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

EPF Appeal No.- 96/2017
Present – P.K. Srivastava
H.J.S. (Retd.)

M/s Vikram University,
Dewas Road (Kothi Area)
Distt. Ujjain (M.P.)

Appellant

V/s

Asstt. Provident Fund Commissioner C-1,
Pradhikaran Bhawan, VIIth Floor,
7, Race Course Road, Indore (M.P.)

Respondent

Shri Uttam Maheswari : Learned Counsel for Appellant.

Shri Abhisek Arjaria : Learned Counsel for Respondent.

JUDGMENT

(Passed on 15th day of July, 2026)

The present appeal is directed against order of the Respondent Authority dated 04.12.2013, passed under ***Section 7A of the Employees Provident Fund and Miscellaneous Provision Act, 1952 (in short the 'Act')***, whereby the Respondent Authority has held the Appellant Establishment liable to pay the PF dues of its employees for the period from 04/1982 to 03/2011 and has assessed the amount at Rs. 1,38,29,400/- (Rupees One Crore Thirty Eight Lacs Twenty nine Thousand Four Hundred).

Shorn of of unnecessary details, the skeletal facts are that the Appellant Establishment is a University, established under the State Legislation, named Vikram Vishwavidyalaya Adhiniyam and is under Ministry of Higher Education, Government of India. They were served a notice under Section 7A of the Act, issued by the Respondent Authority, requiring them to appear before the Authority and peruse record with respect to PF deposits of their employees.

They did appear before the Respondent Authority and submitted an application raising various objections. Copy filed as ***Annexure 4*** to the appeal. Two Enforcement Officers submitted their report before the Respondent Authority. Copies of the report were not supplied to the Appellant Establishment. The Respondent Authority vide its order dated 04.12.2013, passed under Section 7A of the Act, held the Appellant Establishment liable to deposit PF dues of its Contractual employees for the period 04/1982 to 03/2011, assessed the amount at Rs. 1,38,29,400/- and directed the Appellant Establishment to deposit the amount, hence this appeal.

Grounds of appeal, taken in the memo of appeal are mainly that, the impugned order is bad in law, because the Respondent Authority failed to consider the effect of Section 16 of the Act, and committed error in law in recording the finding that the Act shall be applicable to the Appellant Establishment. The impugned order is arbitrary, passed without application of mind and against the Act. Respondent Authority failed to consider the fact that, the employees drawing salary exceeding the wage ceiling of Rs. 6500/- would not be covered under the Act, thus committed error in law. The impugned order has been passed mechanically against settled proposition of law, it is perverse. The Respondent Authority has misdirected itself in appreciation of the required provisions. The Respondent Authority relied on the report off the Enforcement Officer, which was never supplied to the Appellant Establishment, thus committed error in law.

In their counter to the Appeal, the Respondent Authority has taken a case that, the Act is of social security legislation, it is applicable on establishment engaging 20 or more persons on any day, which do not have adopted any other PF scheme equally beneficial. The dues are to be deposited by the Employer, by the 15th of the next month regarding the employees, who have worked in the establishment and has earned the wages. In failure to deposit the legitimate dues of the workers, the Authority initiates assessment and recovery proceeding under Section 7A, 8B and 8G of the Act. After deposit of principle amount, action is initiated for levy of interest under Section 7Q and 14B of the Act on the amount which was not paid within time recovered by the

Appellant Establishment. Since, it is a beneficial legislation, any provision capable of two interpretation, one favoring the beneficiary shall be accepted. It is further the case of Respondent Authority that, , the impugned finding under Section 7A of the Act, as well Assessment, has been recorded by the Respondent Authority after an enquiry, in which the Appellant Establishment participated. He never raised any objection during the enquiry. He was granted full opportunity to have his say. Hence, the impugned order is correct in law and fact and does not warrant any interference.

I have heard argument of Learned Counsel Mr. Uttam Maheswari for Appellant Establishment and Mr. Abhisek Arjaria, Learned Counsel for the Respondent Authority. The Appellant Establishment has filed written submissions also, which have been taken on record, I have gone through the written submissions as well the record.

On perusal of record, in the light of rival submissions, following points arise for determination.

1. ***Whether, the finding of the Respondent Authority that the Appellant Establishment is liable to deposit PF dues of its Contractual Employees for the period from 04/1982 to 03/2011 and the assessment has been recorded correctly in law and fact?***

As it appears from perusal of impugned order dated 04.12.2023, the Establishment is covered under the Act and has been allotted PF Code MP/3985, and it was reported in default of remittance of PF dues of its employees. Thereafter, notice was issued to them on 28.03.2011, requiring them to appear before the Authority on 25.04.2011 with all documents and records. It also comes from perusal of record that, the Appellant Establishment submitted the details of wages of employees from May, 2008 to December, 2010 and reported that earlier records of the Establishment were not readily available. They also reported a consolidated statement of wages, details for the period April, 1982 to April, 2008 was available and might be taken into account. The Respondent Authority further mentions that, report of the Enforcement Officer was submitted on the basis of available records on 07.10.2013, it has been relied upon by the Respondent Authority in recording its findings and assessment.

One argument from the side of Appellant Establishment is that, this report of Enforcement Officer was never submitted to them. But this fact gets falsified from the photocopy documents filed with the counter to the reply.

Learned Counsel for Appellant Establishment has further submitted that, they have been depositing the PF dues of their regular employees and they have a separate PF scheme in this respect, which they have been adopted. He refers to Section 16 of the Act and has submitted that Appellant Establishment could not be held liable for deposit of its Contractual employees which are not regular employees.

Section 16 of the Act is being reproduced as follows –

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;

(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.

The word '*employees'* has been defined under ***Section 2(f) of the Act***, which is also being reproduced as follows –

(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;

Section 1(3), 4 and 5 of the Act also relevant in this respect, these provisions are also being reproduced as follows –

1(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.

Para 30 and 36 of the Employees Provident Fund Scheme, 1952 are also being reproduced as follows –

30. Payment of contributions

(1) The employer shall, in the first instance, pay both the contribution payable by himself (in this Scheme referred to as the employer's contribution) and also, on behalf of the member employed by him directly or by or through a contractor, the contribution payable by such member (in this Scheme referred to as the member's contribution).

(2) In respect of employees employed by or through a contractor, the contractor shall recover the contribution payable by such employee (in this Scheme referred to as the member's contribution) and shall pay to the principal employer the amount of member's contribution so deducted together with an equal amount of contribution (in this Scheme referred to as the employer's contribution) and also administrative charges.

(3) It shall be the responsibility of the principal employer to pay both the contribution payable by himself in respect of the employees directly employed by him and also in respect of the employees employed by or through a contractor and also administrative charges.

36. Duties of employers

(1) Every employer shall send to the Commissioner, within fifteen days of the commencement of this Scheme, a consolidated return in such form as the Commissioner may specify of the employees required or entitled to become members of the Fund showing the [basic wage, retaining allowance (if any) and dearness allowance including the cash value of any food concession] paid to each of such employees: Provided that if there is no employee who is required or entitled to become a member of the Fund, the employer shall send a 'NiL' return.

(2) Every employer shall send to the Commissioner within fifteen days of the close of each month a return-

(a) in Form 5, of the employees qualifying to become members of the Fund for the first time during the preceding month together with the declarations in Form 2 furnished by such qualifying employees, and

(b) [in such form as the Commissioner may specify], of the employees leaving service of the employer during the preceding month: Provided that if there is no employee qualifying to become a member of the Fund for the first time or there is no employee leaving service of the employer during the preceding month, the employer shall send a 'NIL' return.

(c) Provided further that a copy of the forms as mentioned in clauses (a) & (b) above shall be provided by the employer to concerned employees immediately after joining the service or at the time of leaving the service, as the case may be.

(3) [Omitted]

(4) Every employer shall maintain an inspection note book in such form as the Commissioner may specify, for an Inspector to record his observation on his visit to the establishment.

(5) Every employer shall maintain such accounts in relation to the amounts contributed to the Fund by him

and by his employees as the Central Board from time to time, direct, and it shall be the duty of every employer to assist the Central Board in making such payments from the Fund to his employees as are sanctioned by or under the authority of the Central Board

(6) Notwithstanding anything hereinbefore contained in this paragraph, the Central Board may issue such directions to employers generally as it may consider necessary or proper for the purpose of implementing the Scheme, and it shall be the duty of every employer to carry out such directions.

From the aforesaid provisions it is established that, ***even the Contract employees or casual employees are also 'employees' for the purpose of the Act*** and since they are not covered under any PF scheme, they will be covered under the Act. Hence, the submission from the side of Appellant Establishment in this respect cannot be accepted that these causal and contract employees are not covered under the Act.

On the basis of these findings, the finding of the Respondent Authority that the Appellant Establishment has to deposit PF dues of its Contract and Casual employees for the period in question is held to have been recorded correctly and in law.

As regards, **from the side of Appellant that, there were employees who were excluded** as they were getting more than Rs.6500/- as salary/wages, which is not done in the case in hand. This burden was on the Appellant Establishment to show and established this fact by way of filing the salary documents of such so called excluded contract workers and casual labours. ***In absence of these documents, the finding of the Respondent Authority on this point cannot be faulted in fact or law.***

It comes out that the Enforcement Officer filed its report on 03.07.2013, which ***is Annexure R/8*** to the Counter. In this report, he has assessed the amount. There is nothing on record to show that, a copy of this was ever served on the Appellant Establishment. There is no signature or any one from the side of Appellant Establishment receiving this report in the report itself. There is no other record to show that this report was ever served on Appellant Establishment. The Appellant Establishment has taken a specific plea that, record of Enforcement Officer was not served, which is not been countered by the Respondent Authority in their counter to the Appeal.

Also, there is nothing in the impugned order to show that, this report was supplied to the Appellant Establishment. Hence, in the light of these facts, the assessment of amount is held to have been recorded without observing the principles of natural justice. The matter requires to be remanded to the Respondent Authority on this point.

Issue for determination is answered accordingly.

No other point was pressed.

On the basis of above discussion and findings, the appeal is disposed as follows –

ORDER

The impugned order dated 04.12.2013 so far as relates to the liability of the Appellant Establishment with respect to deposit of PF dues of its Contract and Casual Labour for the period in the impugned order is affirmed but so far as it relates to assessment of amount, it is set-aside. The Respondent Authority is directed to record a fresh assessment of amount, after supply of report of the Enforcement Officer(Annx.R/8) to the Appellant Establishment and after giving proper opportunity of hearing to the parties on it, preferably within 60 days from the receipt of the judgment.

Parties are directed to appear before the Respondent Authority with a copy of this judgment.

No order as to cost.

Date:- 15/07/2026

P.K. SRIVASTAVA
(PRESIDING OFFICER)

Judgment Signed, dated and pronounced.

Date:- 15/07/2026

P.K. SRIVASTAVA
(PRESIDING OFFICER)