ble High Court of Kerala in a recent decision dt.04.02.2021 in **Malabar Medical College Hospital & Research Centre Vs RPFC**, O.P. no.2/2021 considered the above issues in detail. In this case also the issue involved was whether the trainees engaged by a hospital can be treated as employees U/s 2(f) of the Act. After considering all the relevant provisions the Hon'ble High Court held that

“ Para 8. A bare perusal of the above definition makes it clear that apprentice engaged under the Apprentices Act, 1961 or under the standing orders of the establishment cannot be termed as 'employee' under EPF Act. It is also clear that in the absence of certified standing orders, model standing orders framed under the Industrial Employment (Standing Orders) Act, 1946 hold the field and the model standing orders also contain the provision for engagement of probationer or trainee. However, the burden for establishing the fact

that the persons stated to be employees by the Provident Fund organisation are infact apprentices, lies on the establishment because that is a fact especially within the knowledge of the establishment which engages such persons ”.

8. Admittedly the appellant has no case that the so called trainees are engaged under Apprentices Act. Further they also did not raise the contention that the trainees are engaged under certified Standing Orders of the appellant establishment. If the trainees were engaged by the appellant were in any of these categories, the appellant ought to have produced the records before the respondent authority to substantiate their claim that they are trainees in any of the above categories. Further it is also seen that the Enforcement Officer who conducted the inspection of the appellant establishment got a list of these employees with their date of joining, the payments received under their signature which was also attested under the seal and signature of the competent person of the appellant establishment. In such a scenario the appellant cannot turn around and now argue that the non enrolled persons are trainees and therefore they are not required to be enrolled to provident fund.

9. The second issue raised by the appellant is with regard to provident fund contribution on minimum wages notified under the Minimum Wages Act. The case of the respondent is that the wages reflected in the salary register

produced before the Enforcement Officer and also in the enquiry is manipulated and is only for the purpose of provident fund inspection. According to the learned Counsel for the respondent, the wages reflected in the wage register is so low that it is not acceptable as the same is not anywhere near the minimum wages notified under the Minimum Wages Act in the city. The contention of the appellant is that an authority U/s 7A of the Act is not the competent person to decide or adjudicate the minimum wages payable by the appellant establishment and he cannot arrogate to himself the powers of the authority under Minimum Wages Act while assessing the dues of provident fund U/s 7A of the Act. According to the learned Counsel for the respondent, the salary structure as per the payroll statement carries within it various components such as basic, basic arrears, HRA, HRA arrears, conveyance, other allowance, medical allowance, performance allowance etc. In the wages register produced during 7A enquiry, only the basic wages is shown. All other allowances are excluded from the register thereby showing a very low wages being paid to the employees. If that be the case the documents such as balance sheet, Profit & Loss account, cash book and ledger ought to have exposed these anomalies very clearly. The appellant being a company registered under the Companies Act is required to submit the balance sheet and Profit & Loss account to the Registrar of Companies for scrutiny. The anomalies in the wage

structure ought to have come out in a proper verification of the books of accounts and the balance sheet and Profit & Loss account. The argument of the learned Counsel for the respondent that all the records are manipulated cannot be legally acceptable.

10. One basic question raised in this appeal is whether an authority U/s 7A is competent to look into the wages structure of the appellant establishment and also to insist for payment of minimum wages notified under the Minimum Wages Act. Minimum Wages Act is an independent Act which has got its own enforcing authorities. If there is a problem with minimum wages, it is for the competent authority under the Minimum Wages Act to look into the same and take appropriate corrective action. If the respondent is convinced regarding violation of Minimum Wages Act, the respondent authority ought to have taken up the matter with the competent authority under Minimum Wages Act. The respondent authority cannot assume the jurisdiction of the competent authority under Minimum Wages Act. With regard to the wage structure, the Hon'ble Supreme Court in **Airfreight Ltd Vs State of Karnataka**, AIR 1999 SC 2459 held that it is upto the management and the workers to decide the wage structure of that particular establishment. The authority U/s 7A can only look into the question whether the components of the wage structure will come within the definition of basic wages U/s 2(b) of the Act. It is seen that the assessment of

dues on evaded wages is clearly on presumptive wages and not based on any evidence. To that extent it is not possible to accept the finding of the respondent authority that the dues will have to be assessed at least on minimum wages payable in that locality.

11. Considering the facts, circumstances, pleadings and evidence in this appeal, I am not inclined to accept the assessment of provident fund dues on evaded wages.

Hence the appeal is partially allowed, the impugned assessment regarding the non-enrolled employees is upheld. The assessment on evaded wages is disallowed and the matter is remitted back to the respondent to re-assess the dues, if any, after issuing notice to the appellant within a period of 6 months of receipt of this order. If the appellant fails to produce the required documents the respondent may proceed to assess the dues as per law. The pre-deposit made by the appellant as per the direction of the EPF Appellate Tribunal, New Delhi shall be adjusted or refunded after the assessment of dues as directed above.

Sd/-

(V. Vijaya Kumar)  
Presiding Officer