

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

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

EPFA No. 02 of 2023
[ATA 344(18) of 2010]

Laxmi Devi Shroff Adarsh Sanskrit College, Deoghar Appellant.
Vs.
**Regional Provident Fund Commissioner, Ranchi and
Four (4) Others** Respondent.

ORDER

Dated: 18.04.2024

Mr. Himanshu Kumar Mehta, Adv. for the Appellant.
Mr. Vidhan Kumar Singh, Adv.
Mr. Rishav Raj, Adv. for the Respondent.
Mrs. Mousumi Ganguli, Adv.

1. The appeal has been preferred under Section 7-I of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the EPF Act) against the impugned order dated 16.08.2007 passed under Section 7-A of the EPF Act and order dated 20.07.2009 under Section 7-B of the EPF Act. The appellant has further prayed for quashing of the Demand Notice dated 12.08.2009 issued by the Assistant Provident Fund Commissioner (Respondent No. 3), whereby the respondent demanded Rs. 10,68,992/- (Rupees

ten lakh sixty-eight thousand nine hundred and ninety-two only) and further prayed for refund of Rs. 6,33,274/- (Rupees six lakh thirty-three thousand twenty-seven hundred and four only) which has been recovered by Respondent No. 1 from appellant institution's Account No. 2381 of Allahabad Bank, Deoghar Branch, Jharkhand. The appellant has also prayed for withdrawal / cancellation of Provident Fund Code No. JH/11276 which has been allotted to the appellant's institution under Section 1 and 16 of the EPF Act.

2. Initially Summons were issued to the appellant institution under Section 8(G) of the EPF Act by the Assistant Provident Fund Commissioner and Recovery Officer (Respondent No. 5). The appellant institution preferred Writ Petition No. 966 of 2009 before the Hon'ble Jharkhand High Court and the order of attachment was quashed by the Hon'ble Court on 20.04.2009, directing the respondent to consider the issue raised by the appellant in the review petition on merit. Respondent No. 3 without considering the issues raised by the appellant related to the irregularities in the application made by the principal of the College, seeking Provident Fund Code from the respondent, passed an order on 20.07.2009. The appellant institution thereafter preferred Writ Petition No. 4125 of 2009 before the Hon'ble Jharkhand High Court which was disposed on 23.04.2010. The appellant institution thereafter filed an I/A for rectification of typographical errors in the order dated 23.04.2010. The Hon'ble Court by order dated 21.05.2010 directed the Tribunal to decide the appeal on merit within a period of four months from the receipt of the application. Accordingly, ATA No. 344(18) of 2010 was preferred. The Learned Appellate Tribunal on 17.08.2011 decided the appeal on merit in absence of the appellant holding that appellant did not file any document to show its staff strength, on the other hand, Provident Fund Authority in the impugned order observed that more than twenty employees were engaged by the appellant and the principal could apply for coverage under Section 1(4) of the EPF Act. Accordingly, order passed by respondent was upheld and the appeal was dismissed.

3. The appellant preferred Writ Petition (C) No. 1121 of 2012 before the Hon'ble Jharkhand High Court, challenging the order dated 17.08.2011 passed by the Learned Appellate Tribunal. The WP(C) No. 1121 of 2012 was allowed by order dated 25.01.2023, whereby the order passed by the Appellate Tribunal, New Delhi on 17.08.2011 was set aside and the matter was remanded back to the learned Appellate Tribunal for passing fresh order in according with law after giving opportunity to the parties to present their respective case. The Hon'ble High Court of Jharkhand further directed the petitioner to appear before the Appellate Tribunal along with the copy of order, writ record as well as a copy of Memorandum of Appeal with annexures on 27.02.2023 with a direction that upon appearance of the parties the Appellate Tribunal shall pass a speaking order as expeditiously as possible and preferably within a period of two months from the date of their appearance.

4. The appellant in compliance with the Hon'ble High Court's order chose to appear before this Central Government Industrial Tribunal -cum- Labour Court (hereinafter referred to as CGIT) at Asansol on 27.02.2023 and filed a copy of order passed by the Hon'ble High Court in Writ Petition along with copy of the Memorandum of Appeal and copy of Writ Record. At the first instance the Employees' Provident Funds Appellate Tribunal, New Delhi (hereinafter referred to as EPFAT) disposed of ATA No. 344(18) of 2010 by order dated 17.08.2011. During pendency of the Writ Petition before the Hon'ble Jharkhand High Court, this Central Government Industrial Tribunal -cum- Labour Court (hereinafter referred to as CGIT-cum-LC) at Asansol has been vested with the jurisdiction to hear the Employees' Provident Fund Appeals arising within the local limits of Deoghar, Jharkhand. In view of the Notification No. 1696(E) dated 26.05.2017 issued by the Government of India, the CGIT-cum-LC at Asansol has been vested with the Appellate jurisdiction. The original records had already been transmitted from EPFAT to CGIT-cum-LC No. 1 at Dhanbad. After repeated

requisition the original record of the appeal was transmitted to this Tribunal on 13.07.2023. Mrs. Mousumi Ganguli, learned advocate authorized by the respondent appeared before this Tribunal. No objection was raised by any of the parties against the jurisdiction of this Tribunal to hear the matter.

5. While remanding the appeal to the Appellate Tribunal, learned Single Judge of the Hon'ble Jharkhand High Court in order dated 25.01.2023 passed in W.P.(C) No. 1121 of 2012 indicated that the (EPFAT) Appellate Tribunal while deciding the case on merit has not considered the main points highlighted by the appellant in the grounds of appeal such as, the application for grant of the EPF Code under Section 1(4) of the EPF Act was not in accordance with the law and it was not binding on the employer, that the principal of the appellant institution had no authority to represent the appellant institution or file any application for grant of EPF Code under Section 1(4) of the EPF Act. The appellant raised the issue that only twelve (12) employees were working in the institution which was far below the number of employees required for mandatory coverage of the Employees' Provident Fund Scheme, 1952 (hereinafter referred to as EPF Scheme). It was the case of the appellant that application filed for grant of EPF Code was not a joint application of the employer and employee, as a result EPF Code issued to the appellant institution is fit to be cancelled and the coverage under the EPF Act was required to be withdrawn. The Hon'ble High Court held that the points raised by the appellant were important issues and in absence of assistance from the petitioner's side they have not been decided by the Appellate Tribunal.

6. Facts of the case leading to this appeal is that on the initiative of Late Shri Hanuman Prasad Shroff, Lakhan Lal Jha and Chanramoleshwar Prasad Singh of Deoghar (Baidyanath Dham), to promote education and advancement of Sanskrit Literature established the appellant institution which was registered in

the year 1979 under the Societies Registration Act 1860. The institution was affiliated to Rashtriya Sanskrit Sansthan, New Delhi to promote the advancement of Sanskrit education and the cost of running the institute was met through private funding and voluntary contribution from the public. In the year 1984, the institution was recognized by the Government of India. It was shortlisted for grant of aid by the Government of India under the scheme for establishment of “Adarsh Sanskrit Mahavidyalaya / Sodhasamasthas”. The affairs of the institution were regulated and managed by Management Committee set up under the order of the Government of India which started bearing 95% of the expenditure of the institution including payment and allowances of the employees of the institution apart from other expenditure involved in running the institution. The management of the College was responsible for managing only 5% of the fund by voluntary contributions by public.

7. In 1993 the Ministry of Human Resources Development, the Government of India revised the scheme which is known as “Scheme For Financial Assistance to Institutions Recognised as Adarsh Sanskrit Mahavidyalaya / Sodha Sansthans” and the same was communicated to the appellant institution on 06.07.1993.

8. The appellant institution received financial grant in aid from the Government of India during the period between 1993 to 2004 and conducted its affairs at the relevant time. The number of teaching and non-teaching staff members of the institution is below nineteen (19) till date. The appellant institution was covered under Contributory Provident Fund scheme and the grant in aid received by the institution was used for Contributory Provident Fund towards share of the employer. The Provident Fund applicable to its staff is still continuing.

9. On 27.01.2004, Mr. Radha Raman Thakur, the Principal of the institution,

who himself was an employee of the College, without seeking any permission from the Central Government or the Managing Committee of the appellant institution unilaterally approached the Regional Provident Fund Commissioner, Ranchi for allotment of Provident Fund Code under Section 1(4) of the EPF Act, without disclosing the true facts. Based upon such misrepresentation of facts a Provident Fund Code was allotted to the appellant institution bearing EPF Code No. JH/11276. When the matter came to the Notice of the Central Government and the Managing Committee, the Principal was directed in letter dated 30.08.2006 to intimate the Assistant Provident Fund Commissioner, Ranchi for cancellation of the EPF Code allotted to the institution as the employees were already covered under Contributory Provident Fund Scheme. The Assistant Provident Fund Commissioner, Ranchi was intimated that in compliance with the direction by the Rastriya Sanskrit Sansthan, New Delhi and in view of the decision of the management of the institution no EPF amount would be remitted on account of the employees of the appellant institution. The respondent did not take any action to withdraw or cancel the EPF coverage even after repeated representations made by the principal of the appellant institution. The Rastriya Sanskrit Sansthan, New Delhi, the nodal agency on behalf of the Central Government issued a letter dated 10.01.2007 to the Respondent No. 1 informing that such scheme had been made applicable without any authority from the employer and the same should be withdrawn.

10. The respondent authority initiated a proceeding under Section 7-A of the EPF Act after issuing Notice dated 02.08.2006 claiming the payment of EPF and allied dues for the period from 09/2004 to 06/2006. After hearing of the representatives of both parties the respondent / Assistant Provident Fund Commissioner, Ranchi directed the appellant to deposit Rs. 9,54,143/- as unpaid EPF dues under Section 7-A of the EPF Act and Rs. 1,14,849/- towards interest under Section 7-Q of the EPF Act for the period from 09/2004 to 04/2007.

11. The appellant filed a petition on 09.10.2007 for review of the order dated 16.08.2007, Respondent passed order dated 20.07.2009 under Section 7-B of the EPF Act, which has been challenged in this appeal.

12. Respondent contested the appeal by filing a written objection before the EPFAT on 01.12.2010. It is stated therein that Laxmi Devi Shroff Adarsh Sanskrit College, Deoghar has been covered under the EPF Act on the basis of application of the employer and employees under Section 1(4) of the EPF Act and a Provident Fund Code No. JH/11276 was allotted w.e.f. 01.01.2004. It is contended that the institution failed to remit their Provident Fund and allied dues up to October 2005 for which the respondent initiated an enquiry under Section 7-A of the EPF Act on 02.08.2006. It was found that the contributions which were deducted from the salary of the employees were deposited in a Savings Bank Account along with employer's share. It is the case of the respondent that deposit in a Savings Bank Account cannot be treated as valid Provident Fund deposit under any scheme. The appellant institution was accordingly treated as a defaulter and was directed to deposit Rs. 9,54,143/- under Section 7-A of the EPF Act and Rs. 1,14,849/- under Section 7-Q of the EPF Act. It is contended that the establishment has not fulfilled any condition for its exemption from application of the EPF Act. Further case of the respondent is that the appellant institution has forwarded the consent of both, employees and employer, seeking coverage under Section 1(4) of the EPF Act and the principal of the institution signed the consent letter as employer. The respondent denied the appellant's claim that the scheme could not have been applied to the institution without Gazette Notification of the voluntary coverage. It is urged that the matter has been examined in light of the decision of the Hon'ble Bombay High Court in the case of **Forest Development Corporation of Maharashtra Limited Vs. Regional Provident Fund Commissioner and Others [(2006) 2 BomCR 189]**, wherein it was held that :

“....mere non- publication of the Gazette cannot result in holding that the provisions of the Act are not applicable. If the parties themselves directly or indirectly acquiesce that the provisions of the Act be made applicable and start making contribution the Act would be applicable from the date of contributions notwithstanding the non-publication in the Official Gazette.....”

13. Respondent further asserted that the appellant institution does not have any Provident Fund scheme of its own and the employees are not getting the benefit of Central Provident Fund (hereinafter referred to as CPF) and old age pension in accordance with any scheme or rule framed by the Central Government. It is the case of the respondent is that once the EPF Act has applied to any establishment, it shall continue and prayed that the appeal is fit to be dismissed.

14. Having received the original record of the appeal from CGIT-cum-LC No. 1, Dhanbad on 13.07.2023 the appeal was heard at length, providing opportunity to learned advocates to argue their cases.

15. Perused the case record, Memorandum of Appeal, reply filed by the respondent, impugned orders and order dated 25.01.2023 passed by the Hon'ble Jharkhand High Court, remanding the appeal to the Appellate Tribunal for passing a fresh and speaking order. Heard learned advocates for the appellant and respondent at length. The point for consideration is whether the impugned orders under Section 7-A and 7-B of the EPF Act suffer from any illegality calling for interference.

16. On a conspectus of relevant material and points highlighted by learned advocates in course of their argument, it now needs to be examined whether the coverage of the appellant institution under the EPF Act is consistent with the

law laid down. The impugned order under Section 7-A of the EPF Act was passed on account of default in payment of EPF and allied dues for the period from 09/2004 to 06/2006. However, at the time of passing of order the respondent made the assessment for the period from 09/2004 to 04/2007, thereby the respondent travelled beyond the notice period without assigning any reason.

17. Before proceeding any further, concerning other aspects of the impugned order, it would be apposite to consider the question relating to the applicability of the EPF Act to the appellant institution for its coverage. Admittedly coverage under the Act was extended to the appellant institution on the basis of an application dated 27.01.2004 under Section 1(4) of the EPF Act in respect of twelve employees. The EPF scheme has been made applicable to the appellant w.e.f. 01.01.2004. It is evident that the EPF Act did not apply to the appellant institution since its establishment from 01.01.1984. For the first time on the basis of an application submitted by the Principal of College in the capacity of the employer, the Provident Fund authority granted a coverage code to the appellant. It would be worthwhile to consider the provision of Section 1(3)(a)(b) of the Act, which essentially requires the establishment to employ twenty or more persons for application of the EPF Act subject to the provision under Section 16(1)(b) of the EPF Act. Where twenty or more persons were employed in an establishment, the provision of Section 16 (1) (a) or (b) of the EPF Act provided conditions for exemption. Section 16(1)(a) of the EPF Act provides that the Act shall not apply to the certain establishment registered under the Co-operative Societies Act, 1912 (2 of 1912), or under any other law for the time being in force in any State relating to co-operative societies, employing less than fifty persons and working without the aid of power or as provided under Section 16(1)(b), that the Act shall not apply to any other establishment belonging to or under the control of the Central Government or a State Government and whose employees are entitled to the benefit of contributory provident fund or old age pension in

accordance with any scheme or rule framed by the Central Government or the State Government.

18. Mr. Himanshu Kumar Mehta, learned advocate for the appellant placing reliance upon a decision of the Hon'ble Supreme Court of India in the case of **Regional Provident Fund Commissioner Vs. Sanatan Dharam Girls Secondary School and Others [2007 (1) SCC 268]**, argued that the appellant institution is under the control of the Central Government which receives grant in aid from the Central Government and the employees are entitled to the benefit of CPF in accordance with the scheme and rules formed by the Central Government. Therefore, as per provision of Section 16(1)(b) of the EPF Act, the Act cannot apply to the appellant institution. Learned advocate for the respondent argued that the appellant institution does not extend any benefit of CPF to its employees. Therefore, the provision of Section 16(1)(b) of the EPF Act does not exempt the appellant from application of the Act to the institution. On a close reading of the decision relied on behalf of the applicant, I find that in the case of **Sanatan Dharam Girls Secondary School and Others (Supra.)** it is laid down is that if the appellant establishment is recognized as an educational institution managed by the private management and is within the effective management of the State Government and, therefore, it is entitled to be excluded from the applicability of the Central Act, 1952, and where a law made by the legislature of the State with respect to one of the matters enumerated in the concurrent list contains any provisions repugnant to the provisions of an earlier law made by the Parliament or any existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State i.e., to say that the State Act would "eclipse" the Central Act and the Central Act would not apply to the educational institution in the state which are governed by the State Act. In the cited decision the respondent institutions were covered

under the State Act of Rajasthan, as such the provision of the said Act was applicable to the respondent institutions.

19. In the present case learned advocate for the appellant does not have a case that by virtue of any State Act the application of the EPF Act has been exempted. Consequently, the question involved in the present case is not in pari materia with the subject matter of the cited decision. Accordingly, the principle laid down has no application to the present case.

20. There is material on record to show that the appellant institution, is a recipient of grant in aid from the Central Government, the appellant is therefore said to be under the control of Central Government, but I find no material on record that the employees are getting the benefit of CPF or old age pension in accordance with schemes and rules framed by the Central Government or the State Government, governing such benefits. Therefore, I find that the prerequisites under Section 16 (1)(a)(b) not having been fulfilled, there is nothing to suggest that Section 16 of the EPF Act restricts application of the EPF Act to the appellant institution. It has to be borne in mind that the provision of Section 1(3) or 1(4) of the EPF Act have to be primarily satisfied for the purpose of applying the Act. There is no dispute that only twelve persons were employed under the appellant institution. Consequently, the conditions specified in Section 1(3)(b) of the EPF Act for application of the Act to the appellant institution are not fulfilled.

21. To deal with the situation where application is voluntarily made for coverage of establishment under the EPF Act we must examine the provision under Sub-Section 4 of Section 1 of the EPF Act which lays down as follows :

“Notwithstanding anything contained in sub-section (3) of this section or sub-

section (1) of section 16, where it appears to the Central Provident Fund Commissioner, whether on an application made to him in this behalf or otherwise, that the employer and the majority of employees in relation to any establishment have agreed that the provisions of this Act should be made applicable to the establishment, he may, by notification in the Official Gazette, apply the provisions of this Act to that establishment on and from the date of such agreement or from any subsequent date specified in such agreement.”

22. In the instant case the appellant institution failed to come up with material in support of their claim that being a Government aided institution functioning under “Scheme for Financial Assistance to Institutions Recognised as Adarsh Sanskrit Mahavidyalaya / Sodha Sansthans” has extended the benefits of CPF to its employees. It appears from paragraph 6 of their review petition dated 09.10.2007 that the CPF amount of their employees were kept and maintained in the Savings Account of Bank of India, Deoghar Branch, Jharkhand. This is a clear indication that the appellant institution does not maintain any CPF account in respect of its employees nor does it make any contribution towards Provident Fund to the Central Provident Fund Commissioner.

23. It is undisputed that only twelve employees were working at the establishment at the time when the demand Notice was issued to the establishment under Section 7-A of the EPF Act. A supplementary affidavit has been filed by the appellant on 17.08.2023 attaching the acquittance roll of the College where it has disclosed that twelve number of employees have employed at the relevant time. It appears from Section 1(3)(b) of the EPF Act that the EPF Scheme does not apply to the appellant establishment as the number of employees are less than twenty. Under such circumstances the only recourse left open to the appellant was to comply the provisions under Sub-Section (4) of Section 1 of the EPF Act, which is a non obstante clause to the restrictions

contained under Sub-Section (3) of Section 1 or Sub-Section (1) (b) of Section 16 of the EPF Act which provides that notwithstanding anything contained in the above provision, if any application is made to the Central Provident Fund Commissioner or it appears to him that the employer and majority of its employee in relation to the establishment have agreed that the provisions of the EPF Act should be made applicable to the establishment, he may issue Notification in this regard in the Official Gazette for application of the EPF Act to that establishment on and from the date of the agreement or from any subsequent date specified in the agreement. In the present case the institution was provided coverage under the EPF Act on the basis of an application submitted by the principal of the appellant institution, certifying that the institution was not covered under the EPF Act as its strength of employees never reached more than nineteen and requested for necessary allotment of EPF Code under Section 1(4) of the EPF Act. In the said communication it was further expressed that the application was on consent and request of the employees and employer.

24. Learned advocate for the appellant institution argued that the Principal of the College cannot be consider as employer as he himself is a paid employee and the Managing Committee of the College is the decision making body. It was argued that no approval was granted by the employer of the College for the purpose of seeking coverage under the EPF Act and prayed for setting aside the impugned orders and withdrawing the coverage code under the EPF Act.

25. Learned advocate for the respondent on the contrary argued that the Principal of the College is the de facto employer and on his request, as per provision of Section 1(4) of the EPF Act a Provident Fund Code has been issued to the institution and it is immaterial whether the number of employees working in the institution were less than twenty. Learned advocate for the respondent

referred to the definition of the employer appearing in Section 2(e)(ii) of the EPF Act wherein it is provided that “employer” means :

“ In relation to any other establishment, the person who, or the authority which, has the ultimate control over the affairs of the establishment, and where the said affairs are entrusted to a manager, managing director or managing agent, such manager, managing director or managing agent.”

26. On traversing Annexure -II of the comprising page no. 20 to 27 of the Memorandum of Appeal, I find that Mr. Radha Raman Thakur, the Principal of Laxmi Devi Shroff Adarsh Sanskrit College, Deoghar, Jharkhand had applied for allotment of Provident Fund Code w.e.f. 01.01.2004 as per Section 1(4) of the EPF Act. At the relevant time only twelve employees were working in the institution. There is no material on record to establish that there was any agreement between employees and employer of the institution prior to submission of the application for allotment of Provident Fund Code. One would have no hesitation to hold that a principal of a college is himself an employee and may be considered as the administrative head of the college. There is no ambiguity of the fact that the Managing Committee or the Governing body is the actual decision maker and the employer of the staff members. Therefore, without prior approval of the employer and without any meeting of minds between the employees and Managing Committee, the principal of the college had no authority to apply for coverage of the college under the EPF Act. The Regional Provident Fund Commissioner having received the application dated 27.01.2004 from the principal for allotment of Provident Fund Code, could not have acted on the same without enquiry and compliance of Section 1(4) of the EPF Act. The respondent was misled by the application of the principal who is a co-employee and did not seek affirmation of the collective decision of the Managing Committee of the college. In my considered view the ultimately control over affairs and the college does not rest in the hands of principal, therefore the principal cannot be treated as the employer as defined in Section 2(e)(ii) of the EPF Act.

27. I therefore find and hold that allotment of Provident Fund Code to the appellant institution w.e.f. 01.01.2004 on the basis of Principal's letter, having less than twenty (20) employees was unjustified and not tenable under the law. The Provident Fund Authority, Ranchi is not justified in extending coverage under the EPF Act without due compliance of Section 1(4) of the EPF Act. Therefore, the EPF code allotted to the appellant needs to be withdrawn and the amount attached from appellant's Allahabad Bank account be refunded. The impugned order dated 16.08.2007 under Section 7-A of the EPF Act and dated 20.07.2009 under Section 7-B of the EPF Act are not found tenable under the facts and law and are hereby set aside. The appeal is accordingly allowed on contest.

Hence,

ORDERED

that the appeal under Section 7-I of the EPF Act is allowed on contest against the respondent. The impugned orders dated 16.08.2007 under Section 7-A and 20.07.2009 under Section 7-B of the EPF Act, passed by the respondent are set aside. Respondent authority is directed to withdraw the coverage code of the appellant institution and refund Rs. 6,33,274/- to the appellant within two months, which was recovered by the respondent from appellant's Account No. 2381 with Allahabad Bank, Deoghar Branch, Jharkhand, along with an interest @ 6% per annum on the said sum. Let copies of the Order 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.