



सत्यमेव जयते

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

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

(Monday the 2<sup>nd</sup> day of August, 2021)

**APPEAL No.239/2018**

Appellant : Sri.Vellappally Natesan  
General Secretary  
SNDP Yogam, P.B. No.512  
Kollam - 691001

By Adv.B. Mohan Lal

Respondents : 1. The Assistant PF Commissioner  
EPFO, Regional Office  
Parameswar Nagar  
Kollam - 691001  
2. The Recovery Officer  
EPFO, Regional Office  
Parameswar Nagar  
Kollam - 691001

By Adv.Pirappancode V.S.Sudheer &  
Megha A.

This case coming up for final hearing on 20.04.2021 and this Tribunal-cum-Labour Court on 02.08.2021 passed the following:

**ORDER**

Present appeal is filed from order no.KR/KLM/16512/ENF-4/2017/1107  
dt.01.06.2017 assessing dues U/s 7A of EPF & MP Act, 1952 (hereinafter

referred to as 'the Act') against non enrolled employees and also the difference in wages. The total dues assessed is Rs.5,01,970/-.

2. The appellant establishment is covered under the provisions of the Act. The appellant was regular in compliance and was regular in filing statutory returns. The second respondent visited the appellant on 11.08.2016, verified the records and registers and submitted an inspection report for the period 12/2013 to 12/2016 alleging that the appellant failed to enroll 6 eligible employees to the fund from the date of their joining and failed to remit contribution on higher wages for the period from 09/2014 to 12/2016. A copy of the inspection report dt.06.01.2017 was served on the appellant. The 1<sup>st</sup> respondent initiated an action U/s 7A of the Act. The enquiry was fixed on 18.04.2017. The notice was acknowledged and a representative of the appellant attended the hearing on 18.04.2017 and filed objections resisting the contentions in the notice. The enquiry was adjourned to 27.04.2017, the second respondent was also directed to appear on the said date. The enquiry was further adjourned to 04.05.2017. The representative of the appellant attended the hearing and requested some more time for production of documents. However the first respondent without giving any further opportunity and an opportunity to cross examine the 2<sup>nd</sup> respondent, issued the impugned order. The appellant filed a review U/s 7B of the Act contenting that the assessment

order is vitiated by mistake and error apparent on the fact of the record. The impugned order was issued based on the report of the 2<sup>nd</sup> respondent without any proof of documents to establish the case against the appellant. The allegation that the appellant failed to enroll the 2 lady sweepers to the Scheme is incorrect. They were engaged as part time sweepers only for one month in 2017. If they were engaged from the previous date, their names should have been reflected in the salary register took by the 2<sup>nd</sup> respondent. As regards the 3 male employees, they were senior citizens and they were excluded from the Scheme under Para 2(f) of EPF Scheme, since they were drawing salary over and above the statutory limit of Rs.15,000/-. The appellant is remitting contribution in respect of all eligible employees and there is no default in remittance of contribution. The respondent without giving an opportunity to the appellant to cross examine the 2<sup>nd</sup> respondent on the basis of the alleged report and to verify the genuineness and veracity of the alleged report, passed the impugned order. The 1<sup>st</sup> respondent ought to have verified the returns and the payments already made by the appellant before initiating an enquiry U/s 7A of the Act. The 1<sup>st</sup> respondent resorted to assessing the dues in respect of temporary employees without deciding their eligibility under Para 26B of EPF Scheme. The 1<sup>st</sup> respondent without considering the valid contentions, made an adverse inference against the appellant that the representative of the appellant

admitted the liability as per inspection report part 2 issued by the second respondent.

3. The respondent filed counter denying the above allegations. Remittance of provident fund contribution is one among the duties of the employer under the Act. The appellant establishment failed to comply with that statutory requirement. An Enforcement Officer of the respondent who is notified inspector U/s 13 of the Act inspected the records and registers maintained by the appellant establishment on 11.08.2016 and submitted his inspection report for the period from 12/2013 to 12/2016. He also submitted copies of salary bill for the month of 12/2015 and 07/2016. As per the inspection report, the appellant establishment failed to remit contribution in respect of 6 employees. It was also reported that the appellant failed to remit contribution on higher wages for the period from 09/2014 to 12/2016. The Enforcement Officer served a copy of the inspection report dt.06.01.2017 to the appellant establishment. The inspection report is produced and marked as Exbt. R1 and a copy of the inspection part 2 report is produced and marked as Exbt R2. Since the appellant establishment failed to comply, an enquiry U/s 7A of the Act was initiated vide notice dt.15.02.2017. In response to the notice, appellant forwarded a letter dt.08.03.2017 stating that they required one month time to file the reply. Copy of the said letter is produced and marked as Exbt.R3.

Subsequently summons was issued to the appellant fixing the date of enquiry as 18.04.2017. The appellant was also directed to produce the records. On 18.04.2017 an authorised representative attended the hearing and filed a representation stating that the proposed assessment is vitiated by actual facts and errors. He also submitted that the Enforcement Officer submitted his report on the basis of hearsay. It was also stated that they engaged Smt.Mallika and Smt.Sarada as part time sweepers only from 01.01.2017 and the other 3 employees are excluded employees as they were drawing salary beyond Rs.15,000/-. With regard to the difference in wages, the appellant submitted that they are remitting provident fund contribution in respect of all employees on full salary paid to them. The enquiry was adjourned to 27.01.2017. The appellant also informed the respondent authority that the books of account for the period 2014-15 are under the custody of Inspector of Police, VACB, SRT in connection with Vigilance Case no.5/2016. Copy of the said representation dt.18.04.2017 is produced and marked as Exbt.R4. For administrative reasons the enquiry was adjourned to 04.05.2017. On 04.05.2017 the authorised representative of the appellant attended the hearing. He accepted the dues assessed by the Enforcement Officer. It was also seen that the records produced by the representative tally with the dues reported by the Enforcement Officer. The authorised representative also requested some more

time. Since the liability and the quantum of dues is admitted by the appellant no further adjournment was given. A copy of the daily proceedings sheet dt.04.05.2017 which is also signed by the authorised representative is produced and marked as Exbt. R5. Accordingly the impugned order came to be issued. The appellant thereafter filed a review application U/s 7B on the ground that the letter dt.18.04.2017 (Exbt.R4) submitted by the appellant was not considered by the respondent authority. A notice was issued to the Enforcement Officer to file his comments on the review application filed by the appellant. The Enforcement Officer filed his reply stating that the assessment of dues was made on the basis of the records and registers provided by the appellant. It was also stated in the reply that as per the salary statement for the month of 12/2015 and 07/2016, it is evident that the employees were not enrolled and the salary taken for calculation of dues are based on original records. Further in the reply, the Enforcement Officer clarified that the appellant remitted provident fund dues for part of the wages and in the original register they have furnished the wages only for provident fund enrolled employees. The actual salary is disbursed through salary sheets. On the basis of the salary sheet obtained from the establishment the dues were calculated and submitted in the report. The copies of the salary bill for the month 12/2015 and 07/2016 is produced and marked as Exbt.R6 and R7. These are documents

attested by the authorised signatory under the seal of the appellant establishment. The respondent thereafter issued a letter dt.27.06.2018, Exbt.A1(6) informing that in order to consider the review petition U/s 7B, it is necessary to submit new evidence supporting the contents. The appellant failed to submit any new evidence or establish any error apparent on the face of the record to consider the review application U/s 7B of the Act.

4. An Enforcement Officer of the respondent inspected the appellant establishment and found that the appellant establishment failed to enroll 6 employees to PF, who were otherwise eligible to be enrolled. A copy of the report of the Enforcement Officer was also provided to the appellant. The appellant sought some time to file his objections. Since the appellant failed to comply, the 1<sup>st</sup> respondent initiated an enquiry U/s 7A of the Act. A representative of the appellant attended the hearing and filed objections regarding the report of the Enforcement Officer based on which the enquiry was initiated. Since the appellant raised serious objections regarding the report of the Enforcement Officer, the Enforcement Officer was also summoned in the enquiry on 27.04.2017. Subsequently the enquiry on 27.04.2017 is adjourned to 04.05.2017 for some administrative reasons. On 04.05.2017 the representative of the appellant admitted the PF liability as reported by the Enforcement Officer in inspection report part 2. However the representative of

the appellant sought some more time to produce further records. Since the appellant admitted the liability, the 1<sup>st</sup> respondent accepted the same and issued the impugned order. The appellant establishment thereafter filed a review application U/s 7B of the Act. The 1<sup>st</sup> respondent called for the comments from the Enforcement Officer who submitted the report. The Enforcement Officer clarified with documentary evidence that her report was based on the records and documents provided by the appellant. In view of the above statement the 1<sup>st</sup> respondent informed the appellant that to consider the review application he will have to produce additional documents or records which were not produced at the time of the Sec 7A enquiry or prima facie establish that there is an error apparent on the face of the record. The appellant failed to comply with the above requirements and therefore the 1<sup>st</sup> respondent did not consider the review application.

5. The issues involved in the appeal are;

- (1) That 6 eligible employees were not enrolled to PF from their due date of eligibility and
- (2) The appellant establishment failed to remit contribution on the higher salary with effect from 01.09.2014 after the upward division of the salary limit from Rs.6500 to 15000/-.



According to the learned Counsel for the appellant, two part time sweepers Smt.Mallika and Smt.Sarada were appointed only from 01.01.2017 and therefore the appellant has no liability to remit the contribution to those employees w.e.f. 01.11.2011. On a perusal of the salary bill for 12/2015 and 07/2016 issued under the seal and signature of the authorised signatory, it is seen that name of the two sweepers are reflected therein. Hence the contention of the appellant that the sweepers are appointed only for one month cannot be accepted. Further as per records the salary of the other 4 employees as on 01.09.2014 i.e. when the statutory limit of wages is enhanced from Rs.6500 to 15000/- was as follows. Sri.Madhusoodhanan was drawing a salary of Rs.10,415/-, C.P.Sudharsanan was drawing salary of Rs.12,500/-, R.Varadharajan was drawing salary of Rs.9000/- and Sri.Baiju was drawing salary of Rs.7000/- as on 01.09.2014 and therefore they are all eligible to be enrolled to PF. The contention of the appellant that these employees are excluded employees in view of the fact that they were drawing more than Rs.15,000/- as on 01.09.2014 is not supported by the evidence available on record. With regard to the second issue regarding difference in wages the appellant has not raised any serious contentions. As already pointed out the salary limit for remitting provident fund contribution is enhanced from Rs.6500 to 15000/- in 09/2014. The case of the appellant is that they were remitting contribution on

full wages. However from the available records it is seen that the contribution was restricted to the statutory limit of Rs.6500/- and the appellant failed to remit contribution on higher wages from 09/2014. The only serious contention raised by the appellant is that they were not given an opportunity to cross examine the 2<sup>nd</sup> respondent. The 2<sup>nd</sup> respondent in the appeal is the Recovery Officer and the Recovery Officer has no involvement in the assessment process. The appellant probably desired to cross examine the Enforcement Officer who inspected the appellant establishment. The Enforcement Officer was also summoned in the enquiry by the 1<sup>st</sup> respondent. Since the authorized representative of the appellant admitted the liability as per the inspection report of the Enforcement Officer, the 1<sup>st</sup> respondent felt that there was no need to cross examine the Enforcement Officer. Further it is seen that the available records and documents will substantiate the case of the respondent.

6. Considering the facts, circumstances, pleadings and evidence in this appeal, I am not inclined to interfere with the impugned order.

Hence the appeal is dismissed.

Sd/-  
(V. Vijaya Kumar)  
Presiding Officer