सत्यमेव जयते

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

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

(Tuesday the 20th day of April, 2021)

APPEAL No.744/2019
(Old No.606(7)2012)

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 13.04.2021 and this Tribunal-cum-Labour Court on 20.04.2021 passed the following:

O R D E R

Present appeal is filed from order no.KR/KK/28039/ENF-2(3)/2012-13/278 dt.24.04.2012 assessing dues U/s 7A of EPF & MP Act, 1952 (hereinafter referred to as 'the Act') for the period from 06/2003 to 02/2012. The total dues assessed is Rs.27,28,610/-.

2. The appellant is a minority educational institution. Though the school is recognised by Govt, it is not receiving any aid from the Govt. The appellant establishment is covered under the provisions of the Act w.e.f. 04.06.2003. The respondent initiated action for assessing the dues U/s 7A for the period from 06/2003 to 02/2012. The authorised representative of the appellant establishment submitted a written statement dt.09.04.2012 before the respondent authority. A copy of the same is produced and marked as Annexure P1. In the written statement it was pointed out that the staff appointed by the appellant used to give in writing that they are not interested in joining PF. So the contributions were added to the salary and paid to the staff as consolidated amount. Those letters were produced before the respondent authority at the time of hearing. Most of the teachers were either temporary or guest teachers and many of them did not continue for long spells. The appellant is not aware of the whereabouts of the teachers employed in 2002 and 2003. The respondent initiated action in the year 2011 by covering the establishment from 2003. Hence the action by the respondent is vitiated by limitation. The Enforcement Officer who conducted the inspection of the appellant establishment has computed contribution on gross salary. The Enforcement Officer has considered the excluded allowances such as HRA while calculating the contribution.

3. The respondent filed counter denying the above allegations. The appellant defaulted in remittance of contribution from the date of coverage. The respondent therefore initiated action for assessing the dues for the period from 06/2003 to 02/2012. A representative of the appellant attended the hearing and stated that the employees are not willing to join PF and they have given in writing to the appellant that they are not willing to join PF. The appellant also pleaded that the school is situated in a remote area and is run on the nominal fees collected from the students. The appellant also pleaded that many of the teachers who worked in 2001, 2002 and 2003 had already left and their whereabouts are not known. None of the defence taken by the appellant is relevant as the provisions of the Act will come into operation the moment the conditions as per Sec 1(3) of the Act is satisfied. In **Provident Fund Inspector Vs Ram Kumar**, 1983 LAB IC 717 (P & H) the Hon'ble High Court of Punjab and Haryana held that the Act comes into operation by its own force and vigour and its operation is not depended on any decision being taken by the authority under the Act. The employers are under legal obligation to deposit their shares of contribution to the Fund within the time prescribed, the moment the Act and Scheme becomes applicable to them as no intimation or notice or any kind in that respect were necessary to be issued by authorities. There is no limitation provided under the Act for initiating action U/s 7A of the Act. The provisional

assessment given by the Enforcement Officer vide his report dt.08.03.2012 is strictly within the provisions of the Act and the computation of dues was also done according to the provisions of the Act. The splitting up of wages followed by the appellant was with a view to avoid compliance with the provisions of the Act.

4. When the appeal was taken up for hearing the learned Counsel for the appellant submitted that the appellant establishment is covered from 2003 however the coverage was later preponed to 2001. However it is seen that the assessment as per the impugned order is made for the period from 06/2003 only. The only valid contention raised by the learned Counsel for the appellant is that the respondent authority failed to take into consideration the Annexure P1 representation filed before him at the time of the enquiry. Though the other grounds pleaded by the Annexure P1 is not relevant and legally correct, at para 11 of the representation, the appellant raised an issue regarding the wages on which the assessment is made. According to the learned Counsel for the appellant, the assessment is made on the gross salary and even the excluded allowance such as HRA was taken into account for assessing the dues. On a perusal of the impugned order, it is seen that the order is totally silent on the splitting up of wages raised by the appellant during the course of 7A enquiry. In the counter affidavit filed by the respondent also it was stated that the assessment is made on the basis of the provisions of the Act and the splitting up

of wages was adopted with a view to avoid compliance with the provisions of the Act. However both the impugned order as well as the counter affidavit filed by the respondent are completely silent on the nature of splitting up of wages done by the appellant. The learned Counsel for the respondent pointed out that in para (d) of the appeal, the appellant himself submitted that the salary is given to the staff as a consolidated amount and therefore the pleading of the appellant that the HRA is also included for assessment is only an afterthought.

5. The one issue that is required to be looked into is whether the wages paid to the employees is a consolidated amount as claimed in the memorandum of appeal or whether the wages includes allowances such as HRA which are excluded U/s 2(b) of the Act. Hence the matter is remitted back to the respondent to examine this limited question and pass the final orders assessing the dues. All other issues raised in this appeal has no relevance and is not legally sustainable.

6. Considering the facts, circumstances and pleadings in this appeal, I am inclined to set aside the impugned order and remit the case back to the respondent to decide the limited question of wages on which provident fund dues are assessed. It is pointed out that the dues pertains to the period from 2003 and there is an urgent requirement to re-calculate the dues at the earliest possible.

Hence the appal is allowed, the impugned order is set-aside and the respondent is directed to re-assess the dues on the basis of the observations made above within a period of 3 months after issuing notice to the appellant. If the appellant fails to produce the records required for the assessment of dues, the respondent may take an adverse inference and assess the dues accordingly.

Sd/-

(V. Vijaya Kumar)
Presiding Officer