

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

NO. CGIT/LC/EPFA-62-2017

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

M/s Keshariya Concrete Products Pvt./Ltd.

APPELLANT

Versus

The Assistant Provident Fund Commissioner
Bhopal(M.P.)

RESPONDENT

(J U D G M E N T)

(Passed on this 21st September-2021)

1. Under challenge in this petition is the order dated 22-5-2012 passed by the Respondent Authority against the appellant establishment holding it responsible to pay employees provident fund dues to the tune of Rs. 63,293/- under Section 7A of the Employees Provident Fund and Misc. Provisions Act,1952, herein referred to by the word 'Act'.
2. Facts connected in brief are mainly that the appellant establishment is a company registered under the Companies Act and is duly registered with the employees provident fund Code No.MP7937 and has been depositing employees provident fund dues continuously with the organization. Proceedings under Section 7A of the Act were initiated against the appellant establishment with regard to default in payment of employees provident fund dues of some exempted employees whose employees provident fund dues

the appellant establishment had been depositing earlier but due to some constrains stopped depositing it from March-2011 to October-2011. According to the appellant establishment, it appeared before the Respondent Authority and filed its objection, wherein it submitted that since the applicability of the Act itself, it is only with respect to the employees who received Rs.6500/- or less salary, it cannot be diluted by the Respondent Authority to seek deposit of employees provident fund dues or any contribution for those employees who were receiving salary/wages above the ceiling limit of Rs.6500/-. Thus submitted that the notice itself was beyond jurisdiction. As it is the case of the appellant establishment that the Respondent Authority did not consider this stand of appellant establishment and wrongly held the appellant establishment responsible to deposit employees provident fund dues of its employees who were earning Rs.6500/- as salary per month and were excluded employees.

3. The grounds of appeal are mainly that the impugned order is without jurisdiction, has been passed by the Respondent Authority exceeding his jurisdiction. The Respondent Authority has committed grave illegality in imposing liability upon appellant establishment to deposit employees provident fund dues of excluded employees also. Hence the order is bad in law and requires to be set aside.
4. In its counter/reply, the Respondent Authority has taken stand that since the appellant establishment was depositing the employees provident fund dues of those employees who were earning wages more than 6500/- since before, it could not stop depositing the dues because the Act is a beneficial legislation and doing so amounts to depriving the employees the benefits of the Act which they were earlier granted.
5. No Rejoinder has been filed.

6. I have heard arguments of Mr. Anoop Shrivastava for appellant and Shri J.K.Pillai for respondent. I have perused the record also.

7. After having perused the record, in the light of the rival arguments, the following points come for determination in the case in appeal.

“Whether the finding of the Respondent Authority holding the appellant establishment liable to deposit employees provident fund dues of its employees who were getting more than Rs.6500/- as wages per month can be faulted in law or fact?”

8. Before entering into any discussion, some provisions of the Act and Employees Provident Fund Pension Scheme,1952 framed under the Act requires to be mentioned as follows:-

Section 2(f) of the Employees Provident Funds Scheme,1952 reads as under:-

2(f) Excluded Employee” means-

(i)an employee who, having been a member of the Fund, withdrew the full amount of his accumulations in the Fund under{clause(a) or (c) of } sub-paragraph(1) of paragraph 69;

(ii)an employee whose pay at the time he is otherwise entitled to become a member of the Fund, exceeds(fifteen thousand rupees} per month

Explanation- “pay” includes basic wages with dearness allowance, {retaining allowance)if any) and cash value of food concessions admissible thereon:}

15(**)**

16[(iv) an apprentice.

Explanation:- An apprentice means a person whom, according to the certified standing orders applicable to the factory or establishment, is an apprentice, or who is declared to be an apprentice by the authority specified in this behalf by the appropriate Government.}

9. Section 12 of Employees Provident Funds and Miscellaneous Provisions Act, 1952:

Employer not to reduce wages, etc.- No employer in relation to 4[an establishment] to which any 5[Scheme or the Insurance Scheme] applies shall, by reason only of his liability for the payment of any contribution to 6[the Fund or the Insurance Fund] or any charges under this Act or the 5[Scheme or the Insurance Scheme] reduce whether directly or indirectly, the wages of any employee to whom the 5[Scheme or the Insurance Scheme] applies or the total quantum of benefits in the nature of old age pension, gratuity 7[,provident fund or life insurance] to which the employee is entitled under the terms of his employment, express or implied.]

Section 26 of Employees Provident Funds Scheme, 1952-Classes of employees entitled and required to join the fund:-

1(a)Every employee employed in or in connection with the work of a factory or other establishment to which this Scheme applied, other than an excluded employee, shall be entitled and required to become a member of the Fund from the day this paragraph comes into force in such factory or other establishment.

(b)Every employee employed in or in connection with the work of a factory or other establishment to which this Scheme applies, other than an excluded employee, shall also be entitled and required to become a member of the fund from the day this paragraph comes into force in such factory or other establishment if on the date of such coming into force, such employee is a subscriber to a provident fund maintained in respect of the factory or other establishment or in respect of any other factory or establishment(to which the Act applies) under the same employer:

Provided that where the Scheme applies to a factory or other establishment on the expiry or cancellation of an order of exemption under Section 17 of the Act, every employee who but for the exemption would have become and continued as a member of the fund, shall become a member of the fund forthwith.”

10. As perusal of the impugned order reveals the Respondent Authority has observed in the impugned order is that under Section 12 of the Act, the employer i.e. the appellant establishment could not

stop depositing employees provident fund dues with respect to the employees who were earning Rs.6500/- per month as wages and whose employees provident fund dues were earlier deposited by the appellant establishment as it amounted to reducing the total quantum of benefits admissible to such employees in the nature of old age pension, gratuity, provident fund or life insurance to which the employee is entitled under the terms of employment expressed or implied. According to the Respondent Authority, as it comes out from the perusal of the impugned order, the entitlement of an employee shall be decided under the terms of his employment expressed or implied and not under any other document so, according to the Respondent Authority, going by the letter and spirit of the Act and wisdom of Legislature, the employer i.e. appellant establishment could not reduce in any manner the total quantum of benefits in the nature of old age pension, gratuity, insurance and provident fund which the employee was entitled under the terms of his employment expressed or implied.

11. The reading of Section 12 of the Act referred to earlier, makes it clear that no employer in relation to which any scheme or insurance scheme apply, can reduce directly or indirectly the wages of employees to whom the Scheme applies to the total quantum of benefits in nature of old age pension, gratuity, insurance etc. to which the employee is entitled under the terms of his employment, expressed or implied. Meaning thereby that the wages of an employee cannot be reduced by an employer which is detrimental to the benefits mentioned in Section 12 of the Act. It is not the case of the appellant establishment nor does it transpire from record that wages of employees who were earlier earning Rs.6500/- or more were reduced in any manner which adversely affected its benefits admissible to him as mentioned under Section 12 of the Act.

12. As per Rule 2F of the Act mentioned earlier, an employee earning wages more than 6500/- is in the category of excluded employee for which the employer has no legal obligation to deposit the employees provident fund dues. However if the employer chooses so, he may opt for depositing the employees provident fund dues of any excluded employee as the Act and Rules provide but the point for consideration, which is the core issue in the case in hand is whether the employer has the liberty under law to reduce or not deposit employees provident fund dues to excluded employees or not.
13. The finding of the Respondent Authority that the employer cannot do so under Section 12 of the Act is misconceived, in my considered view. This is because Section 12 of the Act provides that wages cannot be reduced resulting into adversely affecting the benefits under the Act. In my considered view, the Respondent Authority has mis-read the provision and misconceived itself in interpreting that Section 12 of the Act provides for prohibition of non-deposit of employees provident fund dues to excluded employees.
14. Learned counsel for appellant has referred to case **Marathwada Gramin Bank Karamchari Sanghatna and Another Vs. Management of Marathwada Gramin Bank and Others** (2011) LLR 1130.
15. The point for consideration in the referred case is that whether the employer has right to reduce or not deposit of employees provident fund dues of excluded employees or not? It was held by Hon'ble the Apex Court that the employer has the right to do so and Section 12 of the Act does not impose a bar on this right of the employer.

16. Learned Counsel for Respondent Authority has submitted that the Respondent Authority has rightly held the principle laid down in the referred case not applicable to the facts of the case in hand because it was a case in Industrial Dispute Act and a dispute was raised under Section 9A of the Industrial Disputes Act, 1947 whereas the case in hand refers to Employees Provident fund & Misc. Provisions Act, 1952 but I find myself not inclined to accept his this argument because Hon'ble the Apex Court laid down the preposition of law that the employer was within its rights not to deposit the employees provident fund dues of its excluded employee. In the referred case also the Employer Bank was earlier depositing the employees provident fund dues of its excluded employees but later on stopped depositing the dues of such employees and an industrial dispute was raised and it was held by Hon'ble the Apex Court that the employer could do so and such an Act is not barred under Section 12 of the Act.

17. Now the question arises whether the employer has to satisfy the Respondent Authority regarding the reasons of not depositing the employees provident fund dues of its excluded employees whose employees provident fund dues were earlier deposited by the Employer. Neither the Act nor the Rules provide such a preposition. Hence the finding of the Respondent Authority that there was no evidence produced by the Employer justifying the action of Employer in not depositing the employees provident fund dues of its excluded employees, which it was depositing earlier, cannot be sustained in law .

18. In the light of the above discussion, it is held that the impugned order and findings are not justified in law. Accordingly the appeal deserves to be allowed with costs.

ORDER

Appeal is allowed with costs.

The Impugned order dated 22-5-2012, passed by the Respondent Authority, is set aside. Any deposit made by the appellant with respect to the impugned order be returned to the appellant establishment with interest earned on the amount within 30 days from the date of receipt of this order by Respondent Authority, failing which interest @ 12% p.a. from the date of deposit till payment.”

No order as to costs.

(P.K.SRIVASTAVA)

PRESIDING OFFICER

JUDGMENT SIGNED , DATED AND PRONOUNCED.

(P.K.SRIVASTAVA)

PRESIDING OFFICER

Date:21/9/2021