

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

EPF Appeal No.- 37/2017

Present – P.K. Srivastava

H.J.S. (Retd.)

**M/s Bhoramdeo Sahkari Shakkar
Utpadak Karkhana Maryadit,
Kawardha (Chhattisgarh)**

Appellant Establishment

Vs.

**The Regional Provident Fund
Commissioner,
Employees Provident Fund Organization,
Regional Office Raipur (Chhattisgarh)**

Respondent Authority

Shri Jitendra Nath Nande : Learned Counsel for Appellant.

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

JUDGMENT

Under challenge in the present appeal is order of Respondent Authority dated 16.08.2011, by which holding the Appellant Establishment liable to pay EPF dues of its Five Hammalas (Contract Labors) for the period 11/2006 to 03/2010, recorded a finding that the Appellant Establishment defaulted in deposit of their EPF dues and has assessed the amount at Rs. 16,07,658/- only directing the Appellant Establishment to deposit the amount.

Facts connected in brief are mainly that a complaint was received by the Respondent Authority on 21.04.2009, wherein it was alleged that, the 32 loading and unloading employees Hired by the Appellant Establishment through various Contractors have not been extended PF benefits and the Appellant Establishment is defaulting in deposit of all EPF dues of these 32 Employees. A notice was issued under Section 7A of the Employees Provident & Miscellaneous Provisions Act 1952 (in short the ‘Act’) to the Appellant Establishment in this respect. It was found in the enquiry that though the EPF

benefits have been extended to 27 contract workers out of the list of 32, five contract workers, names mentioned in the impugned order were not extended EPF benefits and their EPF dues for the period mentioned against their names were not deposited by the Appellant Establishment. Hence, the Respondent Authority held that the Appellant Establishment had committed default in deposit of EPF dues of its Five Contract Workers for the period mentioned in the impugned order, had assessed amount at Rs. 16,07,658/- and had directed the Appellant Establishment to deposit it, hence this appeal.

The grounds of appeal are mainly that the Inspection Report prepared by the Enforcement Officer which was relied upon by the Respondent Authority in recording the impugned finding was never supplied to the Appellant Establishment and in the Impugned Findings order was passed without considering the case of Appellant Establishment and their documents. Also that, the Respondent Authority acted as a Prosecutor and Judge which is against principles of Natural Justice. Hence impugned findings and order is against law.

In counter to the appeal, the Respondent Authority, has defended the impugned finding and order with a case that on the basis of complaint, a notice was issued by the Respondent Authority, to the Establishment on 05.05.2009 by which the Appellant Establishment was directed to submit its case before the Respondent Authority which was not responded to inspite of service, hence an Enquiry under Section 7A of the Act was initiated. This Enquiry concluded after 26 hearings in which the Appellant Establishment also perceived with their records. The Enforcement Officer had visited the site of the Appellant Establishment and had prepared his report on 29.10.2009 and 09.02.2010, which were prepared in presence of the Representative of Appellant Establishment and was signed by him. Copies of these reports were also supplied at the site itself at the time of visit.

The Appellant Establishment also filed its balance sheet. According to the Respondent Authority the Contract Workers are also employees for the purpose of the Act as defined under Section 2 F of the Act. Hence, the findings and assessment have been correctly recorded.

None was present for the Appellant Establishment at the time of argument, hence argument of Mr. J.K. Pillai Learned Counsel for the Respondent Authority were heard by me. Appellant Establishment has not filed

any written submissions. Respondent's side has filed their Written Submissions. I have gone through the written submissions as well the record.

On perusal of record in the light of written submissions, following points comes up for determination:

- 1. Whether the findings of the Respondent Authority that the Appellant Establishment is under obligation to deposit EPF dues of its Five contract labors, for the period mentioned in the Impugned order and that the Appellant Establishment has defaulted deposit of these Five Contract Workers is correct in law and fact?***
- 2. Whether the assessment has been correctly recorded in law and fact?***

Point for determination No. 1 & 2 :

For the shake of convenience both the points for determination are being taken together.

Section 1 (3) of the Act which states about the conditions regarding applicability of the Act is being reproduced as follows:

1. Short title, extent and application.—

(1) This Act may be called the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

(2) It extends to the whole of India

(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.

(4) 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.

(5) An establishment to which this Act applies shall continue to be governed by this Act notwithstanding that the number of persons employed therein at any time falls below twenty.

It is not the case of the Appellant Establishment at any stage that it is not covered under the Act.

This is also not disputed at any stage that more than 20 persons have been working with the appellant establishment hence, it is established that the Appellant Establishment is covered under the Act.

Section 2(f) of the Act defines employee for the purpose of the Act is being reproduced as follows:

2. Definitions.—In this Act, unless the context otherwise requires,—

(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; and includes any person employed by or through a contractor in or in connection with the work of the establishment”
- (ii) 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;

It is clear from the above provisions that the Contract Labor is also employee for the purposes of the Act. Hence, this is established that the

Contract Workers of the Appellant Establishment are also entitled to EPF benefits and the Appellant Establishment is under legal obligation to deposit their EPF dues in time.

The Appellant Establishment has taken a ground that principles of natural justice were not followed in the enquiry. There is nothing on record to substantiate this fact.

Hence, holding the findings recorded by Respondent Authority as above correct in law and fact they are affirmed.

Since, the assessment of amount is not been challenged in the appeal and there appears no mistake in the Assessment, the amount assessed also is held correct in law and fact.

Points for determination No. 1 & 2 are answered accordingly.

No other point was pressed.

On the basis of above discussion appeal is held sans merits and is liable to be dismissed.

ORDER

Appeal Dismissed.

No order as to cost.

Date:-17/02/2025

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

Judgment Signed, dated and pronounced.

Date:-17/02/2025

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