

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
CUM LABOUR COURT/EPF APPELLATE TRIBUNAL,
JABALPUR

NO. CGIT/LC/EPFA-12/2017

PRESENT: P.K.SRIVASTAVA
H.J.S.(Retd.)

M/s S.S.L.JAIN Higher Seconday School

APPELLANT

Versus

The Regional Provident Fund Commissioner,
Bhopal(M.P.)

RESPONDENT

(J U D G M E N T)

(Passed on this 16th day of March-2021)

1. The present appeal is directed against the order dated 28-6-2004 passed by the Respondent Authority under Section 7A of Employees Provident Fund and Misc. Provisions Act,1952 , hereinafter referred to as the word ‘Act’ holding the Appellant Establishment liable to pay employees Provident fund dues from April-2000 to February-2004 Rs.22,77,748/- being the difference in percentage of contribution as well as interest under section 7-Q of the Act amounting to Rs.5,35,149/- holding the appellant establishment liable to pay the amount.

2. The facts connected in brief are that, the appellant establishment does not dispute the liability to pay employee provident fund dues as claimed by the Respondent Authority in the impugned order. Its main dispute rests, on the fact that, since the appellant establishment is a school running on Government-grant-in-aid, under the provisions of Madhya Pradesh Ashshkiya Shikshan Sansthan Tatha Anya Karmachariyaon Ke Vetno Ka Sanday Adhiniyam 1978 as amended by the Amendment Act of 2000. It has no funds of its own to pay the amount , hence this amount should be paid by the State Government.

3. The ground of appeal mentioned in the memo of appeal are that the ultimate control on the institution is with the State Government. Appointments are made in the institution after approval from the State Government and no teacher is recognized as teacher, unless so approved. Salary is also required to be fixed by the State Government . The State Government has ultimate control over termination of the staff also as well as suspension also, hence the grounds have been mainly summarized by the Appellant as follows:-

(A):-Because provident fund is payable by State Government being “Employer” as defined in Section 2 of the Act.

(B):-because this dispute has already been settled earlier that the amount is payable by the State

Government . The Respondent Authority has issued an order fixing the liability of the appellant, which is contrary to law.

(C):- because the appellant submitted detailed representation on 21-6-2004.

(D):-because the employees employed in various educational institutions i.e. run by the societies and private individuals and recognized or unrecognized having grant-in-aid or otherwise and employed by the State Government cannot have disparity in social security provided by the State.

4. The Respondent has defended the impugned order in its counter with the case that when liability is not disputed then from whom the payment is to be made, is internal matter between the appellant establishment and State Government. The Respondent has no business to look into it.

5. I have heard arguments of learned counsel for appellant Shri Uttam Maheshwari and Shri J.K.Pillai, learned counsel for Respondent have submitted their arguments. I have gone through the record as well.

6. Perusal of the record in the light of rival arguments reveals that for the period April-2000 to February-2004 which has been taken for fixation of liability by the Respondent Authority in the impugned order has to be divided into sub-sections during April-2000 to April-2003 @ 8.33% of basic wages was deducted as employees provident fund dues and thereafter till February-2004 @ 12% of basic wages were deducted as employees provident fund dues, whereas the employees provident fund dues should have been deducted at the rate of 12% of basic wages+dearness allowance. As it also comes out from the perusal of the record, that the same defense was taken by the appellant establishment before the Respondent Authority also on which it has recorded a finding that grounds on which the Establishment is requesting for waiver of balance dues are internal matter of the Establishment. The various difficulties expressed do not, in any way have the effect of denying the legitimate rights of the employees of the establishment, as provided by the 'Act'. The Respondent Authority further held that the persons responsible for running the establishment have to ensure appropriate compliance and payment of all statutory dues.

7. Now, in the light of these factual background, the point which remains to be decided is "whether the finding of the Respondent Authority, that grounds for waiver of dues are internal matter of establishment, has been recorded correctly in law and fact or not ?.

8. As it has been observed earlier, there is no dispute regarding the liability to pay the dues as calculated by the Respondent Authority. There is no dispute also with respect to the amount calculated by the Respondent Authority. According, to the Respondent Authority the dues should have been 12% of basic pay+dearness allowance whereas earlier it was deducted on 8.3% of basic pay and later on @ 12% of basic pay only, as detailed earlier in this judgment. Section 2(b) of the 'Act' defines basic wages which is being reproduced as follows:-

(b) "basic wages" means all emoluments which are earned by an employee while on duty or 4[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 named 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;

9. Perusal of this Sections reveals that basic wages for the Act means, all emoluments which are earned by an employee while on duty in accordance with the terms of the contract of employment, payable or paid to him in cash. This provision also excludes some allowance as above from the category of basic wages, hence the stand of the Respondent Authority that deduction should have been at 12% of amount, which is basic salary +dearness allowance cannot be faulted in law.

10. As regards the submission of learned counsel for the appellant that the school employees and teachers are in fact employees of the State Government because the appointment, service conditions, suspension and termination as well as payment of salary is regulated by the State Government. According to the Madhya Pradesh Act of 1978 and Amended Act of 2000', as mentioned above, the appointing and the terminating Authority is the Management of the School. The appointment and termination as well as inquiry and service conditions are regulated by the State Government because it gives grant-in-aid to the school and also recognition to the School. Hence only by regulating service conditions, the State Government does not become Appointing Authority of school staff, in the light of facts mentioned, thereby that the school staff i.e. teaching and non-teaching staff remain the employees of School Management and not of the State Government and for the purposes of the 'Act' the employer as defined in Section 2(e) of the Act will be the School Management. Section 2(e) is being reproduced as follows:-

2[(e) "employer" means-

(i) in relation to an establishment which is a factory, the owner or the 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 The Employees' Provident Funds and Miscellaneous Provisions Act, 1952 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;]

11. Hence in the light of the above discussion, the finding of the Respondent Authority in this respect, cannot be faulted in fact and law . How the payment is to be made, is the internal matter between the School Management and the State Government. The School Management may seek additional grant-in-aid for its purposes, being permissible under Rules.

12. On the basis of the above discussion, the appeal sans merit and is liable to be dismissed with costs.

ORDER

Order confirming the impugned order dated 28-6-2004 passed by the Respondent Authority, the Appeal is dismissed with costs.

No order as to costs.

(P.K.SRIVASTAVA)

PRESIDING OFFICER

JUDGMENT SIGNED , DATED AND PRONOUNCED.

(P.K.SRIVASTAVA)

PRESIDING OFFICER

Date:16/3/2021