

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

**NO. CGIT/LC/EPFA-14-2020**

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

**M/S Government Model Science College**

**APPELLANT**

**Versus**

**The Union of India & Others**

**RESPONDENT**

---

**Shri Aditya Narayan Shukla : Learned Counsel for Appellant.**

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

---

**( J U D G M E N T )**

**(Passed on THIS 14<sup>TH</sup> DAY OF December-2021 )**

- 1.* The Present Appeal is directed against the order of the Respondent Authority dated 18-10-2018 whereby the Respondent/Authority has held the Appellant Establishment liable to deposit the employees provident fund dues in employees provident fund as per the provisions of the Employees Provident Fund And Misc. Provisions Act,1952, herein after referred to the word Act”

and has further directed the appellant establishment to comply with the provisions of the Act and Scheme there under and further remit the employees provident fund dues assessed for the period October-1990 to December-2017 amounting to Rs.54,51,780/-.

2. The facts connected in brief are that a Writ Petition No.19983/2016 was filed by one Raju Yadav before Hon'ble High Court regarding granting the benefit of provident fund membership under the provisions of the Act. This writ petition was disposed of by Hon'ble High Court vide its order dated 7-12-2016 directing the petitioner to submit representation before the Respondent Authority who would decide it as per law. A Petition was filed by the petitioner/complainant Raju Yadav in the office of Respondent received on 24-5-2017 and an initial inquiry was conducted. The Inquiry Officer submitted his report dated 7-7-2017, wherein he stated that the Appellant Establishment was liable to be covered under the provisions of the Act. A notice was issued to the Appellant Establishment on 10-8-2017 to take steps for coverage of the establishment under the Act. Several other petitioners have also approached the Hon'ble High Court for extension of benefit of the Act which were disposed by Hon'ble High Court and the petitioners were directed to approach the Respondent, in this regard. They also filed separate complaints /petitions which were clubbed with the petition of Raju Yadav and a joint inquiry was made. During the inquiry the appellant establishment took the stand that they were not covered under the Act as they were entitled to protection of Section

16-b of the Act. This stand of the appellant establishment before the Respondent Authority was repelled by the Respondent Authority with a finding that since the complainants who were other than regular employees of the Appellant Establishment, were not covered by any Provident Fund or Old Age pension Scheme which was available only to the regular employees of the appellant establishment, they are to be entitled to the benefits of the Act. Accordingly the Respondent Authority passed the impugned order holding the Appellant Establishment liable to pay the employees provident fund dues of other employees who were other than the regular employees for the aforesaid period. Hence this appeal.

3. The grounds taken mainly are that the Respondent Authority has passed the impugned order under Section 7-A of the Act in utter dis-regard to principles of natural justice which is erroneous and illegal. The impugned order has been passed without appreciating the fact of the matter and without interpreting the provisions in proper perspective, particularly the provisions relating to the exemption of certain institutions. The Respondent/Authority failed to appreciate that it was required to act as a watch dog of interest of employees and employer both and not permit itself to act as a blood hound merely to achieve the targets.
4. In its reply, the Respondent has stated that the contractual and other casual employees of the Appellant Establishment are covered

under the Act because the benefits of the contributory fund and pension scheme inforce for the regular employees of the Appellant Establishment was not available to them hence, the impugned order cannot be said to be unjustified in law and fact. Also it has been stated that the Respondent Authority did not commit any illegality or error in fact or law in holding the Appellant Establishment not entitled to protection under Section 16-b of the Act. Accordingly, it has been prayed that the Appeal be dismissed.

5. I have heard Mr. Aditya Narayan Shukla, Learned Counsel for the Appellant and Shri J,K,Pillai, learned Counsel for the Respondent. I have perused the record as well.

6. After perusal of the record in the light of the rival arguments, the following points come up for determination:-

**Point No.1:- Whether the finding of the Respondent Authority that the Appellant Establishment is not entitled to protection under Section 16-b of the Act can be faulted in law or fact?**

**Point No.2:- Whether the finding of the Respondent Authority with regard to period of coverage can be faulted in law or fact?**

7. **POINT FOR DETERMINATION NO.1:-**

It has been submitted by learned counsel for Appellant that the Appellant is a Government Establishment. It has its own contributory provident fund and pension scheme for its employees, hence it is not covered under the provisions of the Act. The learned counsel has referred to Section 16-b of the Act which is being reproduced as follows:-

**SECTION 16(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.”**

According to learned counsel, the Respondent Authority committed error in recording his finding that the appellant was not entitled to protection of Section 16-b of the Act.

8. Defending the aforesaid finding, the learned counsel for Respondent has submitted that this finding cannot be faulted in law or fact because there was nothing on record to show that the contractual and casual employees of the Appellant Establishment were covered and were given benefits of any other provident fund and pension scheme.

9. Perusal of the record including the impugned order reveals that no material was produced by the appellant before the Respondent Authority or before this Tribunal to show that the contractual and casual employees were covered or were granted any benefits of any other contributory provident fund and pension scheme. The language of Section 16-b of the Act makes it amply clear that the protection of this provision will be available only when firstly the establishment is run by or controlled by Central or State Government and its employees are covered by any Contributory fund and Pension Scheme.
10. Section 2e and 2f of the Act defines employer and employee as under:-

**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 been ultimate control over the affairs of the establishment, and where the said affairs are entrusted to a manager, managing directing or managing agent, such manager, managing director or managing agent;]**

**(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 3[an establishment] and who gets his wages directly or indirectly from the employer, 4[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 Apprentice Act, 1961 (52) of 1961) or under the standing orders of the establishment];**

*11.* From the aforesaid definition of the word employee , it is established that the contractual and casual employees who were not regular employees shall be deemed to be the employees for the purposes of this Act. There is nothing on record to indicate that this category of employees were covered or given benefit of any contributory provident fund and pension scheme which was given to regular employees of the appellant. Hence the finding of the Respondent Authority that the Appellant Establishment is not entitled to protection of Section 16-b of the Act cannot be held unjustified in law or fact and is confirmed accordingly. **Point for determination NO.1 is decided accordingly.**

*12.* **POINT FOR DETERMINATION NO.2:-**

The Respondent Authority has held that the Appellant Establishment is liable to pay the employees provident fund dues from October-1990 to December-2017. This finding has also been challenged by Appellant with an argument that in fact the complaint itself was made in the year 2016 and the complainant had given it in writing

that they are not interested in getting benefit of the Act for the period earlier to their petitions. I am not inclined to accept this argument of learned counsel for the appellant because the entitlement and protection is given under the Act which cannot be waived as there is no provision. Moreover the Act is a beneficial legislation, hence I do not find any error in law or fact on this point also. Accordingly confirming the finding of the Respondent Authority, regarding the period of assessment , this point no.2 for determination is also decided accordingly.

**13.\_** On the basis of the above discussion, the appeal sans merit and is liable to be dismissed.

**ORDER**

**Accordingly the Appeal stands dismissed.**

**(P.K.SRIVASTAVA)**

**PRESIDING OFFICER**

**JUDGMENT SIGNED , DATED AND PRONOUNCED.**

**(P.K.SRIVASTAVA)**

**PRESIDING OFFICER**

**Date:**