

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

**No. EPF Appeal No.- 16/2020**

**Present – P.K. Srivastava**

**H.J.S. (Retd.)**

**M/S D.B. Corp. Ltd.,  
6, Dwarka Sadan, Press Complex,  
M.P. Nagar, Bhopal-462011**

**Appellant**

**Vs.**

**The Regional P.F. Commissioner-II, Bhopal  
59, Arera Hills, Bhopal-462011**

**Sh. Ashok Dubey  
C/20, Manit Campus, Bhopal-462003**

**Respondent**

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**Shri Uttam Maheshwari** : **Learned Counsel for Appellant.**

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

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**JUDGMENT**

*I.* Under challenge in this appeal are orders dated 23.01.2020 passed by the Respondent Authority under Section 7A and dated 26.02.2020 passed U/S. 7B of the Employees Provident Fund and Misc. Provisions Act, 1952, hereinafter referred to the word ‘Act’, whereby the Respondent Authority has held the Appellant Establishment liable to deposit of EPF dues of its employee Respondent No.-2, hereinafter referred to by the word ‘Complainant’, for the period 11.06.2001 to 23.10.2011 and has directed the Appellant Establishment to deposit the amount assessed at Rs.5,43,878/-.

2. Shorn of unnecessary details, the skeletal facts relevant to the present appeal, are mainly that the Complainant filed a complaint dated 17.05.2019 with the Respondent Authority (received on 21.05.2019) with an allegation against the Appellant Establishment that he worked with the Appellant Establishment for the period 11.06.2001 to 23.10.2011 but the Appellant Establishment did not deposit his EPF dues with the Respondent Authority. A notice dated 04.06.2019 was issued by the Respondent Authority directing the employer i.e. the Appellant Establishment, to appear before him with summoned records on 20.06.2019. The Complainant was also informed to appear with relevant documents on that date.
3. The Complainant submitted his offer of appointment dated 05.06.2001, Experience Certificate dated 08.11.2014 and Form-16 for the year 2002-03, 2004-05, 2005-06, 2006-07, 2009-10, 2010-11 and 2011-12, also submitted performance appraisal documents for the year 2004, 2010-11 along with salary breakup statement issued by Appellant Establishment. The Appellant Establishment also filed its reply to the notice wherein it took the plea that firstly, the complaint was highly delayed as the Complainant left the Establishment on 23.10.2011 and the complaint was filed in 2019 which shows that it was malafide. Secondly, the annual salary package of the Complainant was Rs. 2,24,000/- per annum on basic Rs. 9000/- per month, the Complainant deposited his share of EPF dues for the period 11.06.2001 to 31.03.2002 and the Appellant Establishment also deposited its share of EPF dues in the PF Account of the Complainant MP/846/385 but after the Complainant reached as senior managerial position, he took advantage of his position and influenced the HR Staff to stop deduction of his share of EPF contribution w.e.f. 2002 and it was under this influence, his EPF dues for the period between April 2002 to 23.10.2011 were not deducted and were not deposited. Thirdly, since he was getting salary beyond the limit fixed for coverage of the Act and was in managerial and supervising capacity being Marketing Manager and General Manager, the Appellant Establishment was under no liability to deposit his EPF dues.
4. During the course of inquiry the Enforcement Officer, who was asked to submit his report/deposition after examining the claim and counter claim put by both the parties, directed the Appellant Establishment to produce the attendance and Salary Register of its

employees, Deposit statement alongwith copy of Challan and ECR, records with respect to Excluded Employees if any and Balance Sheet for the period 06/2001 to 10/2011. No documents were produced by the Appellant Establishment before the Enforcement Officer and he then submitted his report/deposition on the basis of documents, referred to above, supplied by the Complainant calculating the EPF dues.

5. The Appellant Establishment took a plea during the inquiry that they would like to verify the authenticity of the documents of the Complainant specially Form-16 but ultimately they could not file any substance/material before the Respondent Authority doubting the authenticity of the documents of Complainant.
6. The Respondent Authority recorded a finding that firstly, the claim could not be defeated only on the ground of delay, secondly, the case of the Appellant Establishment that EPF dues were not deposited as the Complainant himself influenced with the HR Department for this was not substantiated by any evidence, thirdly, the Complainant was covered under the Act and was entitled to the protection of the Act and fourthly, the assessment was not incorrect. With these findings the Respondent Authority passed the impugned order U/S. 7A of the Act holding the Appellant Establishment defaulting the deposit of EPF dues of Complainant for the period 06/2001 to 10/2011, directed the Appellant Establishment to deposit the assessed amount Rs. 5,43,878/-. A Review Petition filed by the Appellant Establishment against this order was dismissed on the ground that the points raised in the Review Petition have already been discussed in the order U/S. 7A and there was no error apparent on the part of record to warrant review of the original order. Hence this appeal.
7. **The grounds of the appeal** taken in the Memo of Appeal are mainly **that** the impugned order is bad in law and facts and as such is illegal, **that** it is a non speaking order without considering the submissions of Appellant Establishment and settled proposition of law, **that** the impugned order has been passed in derogation of provisions of the Act and the Scheme specially para 80 and 26 of the EPF Scheme 1952 (in short the 'Scheme') and Working Journalist and Other Newspaper Employees (Condition of Service) and Miscellaneous Provisions Act 1952 (in short Working Journalist Act) particularly

Section 2(c), 2(dd) and 2(f), hence bad in law, **that** the Appellant Establishment was not given opportunity to cross examine the Enforcement Officer on his report and also when the genuineness of F-16 filed by the Complainant was challenged, the Respondent Authority committed error in law in not summoning witness to prove this document, that the assessment is also against facts and law.

8. In its **counter/reply**, the Respondent Authority has defended the impugned order on the ground that the applicability of the Act could be decided in the light of the provisions of the Act. The liability of the Appellant Establishment to pay the employees provident fund dues of its employees under Section 7A of the Act is not dependant on the consent of the employee. The burden to prove that F-16 was not genuine was on the Appellant Establishment because it was issued by them and there was no occasion for the Respondent Authority to grant opportunity to the Appellant Establishment to cross examine the Enforcement Officer. It was also pleaded by Respondent Authority side that the findings regarding liability and assessment are recorded on the basis of facts and law, they are correct in law and facts, hence need not be interfered with.
9. I have heard arguments of Mr. Uttam Maheshwari, learned Counsel for the Appellant Establishment and Shri J.K. Pillai, learned Counsel for the Respondent Authority. I have gone through the record as well.
10. After perusal of the record in the light of rival arguments, the following points arise for determination :-
- “1. Whether the finding of the Respondent Authority that the Appellant Establishment has defaulted in depositing the EPF dues of the Complainant for the period 06/2001 to 10/2011 and is under obligation to deposit it has been recorded correctly in law and fact?
  2. Whether the finding with respect to the assessment can be faulted in law or fact or not ?
  3. Whether the Review Petition has been correctly dismissed ?”

**Point for Determination No.-1:-**

Learned Counsel for Appellant Establishment has challenged the finding with an argument that it is against law because it has been recorded without considering para 26 and 80 of the Scheme and the

Working Journalist Act. According to learned Counsel, the Complainant was getting salary above the ceiling limit of wages prescribed for coverage under the Act. He was discharging managerial duties as Marketing Manager and General Manager. Hence, the finding of Respondent Authority on this point is held correct in law and fact.

**For the sake of convenience para 2(f), 26 and 80 of the Scheme are being reproduced as follows:-**

***Para 2(f) in The Employees' Provident Funds Scheme, 1952***

*- In this Scheme, unless the context otherwise requires,-*

*(f) "excluded employee" means-*

*(i) an employee who, having been a member of the Fund, withdrew the full amount of his accumulations in the Fund under clause (a) or (c) of sub-paragraph (1) of paragraph 69;*

*(ii) an employee whose pay at the time he is otherwise entitled to become a member of the Fund, exceeds six thousand and five hundred rupees per month.*

*Explanation - "Pay" includes basic wages with dearness allowance, retaining allowance if any.*

*(iii) and Explanation thereto omitted by G.S.R. 1467, dated 2.12.1960 (w.e.f. 10.12.1960).]*

*(iv) an apprentice.*

*Explanation - An apprentice means a person who, according to the certified standing orders applicable to the factory or establishment, is an apprentice, or who is declared to be an apprentice by the authority specified in this behalf by the appropriate Government*

***26. Classes of employees entitled and required to join the Fund.***

*(1)(a) 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 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.*

*(b) 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 if on the date of such coming into force, such employee is a subscriber to a provident fund maintained*

*in respect of the factory or other establishment or in respect of any other factory or establishment (to which the Act applies) under the same employer:*

*Provided that where the Scheme applies to a factory or other establishment on the expiry or cancellation of an order of exemption under section 17 of the Act, every employee who but for the exemption would have become and continued as a member of the Fund, shall become a member of the fund forthwith.*

*(2)After this paragraph comes into force in a factory or other establishment, every employee employed in or in connection with the work of 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.*

*(3)An excluded employee employed in or in connection with the work of a factory or other establishment to which this Scheme applies shall, on ceasing to be such an employee, be entitled and required to become a member of the fund from the date he ceased to be such employee.*

*(4)On re-election of an employee or a class of employees exempted under paragraph 27 or paragraph 27-A to join the fund or on the expiry or cancellation of an order under that paragraph, every employee shall forthwith become a member thereof.*

*(5)Every employee who is a member of a private provident fund maintained in respect of an exempted factory or other establishment and who but for exemption would have become and continued as a member of the fund shall, on joining a factory or other establishment to which this Scheme applies, become a member of the fund forthwith.*

*(6)Notwithstanding anything contained in this paragraph, an officer not below the rank of an Assistant Provident Fund Commissioner may, on the joint request in writing of any employee of a factory or other establishment to which this Scheme applies and his employer, enroll such employee as a member or allow him to contribute more than rupees six thousand five hundred of his pay per month if he is already a member of the fund and thereupon such employee shall be entitled to the benefits and shall be subject to the conditions of the fund, provided that the employer gives an undertaking in writing that he shall pay the administrative charges payable and shall comply with all statutory provisions in respect of such employee.*

***Para 80. Special provisions in the case of newspaper establishments and newspaper employees. [Substituted by G.S.R. 1513, dated 15.12.1961 (w.r.e.f. 24.9.1960).]***

*The Scheme shall, in its application to newspaper establishments and newspaper employees, as defined in section 2 of the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955, come into force on the 31st day of December, 1956 and be subject to the modifications mentioned below:-*

*(1) In Chapters I to IX, references to "industry", "factories" and "employees" shall be construed as references to "newspaper industry", "newspaper establishments" and "newspaper employees", respectively.*

*(2) For paragraph 2(f), the following shall be substituted, namely:- "(f) 'excluded employe' means,-*

*(i) an employee who, having been a member of the Fund, has withdrawn the full amount of his accumulations in the Fund under clause (a) or (c) of sub-paragraph (1) of paragraph 69;*

*(ii) an apprentice.*

*Explanation - "Apprentice" means a person who, according to the standing orders applicable to the newspaper establishment concerned, is an apprentice or who is declared to be an apprentice by the authority specified in this behalf by the appropriate Government.*

*(3) For paragraph 26, the following shall be substituted, namely:- "26. Class of employees entitled and required to join the Fund –*

*(1)(a) Every newspaper employee employed to do any work in, or in relation to, any newspaper establishment to which this Scheme applies, other than an excluded employee, shall be entitled and required to become a member of the Fund from the beginning of the month following that in which this paragraph comes into force in such establishment, if on the date of such coming into force he has completed three months' continuous service or has actually worked for not less than [60 days during a period of three months or less in that newspaper establishment or in other such establishment to which the Act applies under the same employer or partly in one and partly in the other or has been declared permanent in any such newspaper establishment, whichever is earliest.*

*(b) Every newspaper employee employed to do any work, in or in relation to any newspaper establishment to which this Scheme applies other than an excluded employee, shall be entitled and required to become a member of the Fund from the beginning of the month following that in which this paragraph comes into force in such newspaper establishment, if on the date of such coming into force, such employee is a subscriber to a provident fund maintained in respect of the establishment or in respect of another establishment [to which the Act applies under the same employer.*

**Section 2(c), 2(dd) and 2(f) of the Working Journalist Act are also being reproduced as follows :-**

*2(c) "newspaper employee" means any working journalist, and includes any other person employed to do any work in, or in relation to, any newspaper establishment;*

(d) **“newspaper establishment”** means an establishment under the control of any person or body or persons, whether incorporated or not, for the production or publication of one or more newspapers or for conducting any news agency or syndicate; 5 [and includes newspaper establishments specified as one establishment under the Schedule. Explanation.—For the purposes of this clause,—

(a) different departments, branches and centres of newspaper establishments shall be treated as parts thereof; (b) a printing press shall be deemed to be a newspaper establishment if the principal business thereof is to print newspaper;] 6

2(dd) **“non-journalist newspaper employee”** means a person employed to do any work in, or in relation to, any newspaper establishment, but does not include any such person who—

(i) is a working journalist, or

(ii) is employed mainly in a managerial or administrative capacity or;

(iii) being employed in a supervisory capacity, performs, either by the nature of the duties attached to his office or by reason of the powers vested in him, functions mainly of a managerial nature;

2(f) **“working journalist”** means a person whose principal avocation is that of a journalist and who is employed as such, either whole-time or part-time, in, or in relation to, one or more newspaper establishments, and includes an editor, a leader-writer, news-editor, sub-editor, feature writer, copy-tester, reporter, correspondent, cartoonist, news photographer and proof-reader, but does not include any such person who—

(i) is employed mainly in a managerial or administrative capacity, or

(ii) being employed in a supervisory capacity, performs, either by the nature of the duties attached to his office or by reason of the powers vested in him, functions mainly of a managerial nature;

A perusal of para 80 of the Scheme discloses that there are special provisions for coverage of newspaper establishment and newspaper employees. This is also clear that the ceiling of wage has provided under Para 2(f) of the Scheme will not apply to the Employees/Officers of Newspapers Establishment. **Hence, the finding of the Respondent Authority that the Complainant is entitled to the coverage under the Act cannot be faulted in law or fact** and the argument of learned Counsel for Appellant Establishment fails on this point.

The next argument from the side of learned Counsel for Appellant Establishment is that it was the Complainant who himself impressed upon the HR Department that since his basic salary above Rs. 6500/- per



month, no PF could be deducted from his salary has been rebutted by learned Counsel for Respondent Authority on the ground that **firstly**, there was no evidence before the Authority to substantiate this allegation and **secondly**, a liability under law cannot be waived in the manner as submitted by Appellant Establishment before Respondent Authority and before this Tribunal as stated above.

Any civil right or obligation under law can only be waived by another law and not just by oral communication until and unless law itself provides so. Since, there is no provision in the Act or in the Scheme for waiver of the liability of deposit EPF dues, the argument on this point as stated above also fails.

**On the basis of above discussion, the finding of the Respondent Authority that the Appellant Establishment has defaulted in depositing the EPF dues of the Complainant for the period 06/2001 to 10/2011 and is under obligation to deposit it, is held to have been recorded correctly in law and fact and is affirmed.**

Point for determination no.-1 is answered accordingly.

**Point for Determination No.-2 :-**

Learned Counsel for Appellant Establishment has attacked the finding of the Respondent Authority on the point of assessment of the amount on the basis of the whole salary of the Complainant whereas it should have been restricted to .05% of pay limited to Rs. 6500/- as mentioned in para 2(f) of the Scheme. It is further submitted that the Enforcement Officer made assessment of the amount on the basis of records submitted by the Complainant as it is evident from para 3 of his report/ deposition. He also submits that when the genuineness documents F-16 particularly was doubted by Appellant Establishment before Respondent Authority, it was incumbent on him to summon witnesses to prove its genuineness. Learned Counsel for Respondent Authority rebuts this argument with submission that the genuineness was doubted by the Appellant Establishment. The documents were issued by the Officers and those responsible for issuing F-16 were employees of the Appellant Establishment. Hence, they could examine them on themselves. I find substance in the argument of learned Counsel for Respondent Authority. The burden was on the Appellant Establishment to prove that F-16 was

not genuine because it was issued by their employees. They could file another F-16.kept in their office which was genuine according to them. Hence, it is held that the Respondent Authority did not commit any error in law in not issuing summonses to the witnesses. On perusal of record, I do not find any other error in calculating the amount.

**On the basis of above discussion, the finding of the Respondent Authority on the point of assessment of amount in the impugned order is held to have been recorded correctly in law and fact.**

**Point for Determination No.-3 :-**

The Review Petition was dismissed on the ground that the grounds taken in the review petition were same taken during the inquiry and were considered while passing order under Section 7A of the Act (which is under challenged in this appeal) and no fresh ground was taken. Learned Counsel for Appellant Establishment could not show any ground taken in the review petition which was not taken in the main hearing. Hence, the order of Respondent Authority dismissing the review petition also cannot be faulted in law or fact.

Point for Determination No.-3 is answered accordingly.

No other point was pressed.

**11.** In the light of the above discussion, the appeal is held sans merit and is liable to be dismissed.

**ORDER**

**Appeal dismissed. No order as to costs.**

**Date:- 27/06/2024**

**P.K. Srivastava  
(Presiding Officer)**

**Judgment Signed, dated and pronounced.**

**Date:- 27/06/2024**

**P.K. Srivastava  
(Presiding Officer)**