

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

**No. EPF Appeal No.- 28/2022**

**Present – P.K. Srivastava**

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

Government Autonomous Ayurved  
College and Hospital, Jabalpur

Appellant

Vs.

Assistant Provident Fund Commissioner,  
Jabalpur

Respondent

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Shri Rohit Sohgaura	:	Learned Counsel for Appellant.
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Shri J.K. Pillai	:	Learned Counsel for Respondent.
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**JUDGMENT**

1. Under challenge in this appeal is order dated 06.02.2022 passed by the Respondent Authority under Section 7A 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 for deposit of EPF dues of its casual/temporary employees for the period 09/2017 to 02/2021 and has assessed the amount Rs. 12,01,147/-, further directed the Appellant Establishment to deposit the amount within the time frame mentioned in this order.

2. **Facts connected**, in brief, are that a complaint was made by the President of Casual Workers Association working with

the Appellant Establishment, which is a Government College run under the State Government, governed by Executive Committee of the college under Chairmanship of the Divisional Commissioner. The Principal of the College is the Member Secretary of the Committee. It had engaged daily wage/ casual employees for its work. A notice dated 08.03.2021 was issued by the Respondent Authority to the Appellant Establishment on the basis of an inspection report dated 02.02.2021 filed by the Enforcement Officer under direction of the Respondent Authority. An enquiry was conducted by the Respondent Authority. The Respondent Authority recorded a finding that the Appellant Establishment was covered under the Act and was allotted PF code M.P./JBP 1800669. It has defaulted in deposit of EPF dues of its casual/ daily wage employees from 09/2017 to 02/2021. The Respondent Authority further assessed the amount at Rs. 12,01,147/- and directed the Appellant Establishment to deposited within 15 days from the date of receipt of order. Hence this appeal.

3. **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 laid down by Hon'ble the Apex Court in various cases, that the Respondent Authority committed error in law in not considering the objection of Appellant Establishment on the report of Enforcement Officer and also the fact that these employees were employed under no written order, not engaged any sanctioned vacancy, hence not covered under the Act.
4. 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 deposit the employees provident fund dues of

its employees is under the Act. The finding that the Appellant Establishment failed to deposit the EPF dues of its casual/daily wage employees and was under legal obligation to deposit has been recorded on the basis of evidence on record, thus according to the Respondent Authority, there is no error of law and fact in the impugned order.

5. I have heard **arguments** of Mr. Rohit Sohgaura, learned Counsel for the Appellant Establishment and Shri J.K. Pillai, learned Counsel for the Respondent Authority. The Respondent Authority has filed written arguments also. I have gone through the record and the written arguments as well.

6. After perusal of the record in the light of rival arguments, the following point arises for determination :-

**“Whether the finding of the Respondent Authority that the Appellant Establishment is under legal obligation to deposit the EPF dues of its casual/ daily wage employee for the period 09/2017 to 02/2021 and the assessment can be faulted in law or fact ?”**

7. Both the learned Counsel have attacked and defended the impugned finding in their arguments. The main contention of learned Counsel for the Appellant Establishment is that these employees were not appointed against sanctioned vacancies following recruitment process, hence, could not be covered under the Act. Further it has been argued that the Respondent Authority has committed error in law by ignoring this point as well the case of the Appellant Establishment that after one year, the services were outsourced and 7 of these workmen were continuing under stay order passed by Hon’ble High Court of M.P. in W.P. No.-14480/2020 on 25.11.2020. Learned Counsel has further attacked the assessment with a submission that it is factually incorrect.

8. Section 1(3) of the Act requires to be reproduced here, which is as follows :-

3) Subject to the provisions contained in Section 16, it applies-

(a) to every establishment which is a factory engaged in any industry specified in Schedule I and in which twenty or more persons are employed, and

(b) to any other establishment employing twenty or more persons or class of such establishments which the Central Government may, by notification in the Official Gazette, specify in this behalf:

Provided that the Central Government may, after giving not less than two months' notice of its intention so to do, by notification in the Official Gazette, apply the provisions of this Act to any establishment employing such number of persons less than twenty as may be specified in the notification.

**Section 2(e) "employer" means—**

(i) in relation to an establishment which is a factory, the owner or occupier of the factory, including the agent of such owner or occupier, the legal representative of a deceased owner or occupier and, where a person has been named as a manager of the factory under clause (f) of sub-section (1) of section 7 of the Factories Act, 1948 (63 of 1948), the person so named; and

(ii) 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;

**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;

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

(i) the cash value of any food concession;

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

(iii) any presents made by the employer;

**16. Act not to apply to certain establishments.—**

(1) This Act shall not apply—

(a) to any 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

(b) 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 governing such benefits; or

(c) to any other establishment set up under any Central, Provincial or State Act and whose employees are entitled to the benefits of contributory provident fund or old age pension in accordance with any scheme or rule framed under that Act governing such benefits; 6\*\*\* 7\* \* \* \* \*

(2) If the Central Government is of opinion that having regard to the financial position of any class of establishments or other circumstances of the case, it is necessary or expedient so to do, it may, by notification in the Official Gazette, and subject to such conditions as may be specified in the notification, exempt whether prospectively or retrospectively that class of establishments from the operation of this Act for such period as may be specified in the notification.

**9.** A simple reading of these provisions makes it clear that an establishment is under obligation to pay employees provident fund dues of its employees and is covered under the Scheme automatically as and when conditions mentioned as above are satisfied. It is established from Section 2(f) of the Act that the nature of employment i.e. whether the employees are regularly appointed or they are casual/ daily wagers, whether they are employees employed by the establishment or whether they are contract workers, the Appellant Establishment is under legal obligation under the Act to deposit or get deposited the EPF dues of its casual/daily wagers through contractors

(being Principal Employer). There is nothing on record that these employees were covered under any other equally beneficial scheme. The arguments of learned Counsel for respondent that the Appellant Establishment is covered under the Act for Provident Fund deposits when the conditions under Section 3a and 3b as mentioned above are satisfied and letter of coverage or assessment order does not make any difference in this liability, is liable to be accepted. **Accordingly, rejecting the argument from the side of Appellant Establishment, the finding of the Respondent Authority on this point is held to have been recorded correctly in law and facts.**

*10.* As regards the **argument** of learned Counsel for Appellant Establishment with regard to correctness of assessment of amount, recorded by Respondent Authority, I am not incline to accept it because there is nothing on record before this Tribunal or before Respondent Authority to show that the assessment was incorrect. Hence, the finding of the Respondent Authority with respect to assessment of the amount is also held to have been correctly recorded.

*11.* No other point was pressed.

*12.* In the light of the above discussion, the appeal fails.

### **ORDER**

**Appeal dismissed. The liability and the assessment of amount under Section 7A of the Act in the impugned order is affirmed.**

**No order as to costs.**

**Date:- 05/07/2024**

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

**Judgment Signed, dated and pronounced.**

**Date:- 05/07/2024**

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