

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

EPFAppeal No.- 09/2021

Present - P.K. Srivastava

H.J.S. (Retd.)

**M/s Directorate of Archaeology,
Archives and Museum,
Banganga Road, Bhopal,
Madhya Pradesh - 462003**

Appellant

Vs.

- 1. The Regional Provident Fund
Commissioner,
Employees Provident Fund Organization,
BhavishyaNidhiBhavan,
59, Arera Hills, Bhopal, M.P. 462011**
- 2. The State President,
M.P. SambidaKaramchariAdhikariMahasangh,
LIG, 134, Kotara Sultanabad, Bhopal,
District Bhopal, M.P. 462011**

Respondent

Shri Shiv Kumar Shrivastava : Learned Counsel for Appellant.

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

JUDGMENT

The present appeal is directed against order of the Respondent Authority dated 30.12.2020 by which the Appellant Establishment has been held liable to pay EPF dues of its Casual and Contract Workers for the period 01.10.1989 to 12/2017 and has assessed the amount at Rs. 2,26,59,184/-.

The skeletal facts, are that a complaint was made by the State President of MP Sambida Karamchari Adhikari Mahasangh on 05.05.2017 to the Respondent Authority alleging that EPF benefits were denied by the Appellant Establishment to Contract and Casual Workers. An Investigation Squad was setup by the Respondent Authority which found the allegations in the complaint correct in its finding in its preliminary enquiry submitted on 09.06.2017. The Respondent Authority issued a notice dated 03.01.2018 to the Appellant Establishment. They appeared before the Respondent Authority and after enquiry, the Respondent Authority held that the Appellant Establishment was liable to deposit EPF dues of its Casual and Contract Workers from the period 10/1989 to 12/2017 with a finding that **firstly**, the Appellant Establishment was covered under the Act, **secondly**, it is not exempted or excluded establishment under the Act, and **thirdly**, it has defaulted deposit of EPF dues of its Casual and Contract Employees for the period mentioned above. Hence this appeal.

Grounds of appeal, taken in the memo of appeal are mainly that the findings recorded by Respondent are perverse and against law and fact. The Respondent Authority did not follow the principles of Natural Justice while conducting the Enquiry.

In its counter to the Appeal, the Respondent Authority has taken a case that the Act is beneficial legislation. Findings have been correctly recorded and no principles of Natural Justice have been violated.

I have heard argument of Learned Counsel Mr. Shiv Kumar Srivastava for Appellant Establishment and Mr. J.K. Pillai for Respondent Authority and have gone through the record as well. The parties have filed written arguments also, which is a part of record. I have gone through the Written Arguments also.

From perusal of record, in the light of rival arguments, following points arise for determination :-

- 1. Whether the finding of the Respondent Authority that the Appellant Establishment is covered under the Act since 10/1989 has been correctly recorded?*

2. *Whether the finding of the Respondent Authority that the Appellant Establishment has defaulted deposit of EPF dues of its Casual and Contract Employees since 10/1989 till 12/2017 is correct in law and fact?*
3. *Whether, the amount under appeal has been correctly assessed.*

Points for determination no 1 &2 :-

For the sake of convenience, both the issues are being taken together

As it comes from perusal of record, the Appellant Establishment took plea during the Enquiry that **firstly**, Government of M.P. has issued a circular dated 05.06.2018 whereby provisions have been made for EPF deduction of Contract Employees hence, the Appellate Establishment is under obligation to deposit EPF dues of its Contractual and Casual Workers since date of the Circular which is 05.06.2018 and not from 10/1989. The Respondent Authority has recorded a finding on the basis of Section 1(3)(b) of the Act, that since it was found in the inspection of the squad that 23 Workers were working in the Appellant Establishment on the date of inspection in 1989 hence in the light of Section 1(3)(b). The Appellant Establishment stood covered under the Act from 10/1989 and the Act will have over riding effect on the Circular of M.P. Government, above noted.

Section 1(3)(b) 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 6[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 before the Respondent Authority nor has it taken a case before this Tribunal in appeal that report of the Inspecting Squad that 23 Workers were found working as per records on 10/1989 in their inspection is incorrect and the provisions referred to above covers under its operation every Establishment where more than 20 workers are working at a time hence, the argument of Learned Counsel for Appellant Establishment, that this Act will apply on them only from the date of Circular i.e. 05.06.2018 cannot be accepted and **finding of the Respondent Authority on this point that the Appellant Establishment will be covered under since 10/1989 is held to have been recorded correctly in law and fact.**

Second objection and argument from side of the Appellant Establishment is that the Appellant Establishment is not an 'industry' as defined under Section 2 (j) of the Industrial Disputes Act, 1947 and the Contract as well Casual Workers are not their regular employees hence, finding of the Respondent Authority holding the said Establishment liable to deposit EPF dues of its Contract/ Casual Workers is incorrect.

Section 2(f), F(f), and F(F)(F) of the Act are 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 6[an establishment, and who gets his wages directly or indirectly from the employer, 7[and includes any person—

(i) employed by or through a contractor in or in connection with the work of the establishment; for "and includes any person 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; 1

[(ff) "exempted employee" means an employee to whom a Scheme or the Insurance Scheme, as the case may be, would, but for the exemption granted under³ section 17, have applied;

(fff) "exempted 4[establishment]" means 5[an establishment] in respect of which an exemption has been granted under section 17 from the operation of all or any of the provisions of any Scheme 2[or the Insurance Scheme, as the case may be], whether such exemption has been granted to the 4 [establishment] as such or to any person or class of persons employed therein;]

Bare reading of these provisions establishes that the persons employed through the Contract or Working in any capacity (even as Casual Worker) will be an employee in the purposes of the Act. Hence, whether the Appellant Establishment is an Industry as defined under Industrial Disputes Act, 1947 or not is irrelevant and argument from side of Appellant Establishment in this respect is not tenable in law.

Also it comes out that, the Respondent Authority has observed that the Appellant Establishment is not an Exempted Establishment under Section 16(2) of the Act. Nor is it an excluded Establishment under Section 16(1) (b) of the Act. These provisions are 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 10[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 Respondent Authority has further observed that since there is no exemption granted by Central Government under Section 16(2).

Further, has observed by Respondent Authority, since Establishment does not fulfill conditions mentioned in Section 16(1) (b) of the Act and there is no other Provident fund Scheme for Contract and Casual Workers of the Appellant Establishment, it is not excluded as Establishment under Section 16(1) (b) of the Act.

In absence of evidence to the Contract before the Respondent Authority as well before this Tribunal, the finding of the Respondent Authority that, the Appellant Establishment is neither an exempted establishment nor is it an excluded Establishment cannot be folded on facts and law.

Hence, in the light of the above discussion, finding of the Respondent Authority holding the Appellant Establishment liable to deposit EPF dues of its Casual and Contract Workers since 10/1989 to 12/2017 and the Appellant Establishment has defaulted deposit of EPF dues of its casual and contract workers from 10/1989 to 12/2017 is held to have been recorded correctly in law and fact and is affirmed.

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

Point for determination No. 3:-

The Appellant Establishment has virtually not challenged the assessment. From perusal of record also I did not find any incorrectness in computation of the assessed amount, hence, holding the Assessment to have been recorded correctly in law and fact. This point for determination is answered accordingly.

No other points were pressed.

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

ORDER

Appeal Dismissed.

Cost Easy.

Date:-12/02/2025

P.K. Srivastava

(Presiding Officer)

Judgment Signed, dated and pronounced.

Date:-12/02/2025

P.K. Srivastava
(Presiding Officer)

