

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

NO. CGIT/LC/EPFA-208-2017

Present: P.K.Srivastava

H.J.S.(Retd)

**M/s Netaji Subhas Chandra Bose
Medical College
Jabalpur (M.P.)**

APPELLANT

Versus

**Assistant Provident Fund Commissioner,
Jabalpur (M.P.)**

RESPONDENT

(J U D G M E N T)

(Passed on this 11st day of March 2024)

The Present appeal is directed against order of the respondent authority dated 03/10/2016 holding the appellant establishment liable to pay the employees provident fund (EPF) dues of its daily wagers/casual employees for the period January 01 2002 to July 2015 and assessed the total amount Rs. 15812663/- (One crore fifty eight lakhs twelve thousand six hundred and sixty three).

Facts connected, in brief, are mainly that the appellant establishment is a Medical College with a super specialty Hospital providing medical facility and education, established by State of M.P. under Vishwavidhyalay Adhinyam 1973. Some daily wagger employees were engaged by its officers without complying with statutory rules and without ascertaining the fact that whether there were sanctioned and vacant posts available. Hence, it was resolved that the engagement of such employees be dispensed with and these works be off loaded to contractors. The union of the daily wagger employees filed a Writ Petition no. 21283/2013 which was disposed by Hon'ble High Court of M.P. by order dated 06/08/2015. A committee was constituted under the orders of Hon'ble High Court and after enquiry, it was found that none of the employees worked against vacant and sanctioned post and hence they were not entitled to be regularized in light of the law laid down by Supreme Court.

It is further alleged that on a complaint lodged by the President of the union, the responded authority initiated an enquiry under The Employees

Provident Fund & Miscellaneous Provisions Act 1952, hereinafter referred to by the word 'Act'. The appellant establishment appeared before the respondent authority and filed objection taking the plea that all the casual employees were illegally appointed hence have been removed from service, a large number of such employees had already left employment, the provision of the Act are not applicable to appellant establishment, the employees union did not provide the required information that is the Aadhar card, Bank Account details and PAN Card of their members for opening their and for generating their Universal Account Number(UAN). According to the appellant establishment, the assessment has been done only on the basis of balance sheet without identifying the beneficiaries, hence in bad in law.

Ground of the appeal, taken in the memo of the appeal, are mainly that the impugned order has been passed by respondent authority without appreciating the fact that the intended beneficiaries are to be identified hence since has been passed without identification of intended beneficiaries, is bad in law. The respondent authority has exercised his jurisdiction against law in recording his finding about the beneficiaries and the assessment of amount is also faulty, hence cannot be sustained in law. The respondent authority has committed error in law in blindly putting his stamp of approval on the report of the enforcement officer without judiciously applying his mind hence has committed error in law and fact.

In Its counter, the respondent has come with a case, that an Enquiry under section 7A of the act was initiated against the appellant establishment on the basis of complaint received from the President of Dainik Vetan Bhogi Karmchari Sangh on Oct. 29th,2013 stating that 341 employees complaining non extension of Provident Fund Scheme benefits to them in spite of the fact that they had been working with the appellant establishment since last 15-20 Years. Respondents have rebutted the case of appellant that provisions of the Act are not applicable to them and have stated that since the persons with respect to whom the impugned order have been passed, are daily wages/ casual workers, they are not covered in the Provident Fund Scheme, hereinafter referred to by the word 'Scheme,, there are covered under section 16(1)(B) and 16 (1) (c) of the Act. It is further the case of respondent authority that the EPF dues of the causal workers have been calculated for the period 1/2002 to 7/2015 on the basis of the payment sheets and other vouchers as well documents submitted by the appellant establishment. The appellant establishment disputes these sheets with a case that the sheets are not genuine and on the basis of this document, which he cannot be permitted to do so in law. Amount of Rs.- 22069210/- EPF dues for the period from the January 2002 to July 2015 has been calculated. Out of this amount, Rs.- 6256538/- have been deposited by the appellant hence the balance remains to be paid as EFP dues for the period under assessment. It is further the case of the respondent authority these causal workers are employee under section 2(f) of the Act, the appellant establishment is not exempted establishment under the Act.

In its rejoinder, the appellant have mainly reaffirmed its case.

I have **heard arguments** of learned Counsel Shri Uttam Maheshwari for appellant establishment and Shri JK Pillai for respondents. I have gone

through the record and also the written arguments filed by the both sides which is part of record.

On perusal of record in the light of rival arguments, following points come up in the present appeal for determination.

- 1. Whether the finding of respondent authority that the casual workers of the appellant establishment are covered under the Act is justified in law and fact.**
- 2. Whether finding of the respondent authority that worker 341 casual workers working in appellant establishment without identifying them is correct in law and fact.**

Point for determination No 1-

Before entering into any discussion, some provisions of the Act required to mentioned here and are being reproduced as follows:-

1. Short title, extent and application.—4 [(1) This Act may be called the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.] (2) It extends to the whole of India 5***. 6 [(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 7 [twenty] or more persons are employed, and (b) to any other establishment employing 6 [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.]

2(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 establishment” means 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 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;

16. Act not to apply to certain establishments.—This Act shall not apply—

1 (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 9 [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 9 [establishments] from the operation of this Act for such period as may be specified in the notification.]

The concerned employees are the casual workers of the appellant establishment and this fact is established from the record produced by the appellant during the enquiry before the respondent authority. Appellant establishment disputes their engagements on the ground that the appointment of these casual workers was against rules, It is was not against sanctioned vacancy following in recruitment process. The definition of employee U/S 2(f) of the Act, mentioned above does not differentiate employees whether they are casual employees or regular employees for the purposes the Act and also makes no differentiation between the employee legally appointed or irregularly appointed. The second objection by the appellant establishment, taken by its learned Counsel that in fact they were not employed by the establishment even on casual basis cannot be accepted because this fact existed in the payment of salary bills produced by the establishment itself before the respondent authority during the enquiry proceedings.

Another ground taken by appellant is that the establishment has covered its employees by a different Provident Fund Scheme, hence, provisions of this Act are not applicable in the case of the workers who claimed themselves to be the employees of appellant establishment. Section 16(1)(b) and Section 16(1)(c) of the Act have been reproduced earlier in this judgment. Also established is the fact that the casual workers of the

appellant establishment are not covered by the Provident Fund Scheme adopted by appellant establishment. A careful reading of Section 16(1)(b) and Section 16(1)(c) of the Act reveals that for an establishment to be eligible for being excluded establishment, it has to fulfil three conditions which are mentioned in these Sections and in the case in hand, since the casual workers of the appellant establishment have not been forward in the Provident Scheme adopted by appellant establishment for its other employees, the protection of Section 16(1)(b) and Section 16(1)(c) of the Act is not available to the establishment.

In the light above discussion, the findings of the respondent authority that provisions of this Act are applicable to the casual workers of the appellant establishment is held correct in the law and is affirmed.

Point for determination no.-1 is answered accordingly.

Point for determination no.-2

As it is apparent from perusal of impugned order, the findings of the respondent authority with regard to identifiability of the beneficiaries has been recorded on the basis of documents produced in this respect by the appellant establishment itself. The appellant establishment has taken a case that the names of the employees who have been shown to have been paid wages by appellant establishment as its casual workers are incorrectly recorded in the documents produced by appellant establishment and it was in the nature of scam which was reported to The State Government and was enquired into. From the perusal of record as well the impugned order it comes out that there is a dispute pending before the Labour Court under Orders of Hon'ble High Court of M.P. passed on 04.07.2019 in W.P. 6700/2019, where dispute regarding identification of the 341 employees claiming themselves to be the casual employees of the appellant. Learned Counsel for appellant has submitted that till the dispute pending before Labour Court for identifying the genuine employees is settled, the appellant establishment could not have been fastened with the liability of deducting the EPF dues of such ghost employees who are nameless and faceless and finding of respondent authority on this point is incorrect in law. Learned Counsel as referred to following decisions in this respect:-

1. **Food Corporation of India Vs. Provident Fund Commissioner (1990) 1 SCC 68** – Held – The Commissioner while conducting an enquiry U/S. 7A has same powers vested in a Court under Code of Civil Procedure It would be failure to exercise the jurisdiction particularly when a party to proceedings requests for summoning evidence from a particular person.
2. **Ashok Kumar Gopichand Vs. Employees State Insurance Corporation (2013) 1 MPLJ 544.**
3. **S.S. Tennary Vs. RPFC 2019 SCC online Cal 5895 – Para 15 & 16 – “15.**
4. **Gopi Talkies Vs. EPF Tribunal, 2022 LLR 925 C.G.**

5. **EPFO Vs. DAV Nandraj Public School Jharkhand 2019 (II) CLR 1018**
6. **M/s. Car Scanners Vs. EPFO 2017 SCC Online 3244 Pat.**
7. **Endurance Technology Limited Vs. Union of India 2018 LLR 457 Bom. (Aurangabad Bench)**

In these cases, assessment made by Provident Fund Authority without establishing and identifying the beneficiaries has been set aside and the matter was remanded to ascertain the amount after establishing the identity of the beneficiaries. Learned Counsel for respondent has submitted on this point that the appellant establishment is at liberty to recover the amounts paid towards salary and PF if the dispute regarding identification of the casual workman pending before the Labour Court is decided in favour of the appellant with respect to all or any number of the workers and this fact only cannot give a concession to the appellant to skip their liability.

It is established that a serious and bonafide dispute with regard to identification and genuineness of the workers is pending before Labour Court for adjudication. If some of the workers are found not identifiable, it would be next to impossible for the appellant establishment to recover their EPF dues and employers contribution from them. The appellant establishment is under legal obligation to pay interest on the amount due to the respondent authority in case of late payment of EPF dues. If the appellant establishment is ready to take this risk, as is their case before the respondent and before this Tribunal, it would be proper and in the interest of justice to allow them to take this risk. The proposition of law settled from the judgment referred to above, is also that an employer cannot be forced to pay EPF dues of faceless and unidentifiable beneficiaries.

Hence, setting aside the assessment, the matter requires to be remanded back to respondent authority to pass a fresh order with respect to the assessment after beneficiaries are identified by the Labour Court in the dispute pending before it.

In the light of above discussion, the point for determination no.-2 is answered accordingly.

No other point pressed.

ORDER

The appeal is allowed in part. Setting aside the assessment, the matter is remanded back to the respondent authority to pass a fresh order with regard to assessment of EPF dues after identification of beneficiaries by the Labour Court in the dispute pending before it in this respect and after giving opportunity of hearing to both the parties. No order as to cost.

**(P.K.SRIVASTAVA)
PRESIDING OFFICER**

DATE: 11/03/2024