

**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL -CUM- LABOUR COURT,
ASANSOL**

PRESENT: Justice Ananda Kumar Mukherjee (Retd.),
Presiding Officer,
C.G.I.T-cum-L.C., Asansol

EPFA No. 02 of 2019

Life Insurance Corporation of India, Asansol Appellant
Vs.	
Assistant Provident Fund Commissioner, Durgapur Respondent

O R D E R

Dated: 4th May, 2023

Representatives:

For the Appellant :	Mr. Ashis Mukherjee, learned advocate.
For the Respondent :	Mrs. Mousumi Ganguli, learned advocate.

1. Instant appeal has been preferred by the appellant under Section 7-I of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (herein after referred to as EPF Act) against order no. RO/DGP/WB/ENF/1047715/7-A Order/2773 dated 31.07.2018 under section 7-A and order No. RO/DGP/WB/ENF/1047715/7-B/4708 date 31.01.2019 under Section 7-B of the EPF Act passed by Mr. A. K. Singh, Assistant Provident Fund Commissioner, Durgapur for non-payment of Provident Fund contribution for the period from March, 2014 to December 2015 in respect of their ninety-five (95) daily wagers working at Life Insurance Corporation of India (herein after referred to as LIC), Asansol Divisional Office and its branches.

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2. Fact of the case giving rise to this appeal is that since the year 1990 daily wagers have been engaged and are working under LICI, Asansol Division Office and its branches under a Labour Contractor Firm, namely 'Chatterjee and Ghosal Enterprises'. In the year 2011 a notification was issued by LICI for recruitment of those daily wagers as Peon on condition that they must have worked for a minimum period of five years and payment must be received directly in the name of such person. By way of such recruitment fifty-four (54) daily wagers were absorbed and the persons working under contractor firm could not be recruited, which lead to agitation. In course of time the Management of LICI decided to extend Provident Fund benefits to the daily wagers and Employees' Provident Fund Account was opened with Employees' Provident Fund Organization, Durgapur and Provident Fund deductions were made at the Divisional office from March, 2015. The Provident Fund amount so deducted from wages could not be remitted to Employees' Provident Fund Organization due to non-availability of matching contribution from the Employer and the amount so deducted was kept in other receipt account. On 18.08.2015 the Regional Manager (OS) in his mail informed LICI that no decision had been taken at the corporate level to deduct Provident Fund of daily wagers. The deduction of Provident Fund from the pay of daily wagers was stopped and the amount which had been deducted was returned to individual wage workers through NEFT. An appeal was preferred before Employees' Provident Fund Organization to cancel the registration, vide letter dated 01.12.2015. The daily wagers in the mean time lodged a complaint before the State Labour Minister on 31.01.2015. The Minister consequently referred the matter to CPFC by letter dated 04.12.2015. On 27.12.2017 a Notification was received by LICI, Asansol Division from Secretary (OS) Eastern Region whereby LICI was exempted from the EPF Act and the same was submitted before the authority on 03.01.2018.

3. According to the Appellant, Financial Services Executives (FSE) were engaged on contractual basis initially for three years and thereafter extended for

a period of two years, subject to satisfaction of their services in Bank assurance and alternative channel. Some of the FSEs moved the Hon'ble High Court of Kerala for the benefit of Employees' Provident Fund and an order was passed by the Hon'ble High Court of Kerala extending the benefit of Provident Fund to FSEs since December, 2007.

4. On 31.07.2018 the Assistant Provident Fund Commissioner, Regional Office, Durgapur by passing the impugned order directed LIC, Asansol Division to deposit the month wise Provident Fund contribution for the daily wage workers under LIC, Asansol for the period from March, 2014 to December, 2015. The amount so assessed against LIC under Section 7-A of the EPF Act was Rs.47,63,723/- (Rupees forty-seven lakh sixty-three thousand seven hundred and twenty-three only) and further directed to remit the same within fifteen days. A review application was filed under Section 7-B of the EPF Act challenging the order dated 31.07.2018. After considering the material on record the Assistant Provident Fund Commissioner, Durgapur rejected the review application by order dated 31.01.2019.

5. The grounds of appeal canvassed by the appellant are that the Assistant Provident Fund Commissioner, Durgapur failed to consider the material facts that daily wagers are working throughout India under various Divisions of LIC but the provisions of the EPF Act have not been extended to them. LIC, Asansol has no power to follow the direction of Employees' Provident Fund Organization unless the extension of Provident Fund benefits to daily wagers is recognized by the Head office of LIC at Mumbai, Maharashtra. The appellant urged that the order passed under Section 7-B the EPF Act affirming its previous order under Section 7-A of the EPF Act is not sustainable under the prevailing facts and law and the same is liable to be set aside.

6. Responded contested the appeal by filing a reply, contending inter-alia that

a quasi-judicial body cannot be made a party in the appeal unless specific personal allegations were made out against him. According to the respondent the EPF Act relates to providing Provident Fund, Insurance, and Pensionary benefits to employees. It ensures social security to the employees on their retirement and to their family members on the death of the workers. It is urged that on default of remittance of Provident Fund contribution by the Employer, the Provident Fund Authority under Section 7-A of the Act is vested with the jurisdiction to assess the dues against the Employer establishment and recover the same. The appellant establishment was directed to deposit Rs.47,63,723/- on account of their default in remitting Provident Fund dues in respect of ninety-five daily wagers for the period from March, 2014 to December, 2015. It is urged that LICI, Asansol Division registered itself under the EPF Act and was allotted with a Provident Fund Code No. WB/DGP/1047715, Under Section 1 (3) (b) of the EPF Act. The proceeding under Section 7-A of the EPF Act was initiated on the basis of a complaint made by the General Secretary, Life Insurance Corporation of India's Casual Workmen Congress, Asansol Division for non-extension of Provident Fund benefits to all the daily wagers of the division despite deduction of 12% of their wages as contribution towards their Provident Fund Accounts. The respondent authority has determined the dues of the Employer establishment from March, 2014 to December, 2015. Initially LICI, Asansol claimed that it had been exempted by Notification No. 3456 and the establishment was not under the purview of the EPF Act and sought for dropping the proceeding. It is the case of the respondent that in compliance with the order passed by the Hon'ble High Court of Kerala at Ernakulam in W.A. No. 1707 of 2014 arising out of W.P. No. (c) 9608 of 2014, LICI had obtained registration under the EPF Act and deposited contribution in respect of Financial Services Executives who were engaged on contractual basis. Notice was issued on 26.03.2015 by the Manager (OS) that LICI, Asansol Division was going to extend Provident Fund benefits to its daily wagers and wanted to know their

willingness for deduction of 12% towards Provident Fund contribution. However, deduction of Provident Fund from salary of daily wagers were stopped and the amount, already deducted was returned to the daily wagers.

7. It is urged that a proceeding under Section 7-A of the EPF Act was initiated on the basis of a complaint lodged by the daily wagers engaged by LIC, Asansol Division. The Provident Fund Authority found that the daily wagers were not getting the benefit of old age Pension or Contributory Provident Fund. It is asserted that Section 16 of the EPF Act relating to the exclusion of the establishment was not applicable to the daily wagers who were required to be treated as employees of the establishment under Section 2(f) of the EPF Act and were entitled to the benefits of social security under a welfare legislation.

8. The respondent in the reply urged that the order passed under Section 7-A of the EPF Act which is reaffirmed in course of review under Section 7-B of the EPF Act are consistent with the facts and legal position and appeal is liable to be dismissed.

9. I have carefully traversed the Memorandum of Appeal, the reply submitted by the respondent, and the impugned orders under Section 7-A and 7-B of the EPF Act. Mr. Ashis Mukherjee learned advocate for the appellant submitted that the order of assessment under Section 7-A of the EPF Act dated 31.07.2018 and under Section 7-B of the EPF Act rejecting the review application dated 29.08.2018 by order dated 31.01.2019 are liable to be set aside as the Provident Fund Authority by passing such order has extended the benefits of Employees' Provident Fund to the daily wagers engaged at LIC, Asansol Division. It is argued that after regularization of fifty-four daily wagers as Peons under LIC the daily wagers working under the contractor started agitation and the Management took

decision to extend Provident Fund benefit to daily wagers. Employees' Provident Fund code was obtained and the divisional office started deduction towards Provident Fund from the wages of daily wagers since March, 2015. The said amount could not be deposited with the Provident Fund Authority due to want of approval from higher authority. It is the case of the appellant i.e. on 18.08.2015 the Regional Manager (OS) informed LIC, Asansol Division that no decision was taken at corporate level to deduct Employees' Provident Fund of daily wagers. Due to such communication deduction of Provident Fund was stopped and the amount was returned to the individual workers. It was also informed by the way of Notification dated 08.12.2017 that LIC was exempted from the EPF Act. Learned advocate for the appellant fairly submitted that unless the corporate office of LIC, Mumbai, Maharashtra approves, the Divisional Office Asansol is not in a position to extend the benefit of the EPF Act to the daily wagers.

10. In reply learned advocate for the respondent urged that the appellant has to comply the mandatory provisions of law under the EPF Act whereby, the daily wagers who have been identified in course of 7-A proceeding are included under the definition of employee under Section 2(f) of the EPF Act. It is contended that LIC, Asansol Division is not exempted under Section 16 of the EPF Act. Therefore, the daily wagers should be treated as beneficiaries under the EPF Act. Learned advocate for the respondent relied upon Paragraph – 26 of the Employees' Provident Fund Scheme, after notification dated 01.11.1990 which lays down: *“every employee employed in or in connection with the work of a factory or other establishment to which this Scheme applies, other than an excluded employee, shall also be entitled and required to become a member of the fund from the day this paragraph comes into force in such factory or other establishment.”* Learned advocate asserted that since the daily wagers at LIC, Asansol Division are not covered by any other social security scheme or Contributory Provident

Fund or old age Pension in accordance with any scheme or rule framed under the Act they are entitled to be covered by Employees' Provident Fund Scheme and it does not depend upon their length of service, which has been put to rest by amendment of Paragraph – 26 of the Employees' Provident Fund Scheme, 1952.

11. For the purpose of adjudicating the lis involved in this appeal it would be sine qua non to deal with these three issues in particular :

- (i) Whether the daily wage workers are included in the definition of 'employee' under Section 2(f) of the EPF Act ?
- (ii) Whether the daily wagers working at LIC, Asansol Division and its branches are excluded from the purview of Section 16 of the EPF Act ?
- (iii) Are the daily wagers working under LIC, Asansol eligible for the benefit of the EPF Act under Paragraph- 26(1) of Employees' Provident Fund Scheme, 1952 ?

12. On a close examination of order dated 31.07.2018 under Section 7-A of the EPF Act I find that summon was issued to LIC, Asansol on 11.01.2016 for the period from the date of its applicability to 31.12.2015. The proceeding was initiated on 27.01.2016 and the order under Section 7-A was passed on 31.07.2018, which indicates that the proceeding continued for a period of two years and six months. Subsequently, an application for review was filed under Section 7-B of the EPF Act and the same was disposed of on 31.01.2019. It is therefore evident that the respondent authority had considered materials submitted by the representatives of workers as well as the establishment and after considering the reports of the Enforcement Officers as well as law involved arrived at a finding that the LIC, Asansol Division was liable to deposit Rs.47,63,723/- (Rupees forty-seven lakh sixty-three thousand seven hundred

and twenty-three only) towards Provident Fund contribution of ninety-five daily wagers who rendered service to the establishment. I find there is no dispute regarding identification of workers which is one of the essential points for consideration. In course of proceeding Squad Enforcement Officer was directed to verify the wage component of workers and submitted their final deposition. On 16.05.2018 Manager (OS)/D.M. enclosed their statement of wage details for the period from March, 2014 to January, 2015. Representative of Management and Complainant raised no objection against the report of the Enforcement Officer dated 21.02.2018 and 13.06.2018 and the daily wagers also agreed to the wage details submitted by the Management of establishment in respect of the employees. It transpires from the impugned order that the wage details as well as identity of the beneficiaries were beyond dispute nor any dispute has been raised over such issues in the Memorandum of Appeal at this stage.

13. The appellant attempted to demonstrate that temporary workers working for LICl and deputed by the labour contractor firm are not entitled to the Provident Fund benefits. Moreover, the corporate office of LICl, Mumbai, Maharashtra did not approve any deduction of wages of the daily wagers for Provident Fund contribution. On this count there is a clear finding in the impugned order that the daily wagers are not covered under any social security scheme therefore, the establishment cannot claim exclusion of such daily wagers under Section 16 of the EPF Act. On the basis of report of the Squad Enforcement Officer dated 21.02.2018 and 13.06.2018 it was found that the month-wise dues from March, 2014 to December, 2015 were prepared on the basis of wage statement of daily wagers submitted by LICl, Asansol which are attached as Annexure - A and B in four pages. It is gathered from the definition of the term "Employee" defined in Section 2(f) of the EPF Act that :

" Any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an establishment, and who gets his

wages directly or indirectly from the employer, and includes any person :

- (i) employed by or through a contractor in or in connection with the work of the Establishment.*
- (ii) engaged as an apprentice, not being an apprentice engaged under the Apprentices Act, 1961 (52 of 1961), or under the standing orders of the establishment.”*

14. It is evident that the daily wagers employed through a contractor firm and who rendered work, manual or otherwise, in connection with the work of an establishment is necessarily an employee of LIC as defined in the Section 2(f) of the EPF Act. Nothing has come forth to suggest that the establishment has been exempted under Section 16 of the EPF Act. Therefore, I have no hesitation to hold that Section -16 of the EPF Act does not exclude application of the EPF Act to daily wagers working at LIC, Asansol Division. Accordingly, I hold that such findings by the respondent is legal and binding.

15. Other fact of appellant's argument is that the nature of service of daily wagers is temporary due to which the benefit of the Act cannot extend to the daily wagers. Learned advocate for the appellant argued that the EPF Act does not cover casual workers or temporary workers employed through contractor and placed reliance upon a decision in the case of **Sandeep Dwellers Pvt. Ltd. vs Union of India (2007(3) BomCR 898)**. In the cited case, writ petitions were filed by three petitioners which were taken up together as they involved the same issues. Dispute involved was regarding coverage of casual site workers or temporary workers employed through contractor or otherwise. It was claimed that because of peculiar nature of their activity and work, they are required to engage contractors having specialisation in particular area and these contractors in turn engage their own subcontractors and the subcontractors may again engage further petty contractors or labour contractors for doing work at various

stages. According to petitioners the labour force working with each contractor is different and they work for very short period and after finishing one site they move to other site with their contractor. Such casual or temporary or site workers are not employed in their establishment and as such petitioners cannot be forced to cover them under PF Act as their employees. It is pointed out that under earlier paragraph 26 of 1952 scheme an employee who had put in particular length of service alone was required to be treated as covered under the scheme. The petitioner attempted to show that such employees cannot be treated "as employed" with them and therefore are not covered by definition of Employee under Section 2(f) of the EPF Act.

16. In the case of **Sandeep Dwellers Pvt. Ltd. vs Union of India (supra.)** the question of identity of beneficiaries came up for consideration and it was observed that the quantification of amount without identifying beneficiaries or any attempt to recover it is therefore unsustainable. The writ petitions were partially allowed and the Regional Provident Fund Commissioner was directed to hold an inquiry & investigate as per provisions of Section 7-A of the EPF Act within a period of six months from the date of communication.

17. On a close reading of the cited decision, I find that the validity of amendment to Paragraph- 26 was not questioned by the petitioners. The question of constitutionality of the amendment to Paragraph-26 has already been settled by the Hon'ble Apex Court discussed above in the case of **J. P. Tobacco Products etc. vs Union of India [1995 (II)C.L.R. 369]**.

18. In the instant case there is no qualm regarding identification of the beneficiaries, who are ninety-five in number. It has been admitted by the appellant that at some point of time Employees' Provident Fund contribution had been deducted from their wages. Under such circumstances I hold that the

decision relied upon by the appellant is not in perimetria with the facts and circumstances of the present case and therefore the same has no application.

19. In order to answer this question raised by the appellant it would be appropriate to examine the content of Paragraph – 26 (2) of Employees' Provident Funds Scheme, 1952 which lays down:

“After this paragraph comes into force in a factory or other establishment, every employee employed in or in connection with the work or that factory or establishment, other than an excluded employee, who has not become a member already, shall also be entitled and required to become a member of the Fund from the date of joining the factory or establishment. ”

This amendment was introduced by the notification dated 01.11.1990. The minimum period of service rendered by a workman was previously considered under the earlier unamended provision of Paragraph- 26 of the Employees' Provident Fund Scheme, 1952 but the quantifying period of work rendered has been done away with.

20. In this context it is worthwhile to note that the Hon'ble Supreme Court in the case of **J. P. Tobacco Products etc. vs Union of India [1995 (II)C.L.R. 369]**, upheld the validity of amended provision in Paragraph- 26 of the Employees' Provident Funds Scheme. The Provident Fund department thereafter, issued Circular by placing reliance upon the Hon'ble Supreme Court judgement and directed all its officer to take necessary action for implementing the amended paragraph w.e.f. 19.10.1990.

21. In view of the foregoing facts and circumstances and the position of law I have no hesitation to hold that the daily wagers working under LIC, Asansol Division, irrespective of their length of service are entitled to the benefit of the EPF Act. The impugned order passed by the respondent on 31.07.2018 under

Section 7-A of the EPF Act and on 31.01.2019 under Section 7-B are found consistent with the provision of law and facts involved. Accordingly I find no merit in appeal and the same is dismissed. The Appellant is therefore found liable to comply the impugned orders.

22. LIC, Asansol Division is duty bound to comply the mandate of law by extending the benefits of Provident Fund to the daily wagers. For such compliance the matter may be communicated to its Corporate Office.

Hence,

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that the appeal under Section 7-I of the EPF Act is dismissed on context. The appellant is directed to remit the assessed amount towards Provident Fund dues in favour of the daily wagers within one (1) month from the date of communication of this order. Let copy of the Judgment be communicated to the parties under Rule 20 of the Tribunal (Procedure) Rules, 1997.

Sd/-

(ANANDA KUMAR MUKHERJEE)

Presiding Officer,
C.G.I.T.-cum-L.C., Asansol.