



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 October, 2020)

APPEAL No.80/2019

(Old No.75(7)2014)

Appellant : M/s.Kancor Ingredients Ltd
No.VII/138, Kanakkankadavu Road
Angamaly South
Ernakulam - 683573

By Adv. Benny P. Thomas

Respondent : The Regional PF Commissioner
EPFO, Sub Regional Office
Kochi - 682017

By Adv.Thomas Mathew Nellimoottil

This case coming up for final hearing on 25.02.2020 and this Tribunal-cum-Labour Court on 20.10.2020 passed the following:

ORDER

Present appeal is filed from order no.KR/KCH/13367/ENF-3(7)/2012/10399 dt.7.10.2013 assessing dues U/s 7A of the EPF & MP Act (hereinafter referred to as 'the Act') in respect of 91 head load workers for the period from 01/1998 to 12/1999. The total dues assessed is Rs.8,77,214/-.

2. The appellant is a public limited company incorporated under the Companies Act, 1956. The appellant is covered under the provisions of the Act. The appellant in the past was engaging head load workers in and around the area where the factory is situated. These workers belong to various unions who are entrusted with the loading and unloading work at a particular locality and are not employees of the appellant. Head load workers are engaged by all establishments in the area. These head load workers were engaged by the previous owner M/s.Bombay Oil Industries(BOI). These workers were not covered under BOI Provident Fund Trust. The respondent herein directed the appellant to enroll the head load workers to Provident Fund vide its order dt.16.04.1999 and also directed the appellant to remit the contribution for the period from 01/1992 to 10/1996. The said order was challenged before the EPF Appellate Tribunal, New Delhi. The EPF Appellate Tribunal dismissed the appeal whereas the issue regarding waiver of employees' share was left open and the matter was remitted back to the respondent. The appellant filed W.P.(C)no.29712/2004 before the Hon'ble High Court of Kerala and the Hon'ble High Court vide its judgment dt.14.11.2011 disposed of the writ petition waiving the employees' contribution for the period from 01/1992 to 10/1996. The revision petition and the writ appeal filed by the respondents were dismissed by the Hon'ble High Court. The appellant thereafter paid the

employer's share of contribution. The respondent summoned the appellant vide notice dt.29.06.2012 to determine the provident fund dues in respect of the head load workers for the period from 01/1998 to 12/1999. Despite the objections filed by the appellant the respondent issued the impugned order assessing the dues for the period from 01/1998 to 12/1999. The impugned order has been issued with an undue and unreasonable delay of 15 years and hence is barred by limitation. The respondent erred in finding that the head load workers in question are employees engaged directly in connection with the manufacturing activities. The workers mentioned above are not regular workers of the appellant. The appellant has no effective control, administrative or disciplinary over the head load workers. There is no employer-employee relationship between the appellant and the head load workers. The Hon'ble High Court of Kerala vide judgment dt. 14.11.2011 has waived the employees' contribution with for the period from 01/1992 to 10/1996 in view of the Ministry of Labour Circular no.ST/11025(25)/87-SS-II dt.06.10.1989. Therefore the appellant is not liable to pay the employees' share of contribution.

3. The respondent filed counter denying the allegations in the appeal memorandum. The appellant establishment is covered under the provisions of the Act. Originally this unit was a branch unit of M/s.Bombay Oil Industries which was covered under the Maharashtra region and was an exempted

establishment. The unit at Angamaly was taken over by the appellant w.e.f. 01.04.1991 through an agreement dt.21.03.1991 and for administrative convenience a separate code number was allotted to the appellant w.e.f. 01.04.1991 and they were complying under the Act as an un-exempted establishment. 91 casual head load workers employed by the appellant establishment were enrolled to EPF Scheme w.e.f. 10/1992. The provident fund liability of those employees from 10/1992 to 12/1997 was finalised through proceedings dt.16.04.1999 U/s 7A of the Act read with para 26B of the Scheme. The appellant filed appeal no.7(39)1999 before the EPF Appellate Tribunal and remitted 50% of the dues as pre-deposit. The appeal was finally disposed of vide order dt.08.12.1999 upholding the enrollment of head load workers under the Act and remanded the case to the respondent to re-assess the dues after considering the question of waiver of employees' share of contribution. On the basis of the order, a notice was issued to the appellant dt.01.09.2004 directing the appellant to appear before the respondent on 14.09.2004. The enquiry was also initiated for the purpose of assessing dues for subsequent period from 01/1998 to 02/2004. The appellant challenged the order of the EPF Appellate Tribunal in W.P.(C) 29712/2004. Hence the enquiry initiated by the respondent as per Exbt.R2 notice was kept in abeyance. The Hon'ble High Court vide Annexure A4 judgment dt.14.11.2011

disposed of the writ petition with a direction that the employees' share of contribution upto the date of notice for the period from 10/1992 to 09/1996 shall be waived. The appellant enrolled all head load workers from 1999 onwards. Since the appellant failed to remit the contribution from 01/1998 to 12/1999 an enquiry was initiated to assess the dues. The representative of the appellant attended the 7A enquiry and filed statutory returns in Form 6A and Form 3A in respect of the head load workers for the assessment period admitting the liability. Accordingly the impugned orders were issued on the basis of the statutory returns filed by the appellant before the respondent during the course of 7A. After fully admitting the statutory liability for the period from 01/1998 to 12/1999 by submitting statutory monthly returns in terms of para 35 and 42 of EPF Scheme the appellant is estopped from disputing the assessment at a later stage. The direction issued by the Hon'ble High Court of Kerala for waiver of employees' share of contribution relying on Ministry of Labour Circular dt.06.10.1989 was the period from 01/1992 to 10/1996 only out of assessment period upto 12/1997. The appellant is liable to remit both shares of contribution from 11/1996 and there is no question of waiver of employees' share of contribution for the subsequent period. The present appeal is frivolous and vexatious litigation and a dialatory tatic

adopted by the appellant to delay the extension of benefits of provident fund to the head load workers.

4. It is seen that the dispute whether the 91 head load workers working in connection with the appellant establishment are employees of the appellant establishment under the provisions of the Act was raised in an earlier proceedings before the respondent and the respondent vide Exbt.R1 proceedings dt.16.04.1999 decided that these head load workers will come within the definition of employee U/s 2(f) of the Act. As per Annexure R1,

" Undoubtedly, the employees as explained in Para 5.4 being the employees engaged in connection with the manufacturing activity is covered by the definition of Sec 2(f). Thus all these workers engaged in the establishment are required to be made members of the Fund under Para 26 of the Scheme and as such I hold that the following 91 casual workers as per Annexure appended are required to be enrolled as members w.e.f. the date of eligibility ".

This order of the respondent was challenged before the EPF Appellate Tribunal in ATA.7(39)1999 and the Tribunal vide its order dt.08.12.99 dismissed the plea of the appellant that the head load workers are not employees holding that " In view of the above, the plea of the appellant that head load workers cannot be treated to be the employees of the appellant and cannot be forced

to deposit provident fund contribution also cannot be upheld". However the EPF Appellate Tribunal in its order held that " The appeal on the point of coverability of head load workers is dismissed. It is allowed on the point of quantification of provident fund dues. The case is remanded back for re-computation after considering the question of waiver of employees' share for pre-discovery period and other allied issues". This order of EPF Appellate Tribunal was challenged by the appellant before the Hon'ble High Court of Kerala in W.P.(C) no.29712/2004. The only issue considered by the Hon'ble High Court was whether the employees' share of contribution can be waived as directed by the EPF Appellate Tribunal. While disposing of the appeal vide its order dt.14.11.2011 the Hon'ble High Court held that " In view of such affidavit I dispose of the writ petition with a direction that employees' share of contribution upto the date of notice, i.e. 27.09.1996 shall be waived. The Commissioner shall re-adjudicated and proceed to collect and raise further demand, if any, in accordance with law ". The respondent filed a review application since they felt that the date of notice referred by the Hon'ble High Court is not in accordance with the Ministry of Labour Circular dt.06.10.1989. The review application came to be dismissed and the writ appeal no.428/2013 filed from the order also came to be dismissed by the Division Bench of the Hon'ble High Court of Kerala.

5. From the above facts it is clear that the dispute regarding the eligibility of the 91 head load workers to be enrolled to provident fund is impliedly settled and the only dispute regarding the waiver of employees' share for pre-discovery period was also resolved by the Hon'ble High Court vide its judgment dt.14.11.2011. According to the learned Counsel for the respondent all these 91 head load workers are enrolled to provident fund w.e.f. 10/1992 to 12/1997. The appellant establishment started enrolling the employees from 1999 and therefore there is a gap between 01/1998 and 12/1999 where the contribution is not paid by the appellant. The respondent therefore initiated action for assessing dues for the said period. During the enquiry the appellant itself filed the statutory returns showing the wages and contribution in Form 6A and 3A and it is seen that the impugned order is issued on the basis of the statutory returns filed by the appellant.

6. Hence it is clear from the above discussion that the issue regarding the question whether the 91 head load workers are employees as per the provisions of Sec 2(f) has already been resolved by the earlier proceedings which has become final. Further the quantification of dues is done on the basis of the statutory returns filed by the appellant before the respondent and hence there cannot be any dispute regarding the same. Further I failed to understand when the appellant establishment has already covered the

employees from 10/1992 to 12/1997 and again from 1999 how they can dispute the extension of benefits for the in between period from 01/1998 to 12/1999. The final plea of the appellant that the employees' share of contribution may be waived for the subsequent period also cannot be accepted as the concession is available only for the pre-discovery period and cannot be extended for subsequent periods.

7. Considering all 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