

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL/EMPLOYEES PROVIDENT FUND
APPELLATE TRIBUNAL, JABALPUR

EPF Appeal No.- 54/2017

Present – P.K. Srivastava

H.J.S. (Retd.)

**M/S. Choithram Hospital & Research Centre,
 Manik Bagh Road,
 Indore (M.P.)- 452014**

Appellant

Vs.

**Regional Provident Fund Commissioner (C-III),
 Employees Provident Fund Regional Office, 6th-9th Floor,
 7, Race Course Road,
 Indore – 452003 (M.P.) & Other**

Respondent

Shri Uttam Maheswari : Learned Counsel for Appellant.

Shri J.K. Pillai : Learned Counsel for Respondent.

JUDGMENT

(Passed on 04th day of August, 2025)

The present appeal is directed against the order dated 02.07.2012, passed by Respondent Authority under section 7-C of the **Employees Provident Fund & Miscellaneous Provisions Act, 1952 (hereinafter referred to as the ‘Act’), holding the Appellant Establishment liable to deposit PF dues of its 35 employees and has assessed the amount at Rs. 2,83,201/-, further directed the Appellant Establishment to deposit the amount within time frame mentioned.**

The facts connected in brief are mainly that, according to the Appellant Establishment they are Hospital, covered under the Act and have been allotted separate PF No. MP/3332. An ex-employee of the establishment filed a complaint before Respondent Authority alleging that establishment failed to deposit amount of his Provident Fund and of other employees, details mentioned in the complaint. Notice under section 7-A of the Act was issued by the Respondent Authority . During the enquiry, it came out that a Public Interest Litigation W.P. No. 284/2000 was pending before the Hon’ble High Court of Madhya Pradesh on the same matter and with regards to same dispute between the parties. In light of this fact, the proceedings were kept in abeyance. The complainant filed an application under

section 7-B of the Act seeking review of the order of Respondent Authority keeping the proceedings in abeyance, which was finally dismissed after hearing vide order dated 06.06.2003, holding the allegation in the complaint without substance.

The Public Interest Litigation No. 284/2000 was also dismissed by Hon'ble High Court after hearing vide its order dated 11.08.2004, the complainant was also a party in the Public Interest Litigation. Thereafter, complainant (respondent No. 2) in the appeal again moved another application u/s 7-C of the Act, before the Respondent Authority on 05.05.2008 to initiate the enquiry proceedings.

Notice was issued to the Appellant Establishment on behalf of the Respondent Authority which was served on them. They appeared and submitted their reply stating that the enquiry is being reopened under section 7-C of the Act is bad in law because **firstly**, it was not initiated by the Authority who had decided the Review Petition under section 7-B of the Act and **secondly**, the proceedings under section 7-C of the Act were initiated after 5 years from the date of order under section 7-B of the Act, which is dated 06.06.2003. They also took a case that they do not have any records required because **firstly**, they are very old and **secondly**, they are damaged.

The Respondent Authority, ignoring the grounds taken by the Appellant Establishment against proceedings under section 7-C of the Act, illegally proceeded in the enquiry and recorded the impugned finding as well assessment completely against law and fact. Hence this appeal.

Grounds of Appeal, are mainly that the Respondent Authority committed error in law in ignoring the fact that proceedings under section 7-C of the Act could be initiated only by the Authority who had passed the order under section 7-A and 7-B of the Act and also that the proceedings were initiated after 5 years of date of order under section 7-B of the Act i.e., 06.06.2003. The Respondent Authority travelled beyond the scope of section 7-C thus, committed error in law. The Respondent Authority wrongly recorded finding that the 35 employees were employees of the Appellant Establishment only, on the ground that they are members of a society which required that only employees of the Appellant Establishment could be its members.

Defending the impugned finding and assessment, the Respondent Authority has taken a case in their counter to the appeal that the impugned order dated 19.06.2012 has been passed by the Authority under section 7-C of the Act and in pursuance of direction of Hon'ble High Court of Madhya Pradesh dated 19.04.2012 passed in W.P. No. 2648/2012 because the amount escaped notice/escaped determination against the Appellant Establishment with respect to 35 employees as mentioned in the list enclosed with the notice dated 06.03.2012 (*Annexure-A/27*) to the appeal. According to the Respondent Authority, a complaint was made by one Mr. Suresh Rughani, an ex-employee of the Appellant Establishment, proceedings

under section 7-A of the Act was initiated by the department in the year 2003. It came to the knowledge during the proceedings as informed by the Appellant Establishment that the issue raised in the complaint of the complainant/employee was already pleaded in Writ Petition No. 284/2000 pending before the Hon'ble High Court of Madhya Pradesh at Indore Bench. Hence proceedings under section 7-A of the Act were kept in abeyance. The complainant filed an application under section 7-B of the Act and order on the application under section 7-B was passed after hearing all the parties on 06.06.2003 the complaint of the complainant was dismissed. This order was not challenged by any of the parties including the complainant. The complainant again filed an application in 2007 before the Respondent Authority with a request to initiate proceedings under section 7-C of the Act. Consequent, thereto the Department decided on 23.11.2007 to initiate proceedings under section 7-C of the Act to be initiated by Assistant Provident Fund Commissioner, Shri Sanad Kumar with following directions issued to him.

- (1) He will initiate proceedings under section 7-C of the Act taking into consideration the pending application of the complainant.***
- (2) He will afford adequate opportunity to the complainant in connection with his grievance/complaint and let him substantiate the allegation against the officers.***
- (3) He shall take assistance of any Enforcement Officer posted at Indore for constituting special squad for concluding the proceedings at the earliest and to ensure proper compliance.***

It is further the case of the Respondent Authority that after a series of litigations between the parties with respect to jurisdiction and limitation, the matter was finally decided by them vide order dated 29.06.2012, in view of the direction dated 19.04.2012 and 10.01.2012 passed by Hon'ble High Court of Madhya Pradesh in W.P. No. 2648/2012 and W.A. No. 177/2011, the decision to reopen the case was taken on 27.11.2007 i.e., within 5 years of passing of order dated 06.06.2003 as the period of limitation of 5 years shall be calculated from the date of communication of the order under section 7-A or 7-B of the Act. Thereafter, the impugned finding that 35 employees were the employees of the Appellant Establishment and were entitled to be covered under the Act was recorded on the basis of evidence which is correct in law and fact.

The Appellant Establishment has filed rejoinder in which they have alleged that the passing of the impugned finding that these 35 employees are employees of the Appellant Establishment is solely on the membership of the society, which is incorrect in law and fact. The finding of the Respondent Authority that the proceedings under section 7-C of the Act are within limitation of 5 years from the date of receipt of order is also without any evidence in this respect. The action of the Respondent Authority in unsettling the finding of the earlier Commissioner under section 7-B of the Act is also incorrect in law. That these workers were not the

employees of the Appellant Establishment within the Act as they were only engaged in construction or other activities which is not a regular business of the Appellant Establishment that too for a short time.

I have heard argument of Learned Counsel Mr. Uttam Maheswari for the Appellant Establishment and Mr. J. K. Pillai for Respondent Authority . The respondent No. 2, the complainant never appeared in the appeal. Both the sides have filed written arguments which are part of record I have gone through the written arguments and the record as well.

On perusal of the record in light of rival arguments following point comes up for determination in the case in hand.

- (1) Whether the finding of the Respondent Authority that the proceeding under section 7-C of the Act was within limitation of 5 years has been recorded accordingly in law and fact?***
- (2) Whether the finding and assessment of the Respondent Authority that 35 employees are employees of the Appellant Establishment for the purpose of the Act has been recorded accordingly in law and fact?***

Point for determination No.1.

Before entering into any discussion, section 7-C of the Act requires to be reproduced and is being reproduced as follows:-

"7-C. Determination of escaped amount —

Where an order determining the amount due from an employer under section 7-A or section 7-B has been passed and if the officer who passed the order—

(a) has reason to believe that by reason of the omission or failure on the part of the employer to make any document or report available, or to disclose, fully and truly, all material facts necessary for determining the correct amount due from the employer, any amount so due from such employer for any period has escaped his notice;

(b) has, in consequence of information in his possession, reason to believe that any amount to be determined under section 7-A or section 7-B has escaped from his determination for any period notwithstanding that there has been no omission or failure as mentioned in clause (a) on the part of the employer,

he may, within a period of five years from the date of communication of the order passed under section 7-A or section 7-B, re-open the case and pass appropriate orders re-determining the amount due from the employer in accordance with the provisions of this Act:

Provided that no order re-determining the amount due from the employer shall be passed under this section unless the employer is given a reasonable opportunity of representing his case."

The case of the Appellant Establishment is that the order under section 7-B of the Act was passed on 06.06.2003 and the notice under section 7-C of the Act was issued by Respondent Authority on 02.06.2008. There is nothing on record to indicate that on which date the order under section 7-B of the Act were communicated by Respondent Authority to the Appellant Establishment, the Appellant Establishment denies any communication of order under section 7-B of the Act as claimed by Respondent Authority. Hence without evidence with respect to date of communication of the order under section 7-B, the finding of the Respondent Authority for the proceedings under section 7-C of the Act are bad in law.

Perusal of the impugned order reveals that the Respondent Authority has though mentioned about section 7-C at Page 4 of his order but has not recorded any specific finding on the point of limitation, relevant portion of the impugned order on the point of limitation is being reproduced as follows:-

"A plain reading of the said Section 7-C makes it evident that for invoking the said Section the Authority has reasons to believe that there is certain amount which has escaped his notice/escaped from his determination due the reasons mentioned in clause (a) and or/ (b) of the said Section. It is provided that no order re-determining the amount due from the employer shall be passed under this Section unless the employer is given a reasonable opportunity of representing his case. It is crystal clear that the said Section 7-C does not envisage calling for and/or adducing fresh evidence. Secondly opportunity to represent his case is to be provided to the employer.

In the instant case there were information available on records that M/s C.H.R.C. has failed to extend Provident Fund membership to 35 employees from their respective due dates of eligibility.

Accordingly a summon dated 06/03/2012 was issued to the employer disclosing the intended determination of escaped Provident Fund amount."

The order further speaks that the said enquiry under section 7-C of the Act was reopened vide summon dated 02.06.2008. Even if the date of communication of order is taken, the date on which the order under section 7-B of the Act was passed which is 06.06.2003 because there is nothing on record to indicate the date of communication of order under section 7-B of the Act to the Appellant Establishment, the notice under section 7-C of the Act is within the limitation of 5 years which will be 06.06.2008.

In light of above discussion the argument from the side of Appellant Establishment fails and the proceedings as well enquiry under section 7-C of the Act is held not barred by limitation.

Point for determination No. 1 is answered accordingly.

Point for determination No. 2.

Before entering into any discussion on this point, the complaint of the complainant requires to be considered, there are as many as 11 allegations made by the complainant in his complaint. The complaint itself is being reproduced as follows:-

- “(१) दैनिक वेतनभोगी कर्मचारियों को भविष्य निधि सदस्यता लाभ, सदस्यता तारीख से नहीं दिए जाने बाबद।
- (२) स्थाई कर्मचारियों के निर्वाह भत्ते को अंशदान में शामिल नहीं करना
- (३) लगभग दो सौ दैनिक वेतनभोगी कर्मचारियों को मार्च, ९९ से पूर्व भविष्य निधि लाभ नहीं दिए जाने बाबद।
- (४) व्यक्तिगत भत्ते एवं अतिरिक्त विशेष भत्ते को अंशदान में सम्मिलित नहीं करना।
- (५) विशेष भत्ते के ६५ प्रतिशत भाग को ०२.०७.९९ के समझौते के अनुसार व्यक्तिगत वेतन एवं ३५ प्रतिशत भाग को मकान किराये भत्ते में परिवर्तित करने बाबद।
- (६) कर्मचारी संघ के किए गए समझौते के अनुसार अतिरिक्त विशेष भत्ते की राशि कर्मचारी के सेवाकाल के दौरान कभी भी वापिस नहीं किए जाने बाबद।
- (७) नर्सिंग कर्मचारियों की यूनियन से किए गए समझौते की अवैधता बाबद।
- (८) श्रम: न्यायालय के निर्णयों के पश्चात संस्था द्वारा किए गए वेतन भुगतान पर भविष्य निधि नहीं दिए जाने बाबद।
- (९) चोईथराम चैरिटेबल ट्रस्ट, म१/३००६ के अंतर्गत चोईथराम प्रोजेक्ट में कार्यरत दैनिक वेतनभोगियों की वर्षों से कार्यरत होने के बावजूद फरवरी, ९९ तक सदस्यता लाभ से वंचित रह गया साथ ही ठेकेदार के माध्यम से नियुक्त कर्मचारियों को विगत कई वर्षों से सदस्यता लाभ नहीं दिया गया है।
- (१०) चोईथराम चैरिटेबल ट्रस्ट", मग-३००६ के अंतर्गत प्रोजेक्ट विभाग में वर्ष १९७४ से कार्यरत कर्मचारियों को नियुक्ति पत्र न देते हुए साप्ताहिक वेतन दिया गया एवं वर्ष १९७९ में चोईथराम अस्पताल में नियुक्ति बताते हुए भविष्य निधि लाभ दिया गया, ऐसो कर्मचारियों को वर्ष १९७४ से १९७९ तक भ५-२००६ के अंतर्गत भविष्य निधि लाभ से वंचित रखा गया।
- (११) संस्थान से संबंधित १५० कर्मचारी प्रोजेक्ट के एवं ठेकेदारों से संचालित केन्टीन, दवाई दुकान इत्यादि में कार्यरत लगभग ५० से अधिक कर्मचारियों के लिए भविष्य निधि अधिनियम का पालन नहीं किया गया।
- (१२) जून, ८९ से ३१ मार्च, ९७ तरू १० प्रतिशत के स्थान पर ८.३३ प्रतिशत की दर से संस्था द्वारा अंशदान जमा किया जाना।

(१३) टी चोईथराम फाउण्डेशन मग्न-२३४५ में कार्यरत दैनिक वेतनभोगी कर्मचारियों को भविष्य निधि सदस्यता लाभ से वंचित रखा गया है।
 (१४) ठेकेदार के माध्यम से नियुक्त कर्मचारी एवं डॉक्टर्स जिन्हें स्टयाफंड के रूप में वेतन दिया जाता है, लाभ से वंचित होने बाबद्द।”

The Respondent Authority has made an observation on this point that 35 employees are members of a society in which only employees of the Appellant Establishment could be the members; hence they are employees of the Appellant Establishment. **Firstly**, whether the person is an ‘Employee’ of the establishment or not, is to be determined in the light of the provisions of the Act section 2(f) of the Act which defines ‘Employee’, is being reproduced as follows:-

2(f) “Employee” means 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;**

On perusal of the order under section 7-B of the Act reveals that, this point was raised by the complainant during the proceedings under section 7-B of the Act and there was a specific finding recorded by the Authority in his order under section 7-B of the Act that these employees are contractor labourers and other employees, who are not associated with the business of the employer and engaged for a short period, hence they are not ‘employees’ as defined under the Act.

An employee of an establishment may be a member of society established by the employees or the establishment but for the benefit of the Act he has to qualify in accordance of section 2(f) of the Act, there is a specific finding that some employees, who are Carpenters or other workers engaged in some activities for the time being which are not connected with the regular business of the employer. Hence, finding of the Respondent Authority in the impugned order that the 35 workers are employees of the Appellant Establishment because only an employee of the Appellant Establishment can be a member some society and all these workers are also members ignoring the fact whether they are engaged in connection with the work of establishment cannot be held to be recorded in law, hence such finding cannot be allowed to sustain accordingly. The finding of the Respondent Authority of holding the 35 workers as employee under the Act is held vitiated in law.

Point of determination No. 2 is answered accordingly.

No other point was pressed.

On the basis of above discussion and findings, the appeal deserves to be allowed.

ORDER

The appeal is allowed, the impugned order dated 29.06.2012 is set aside.

No order as to cost.

Date:- 04/08/2025

P.K. Srivastava
(Presiding Officer)

Judgment Signed, dated and pronounced.

Date:- 04/08/2025

P.K. Srivastava
(Presiding Officer)

