

**BEFORE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM
LABOUR COURT, DELHI**

Appeal no. D-1/18/2024

M/s. JSR Enterprises (Appellant)

Vs.

APFC/RPFC, Delhi East (Respondent no. 1)

Sh. Kapil Arora (Respondent no. 2).

Through:-

Sh. Manish Malhotra, Ld. counsel for the appellant.

Sh. S.N. Mahanta, Ld. Counsel for respondent no. 1.

Sh. Kapil Arora, respondent no. 2 in person.

Order Dated:- 10.10.2025

A very short question involve herein in the present appeal is whether the appellant is still liable to pay the provident fund dues of an employee with whom the settlement took place outside the court, wherein the complainant agreed to accept a lump sum amount of Rs. 7,50,000/- in lieu of full and final settlement of his claim, including PF liability.

The appellant has assailed the impugned order passed by the respondent under section 7-A of the **Employees' Provident Funds & Misc. Provisions Act, 1952** (Hereinafter referred as 'the Act'), whereby an amount of Rs. 1,72,220/- has been assessed/determined by the respondent. The appellant stated that the Ld. APFC overlooked the fact that the appellant, in its submissions dated 10.01.2023 and 03.02.2023, had demanded a copy of the complaint filed by respondent no. 2, which was made on the basis of inspection and quantification of PF contribution. However, the above demand of the appellant remained unaddressed. The appellant, on 03.02.2023, submitted an application referring to the show cause notice dated 04.01.2023, seeking recall of the said notice by RPFC-II as the above show cause notice matter fell within his purview on account on non-functioning of the APFC. It is submitted that despite the fact that a full and final settlement had already been arrived, the Ld. APFC initiated the enquiry and concluded

the same without considering the fact that the full and final settlement amount already included the PF liability.

The respondent herein filed a reply denying all allegations, claims, demand contained in the instant appeal filed by the appellant except to the extent specifically admitted. It submitted that 'the Act' is a legislation for providing social security to employees working in any scheduled industry or a class of establishments engaging 20 or more persons on any day. It further submitted that the present appeal is a burning example of abuse of process of law, filed wholly on false and frivolous grounds only to delay the matter. It is stated that the appellant has not approached this Tribunal with clean hands and has suppressed material facts. The appellant has also distorted the facts to gain sympathy from this Tribunal. The relief claimed by the appellant cannot be granted as the equity and good conscience are not in the appellant's favour.

On merits, the respondent submits that on the basis of a complaint received from respondent no. 2 (Sh. Kapil Arora) regarding non-extension of PF benefits by the establishment, an Enforcement Officer (EO) was deputed to examine the facts in regard to the complaint against the appellant (a covered establishment bearing EPF code no. DS/SHD/12315. As per the EO's report, the establishment failed to pay the PF & allied dues to respondent no. 2, for which Enforcement Officer quantified tentative dues of Rs. 1,72,220/-. A show cause notice was issued to the appellant, reminder show cause notices were also issued regarding non-remittance of PF dues & establishment was directed to deposit the said dues, but the establishment did not comply the same. Accordingly, a 7A enquiry was initiated, reasonable opportunities were given to the appellant to appear and represent its case.

The complainant Sh. Kapil Arora (respondent no.2), in his complaint dated 13.11.2022, stated that the appellant's establishment had not deposited the PF contribution on the amount of Rs. 7,50,000/- given by the establishment as per *Samjhota* (settlement) dated 03.02.2021. A sum of Rs. 1,72,220/- was quantified as dues by the then

Enforcement Officer by taking the wages Rs. 6,500/- and Rs. 15,000/- as the case maybe, in accordance with the prescribed EPF wage limits.

It is submitted the Labour Court awarded reinstatement with full back wages and other consequential benefits. Subsequently, the order of Labour Court was challenged by the appellant (M/s. JSR Enterprises) before the Hon'ble High Court, which held that the management M/s. JSR Enterprises failed to make out a case and directed the management to pay wages as awarded by the Labour Court during the pendency of the writ petition. Subsequently, the appellant settled the matter with Sh. Kapil Arora (respondent no. 2) and proposed to pay him Rs. 7,50,000/- to the Sh. Kapil Arora which was duly accepted by him. The full and final settlement didn't include PF, ESI and other statutory benefits, and therefore, the Assessing Officer has rightly passed the impugned order. Accordingly, the appeal is liable to be dismissed.

I have heard the arguments advanced by both parties, and gone through the impugned order under challenge. Section 1 of the Act states that the provisions of the Act apply to every establishment which is a factory engaged in any industry specified in schedule I, and in which twenty or more persons are employed. Further, section 2(b) of the Act defines 'basic wages' as under:

2(b). Basic wages" means all emoluments which are earned by an employee while on duty or on leave or on holidays with wages in either case in accordance with the terms of the contract of employment and which are paid or payable in cash to him, but does not include—

(i) The cash value of any food concession;

(ii) any dearness allowance (that is to say, all cash payments by whatever name called paid to an employee on account of a rise in the cost of living), house-rent allowance, overtime allowance, bonus, commission or any other similar allowance payable to the employee in respect of his employment or of work done in such employment;

(iii) Any presents made by the employer.

Section 6 of the Act makes it mandatory for an employer to contribute to the Provident Fund account of an employee. The same reads as under:

6. The contributions which shall be paid by the employer to the fund shall be ten (or twelve) percent of the basic wages, dearness allowance and retaining allowance (if any) for the time being payable to each of the employees (whether employed by him directly or by or through a contractor). The employee's contribution shall be equal to the contribution payable by the employer in respect of him.

'Basic wages' as defined in section 2(b) of the Act specifically mentions all emoluments earned by an employee while on duty. In the present case, certain facts are admitted:

- (i) Workman was in the service of the management till 2006.
- (ii) He was terminated on 31.03.2006.
- (iii) Award was passed on 11.11.2013 by the Ld. Presiding Officer, Labour Court, Karkadooma.
- (iv) In 2014, appellant preferred the writ petition in the Hon'ble High Court.
- (v) Hon'ble High Court has passed the order dated 16.11.2015 under section 17B of the ID Act.
- (vi) In between the settlement had been arrived wherein appellant was agreed to pay Rs. 7,50,000/- as full and final settlement including the PF liability to the complainant Sh. Kapil Arora.
- (vii) Writ Petition was withdrawn by the respondent vide order dated 31.08.2022 in pursuance of the settlement arrived.
- (viii) Thereafter, complainant one Sh. Kapil Arora has lodged the complaint with the respondent authority against the management for non-extension of the PF dues. Management had assessed the amount of Rs. 1, 72,220/- as PF contribution.

It is further admitted that respondent no. 1 made the assessment for the period **2013 to 2018**. The complaint by respondent no. 2 was filed before the Ld. RPFC after the settlement, alleging non-payment of the Provident Fund for the period **2013 to 2018**. However, respondent no. 2 (Sh. Kapil Arora) was terminated in 2006, and his termination was held to be illegal in 2013 by the Labour Court. Therefore, If the amount paid by the appellant in lieu of the

settlement is to be assessed for provident fund contributions, the period should start from 2006, not from 2013 to 2018.

The Ld. Counsel for the appellant has relied upon the judgment of Hon'ble High Court of Gujarat in **Swastik Textile Engineers Pvt. Ltd. vs. Virjibhai Rathod and Ors.** (Special Civil Applicaion no. 4336 of 1999), **MANU/GJ/7528/2007**, decided on 28.09.2007, and the judgment of Hon'ble High Court of Bombay in **Automotive and Allied Industries Pvt. Ltd. vs. RPFC and Ors.**, Appeal no. 103 of 1992 in W.P. no. 403 of 1986, where it was held that back wages for a period of employment was not the same as payment of wages for the duty performed or for the period deemed to have been spent on duty.

The Ld. Counsel for the appellant has further drawn the attention of this Tribunal to the page no. 181 and 184 of the appeal. In clause 1 of the *Samjhota Gyapan*, respondent no. 2 agreed to accept a full and final settlement for Rs. 7,50,000/- in lieu of back wages, Provident Fund, gratuity, retrenchment compensation and award. Page 183 and 184 of appeal describe the mode of payments received by respondent no. 2 on different occasions though cash and cheque. These facts have not been disputed by any of the parties.

For countering this submission, respondent no. 2 (Sh. Kapil Arora) contended that the management (appellant herein) had assured him to pay the provident fund dues separately, and he signed on the *Samjhota Gyapan* believing this assurance. However, the plea of the respondent is not tenable because it is the maxim of law that no oral evidence can be entertained over the written documents. A person may make a false statement, but the documents cannot. If this claim is allowed, it will open a Pandora box where any party can state that they signed the agreement full aware, only to tell a different story later.

The facts of the present case are also different altogether upon the judgment cited by the appellant. In those cases, nothing had been mentioned regarding the settlement agreement that included the PF liability, whereas in the present case, the *Samjhota Gyapan* specifically mentions that the total settlement amount included the PF liability also.

The Ld. RPFC has chosen an unusual path by assessing an amount of Rs. 1,72,220/- , after segregating the lump-sum settlement of Rs. 7,50,000/ into different components from 2013 to 2018, despite the fact that services of respondent no. 2 were terminated illegally in 2006. If respondent-1 were to calculate any dues, the assessment period should have been from 2006 onwards. The Ld. RPFC failed to do so and adopted a mechanical approach.

Section 25F of the Industrial Disputes Act, 1947 lays down the conditions precedent to retrenchment, including one month's notice or wages in lieu thereof and payment of retrenchment compensation equivalent to 15 days' average pay for every completed year of service. In the absence of one month notice or notice pay or retrenchment compensation equivalent to 15 days salary of each completed year, implies that the termination was illegal, and a court can directed reinstatement with full back wages and continuity of services. The settlement amount paid by the appellant in this case was not only towards back wages but also included Provident Fund, gratuity and other consequential benefits too. Therefore, the plea of respondent no. 1 that the appellant was bound to pay the statutory contributions on the alleged back wages which were not actually earned by respondent no. 2 is not tenable. Parties are free to settle matters, including the statutory liabilities outside the court. Malafide of the respondent no. 2 has also been reflected because he filed a complaint before the respondent no. 1 despite entering into a settlement for non-deposit of the statutory dues.

The Statute cannot force an employer to pay the contribution of an employee, particularly when the employee is agreed to accept a consolidated amount from the employer in lieu of compensation/back wages, gratuity, PF and other consequential benefits.

In view of the above discussion, I find that the order of respondent no. 1 is not in the accordance with law. Accordingly, the appeal stands allowed. The order passed by the Ld. RPFC under section 7-A of the Act is hereby set aside and recalled. The record is consigned to the record room.