

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

EPF Appeal No.- 24/2021

Present - P.K. Srivastava

H.J.S. (Retd.)

M/s. Shri Vardhman Higher Secondary School
Ashok Nagar, Distt.- Ashok Nagar

Appellant

Vs.

Assistant Provident Fund Commissioner
Regional Office, IInd Floor, Sanjay Complex
Jayendraganj, Lashkar, Gwalior M.P.

Respondent

Shri Pranay Chaubey : **Learned Counsel for Appellant.**

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

JUDGMENT

1. Under challenge in this appeal is order dated 01.07.2021 passed by the Respondent Authority under Section 7-A (1)(b) of the Employees Provident Fund and Misc. Provisions Act, 1952, hereinafter referred to the word 'Act', whereby the Respondent Authority has held the Appellant Establishment liable for deposit of EPF dues of its employees for the period April-1982 to November-2015 amounting to Rs. 89,99,814/- and has directed to deposit the amount.
2. **Facts connected**, in brief, are that the Appellant Establishment is a School, run by society named Vidhya Parishad registered under law and has its own bye laws. It has been

recognized by M.P. Education Board and has been receiving grant-in-aid by M.P. Board of Secondary Education. It is covered by the 'Act' and has been allotted a separate EPF number. The service conditions of its employees are governed by M.P. Ashaskiya Shikshan Sanstha (Anuday ka Praday) Adhinyam 1978, referred to by the word 'Act of 1978', which governs the service conditions of employees of Educational Institutions receiving grant-in-aid by the Government. Rules named M.P. Ashaskiya Shikshan Sanstha (Adhyapkon tatha anya Karmcharyon ki Bharti) Niyam 1979, in short 'Rules of 1979' have been framed for the purposes of regulating the service conditions. In the light of these provisions, it is the State Government who is the overall controller of the appointment, service conditions as well recruitment, suspension, termination, also responsible for payment of their salaries. The Appellant Establishment has no right or control over the use of the fund by diverting it to another purpose. The State Government also releases their contribution of EPF share to the tune of 8% of the wages and deposits it with the Respondent Authority with the share of employees. The Respondent Authority issues a notice to the Appellant Establishment with respect to non deposit of EPF dues of employees of the Appellant Establishment. During enquiry the Appellant Establishment specifically submitted that it was not the agency which released salary nor is the agency which deducts PF contribution from its employees. It is not an agency which is obligated to deposit the share of employer and to deposit the complete amount or any share thereof with the Respondent Authority. It was also stated by the Appellant Establishment that it was the State Government who was under obligation to do all these acts being principal employer. The Respondent Authority, without impleading the State Government as party to the proceedings, proceeded in the enquiry and passed the impugned order which is bad in law, hence this appeal.

3. **The grounds of the appeal** taken in the Memo of Appeal are mainly **that** the impugned order is bad in law and facts and as such is illegal, that it is a non speaking order without considering the submissions of Appellant Establishment and settled proposition of law laid down by Hon'ble the Apex Court without considering the objections of Appellant Establishment taken before the Respondent Authority.
4. In its **counter/reply**, the Respondent Authority has defended the impugned order on the ground that the liability of the Appellant Establishment to pay the employees provident fund dues of its employees has been adjudicated correctly under Section 7A of the Act. It is further the case of Respondent Authority that the Appellant Establishment is the 'Employer' and its employees including the teaching staff are their 'Employees' as defined in the Act, hence is bound in law to deposit the EPF dues of its employees within time prescribed because it is settled that the employees of the Appellant Establishment are covered under the Act. Also it has been stated that the Appellant Establishment receives grant-in-aid from State Government for their expenses in various heads, hence cannot escape from liability. According to Respondent Authority the order holding the Appellant Establishment liable to deposit EPF dues cannot be faulted in law or fact.
5. I have **heard arguments** of Mr. Pranay Chaubey, learned Counsel for the Appellant Establishment and Shri J.K. Pillai, learned Counsel for the Respondent Authority. Both the sides have filed written arguments. I have gone through the record and the written arguments as well.
6. After perusal of the record in the light of rival arguments, the following point arises for determination :-
- "Whether the finding of the Respondent Authority that the Appellant Establishment is liable to deposit EPF dues of its**

employees for the period 04/1982 to 11/2015 and the assessment can be faulted in law or fact or not ?”

7. Both the learned Counsel have attacked and defended the impugned finding in their arguments. The main contention of learned Counsel for Appellant Establishment is that the State Government who gives grant-in-aid as well the salaries of the employees and also has full control over the affairs of appointment till termination of employees is responsible for the deposit and not the Appellant Establishment, who does not have any other income except grant-in-aid paid by the State Government. Learned Counsel for Respondent Authority has countered this argument on the ground that the purpose of grant-in-aid given by State Government is to meet the expenses with respect to salary, provident fund dues and other heads. When there is no dispute that the Appellant Establishment has received grant-in-aid for the period under the enquiry, it is liable to deposit EPF dues of employees from this grant-in-aid.
8. **The first point** which arises for consideration is regarding the coverage of the Act with regards to the Appellant Establishment.
9. Section 1(3), 2(e), 2(f), Section 16 of the Act required to be reproduced and are being reproduced as follows :-

Section 1(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 twenty as may be specified in the notification.

Apart from this, the dispute regarding coverage has been settled by Hon'ble the Apex Court in the case of **M.P. Shikshak Congress vs. RPF Jabalpur, reported in (1999) 1 SCC 396**. Hon'ble the Apex Court has observed the following in this case :-

This extract is taken from *M.P. Shikshak Congress v. R.P.F. Commr., (1999) 1 SCC 396 at page 401*

“12. Secondly, as the preamble and other provisions of the State Act 20 of 1978 show, the primary purpose of the State Act was to make provisions for regulating the payment of salaries to teachers and other employees of aided non-government schools. The Act did not even provide for any scheme for setting up a provident fund. The Act incidentally required that the institutional contribution to any existing provident fund scheme should be paid into the institutional fund set up under the said Act. Looking to the pith and substance of the State Act of 1978 also, it cannot be said that it in any way made provisions which were repugnant to the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

13. It was by reason of the notification of 6-3-1982 that the Central Act was extended to educational institutions. The Employees' Provident Funds and Miscellaneous Provisions Act, 1952, therefore, became applicable to educational institutions in the State of Madhya Pradesh for the first time on 6-3-1982. This was much later than the enactment of the State Act 20 of 1978. The parliamentary enactment, therefore, would prevail over the State Act 20 of 1978, assuming that the State Act of 1978 created or effected any scheme for provident fund. Article 254(2), therefore, has no application in the present case.

15. However, after the application of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 to educational institutions, in 1983, new Rules were framed by the State of Madhya Pradesh under Act 20 of 1978. These are referred to as the State Rules of 1983. Under the State Rules of 1983, for the first time a scheme was set out for contributory provident fund covering the teachers and employees of aided schools. The State Government, however, was conscious of the fact that the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 was applicable in the State of Madhya Pradesh. Therefore, by Rule 10(6) of the State Rules of 1983, it was provided that the scheme as set out in the State Rules of 1983 would not apply where the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 apply. Clearly, therefore, far from there being any conflict between the State and the Central legislation, the State legislation by Rules framed in 1983 has excluded from the operation of the State scheme as framed under the 1983 Rules, those employees to whom the Central Act applies.

16. In this view of the matter, there can be no doubt that for the period 1-8-1982 to 1-8-1988 the Employees' Provident Funds and Miscellaneous

Provisions Act, 1952 was applicable to such teachers and employees of the aided schools in the State of Madhya Pradesh who are covered by the provisions of the scheme framed thereunder. The orders of the Regional Provident Fund Commissioner, therefore, insofar as the orders cover the period 1-8-1982 to 1-8-1988 are valid.

17. The said orders, however, also refer to an additional period from 1-8-1988 to 1-12-1988. According to the appellants, on 1-8-1988, by virtue of the amended Section 16(1)(b) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 coming into effect, the provisions of the 1952 Act are no longer applicable to them. Section 16(1)(b) provides that the 1952 Act will not apply to any establishment under the control of the State Government whose employees are entitled to the benefit of contributory provident fund in accordance with any scheme framed by the State Government conferring such benefits. Whether on 1-8-1988, there was any scheme in existence of the State Government which conferred contributory provident fund benefit on the employees covered earlier by the Central Act of 1952 or not is a matter which the Regional Provident Fund Commissioner will have to examine if such a contention is raised before him by the appellants.

18. We, therefore, remit the matter to the Regional Provident Fund Commissioner concerned only for the limited purpose of examining whether for the period 1-8-1988 to 1-12-1988, the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 are applicable to the institutions concerned. The orders, however, for the period 1-8-1982 to 1-8-1988 are upheld."

In pursuance of the directions, the Regional Provident Fund Commissioner took a decision vide his order dated 13.03.2024 holding that all the aided Non-Government Schools were covered under the Act for the period 01.08.1988 to 01.12.1988. The relevant portion of the said order is being reproduced as follows :-

"On the basis of above findings I, M. Joseph Pushpam, Regional Provident Fund Commissioner, Jabalpur in exercise of powers 7A(1)(a) of the Act and as per the direction of the Hon'ble Supreme Court in its order dated 1.12.1999 hold that the provisions of Section 16(1)(b) of the Act are not applicable to the establishment and they continue to be covered U/S. 1(3)(b) of the Act even w.e.f. 01.8.1988 and onwards. Accordingly, all the aided non Govt. School run by the Societies /Managing Committee/Sansthan / Individual Employer/ Individual Trustee situated in M.P. are directed to comply with the Employees Provident Fund and Miscellaneous Provision Act, 1952 w.e.f. with the Employees Provident Fund and Miscellaneous Provision Act 1952 w.e.f.

01.08.1982 or the date of coverage as the case may be, and continued to be covered even after 01.08.1988 onwards in respect of all employees employed in or in connection with the establishment including non-aided and casual contractual employees and also employees those who left their service within fifteen days of recent receipt of the order."

A Writ Petition No.-686/2001, was filed against the aforesaid order of Regional Provident Fund Commissioner. Which was decided by Hon'ble High Court of M.P. **two other Writ Petitions No.- 1687/2001 & 1417/2001** were also filed in which the aforesaid order of Regional Provident Fund Commissioner was affirmed. For the period thereafter, such institutions were covered under the Act under order of the State Government and this fact is not disputed.

Hence, on the basis of above discussion, the finding of the Respondent Authority that the Appellant Establishment being an unaided private educational institution is covered under the Act cannot be faulted in law or facts. This finding is affirmed accordingly.

The second point for consideration, which is the main bone of contention between the parties is who is under obligation to deposit the EPF dues. The submission of the learned Counsel for Appellant Establishment is that since the Appellant Establishment is an aided institution, who pays the wages of its employees from the grant-in-aid received from State Government, also that it does not have power to appoint, terminate, control and regulate the services of its employees which are now being done by the State Government, hence the finding of the Respondent Authority that it is the Appellant Establishment which is under obligation to deposit the EPF dues has not been recorded correctly, as submitted by learned Counsel for Appellant Establishment.

Learned Counsel for Respondent Authority submits that under the Act of 1978 and Rules framed therein, a fund named institutional fund is maintained by every unaided educational institution receiving grant-in-aid and the salary as well Provident Fund dues are paid from this fund. Learned Counsel further submits that as defined U/S. 2(e) of the Act it is the Appellant Establishment which is the 'employer' for the purposes of the Act. Learned Counsel further submits that the State

Government only gives grants and power to appoint, regulate and terminate the services of its employees is on the Appellant Establishment itself. The State Government has only regulatory control over all these matters.

Following provisions from the Act require to be mentioned here and are being reproduced as follows :-

Section 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 the ultimate control over the 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;*

Section 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 an establishment, and who gets his wages directly or indirectly from the employer, 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*

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 whether prospectively or retrospectively that class of establishments from the operation of this Act for such period as may be specified in the notification.

10. The paragraph 30 & 32 of the Employees Provident Fund Scheme 1952, hereinafter referred as 'Scheme' are also being reproduced as follows :-

30. Payment of contributions

(1) The employer shall, in the first instance, pay both the contribution payable by himself (in this Scheme referred to as the employer's contribution) and also, on behalf of the member employed by him directly or by or through a contractor, the contribution payable by such member (in this Scheme referred to as the member's contribution).

(2) In respect of employees employed by or through a contractor, the contractor shall recover the contribution payable by such employee (in this Scheme referred to as the member's contribution) and shall pay to the principal employer the amount of member's contribution so deducted together with an equal amount of contribution (in this Scheme referred to as the employer's www.epfindia.gov.in 43 contribution) and also administrative charges.

(3) It shall be the responsibility of the principal employer to pay both the contribution payable by himself in respect of the employees directly employed by him and also in respect of the employees employed by or through a contractor and also administrative charges. Explanation: For the purposes of this paragraph the expression "administrative charges" means such percentage of the pay (basic wages, dearness allowance, retaining allowance, if any, and cash value of food concessions admissible thereon) for the time being payable to the employees other than an excluded employee, and in respect of which Provident Fund Contribution are payable as the Central Government may, in consultation with the Central Board and having regard to the resources of the Fund for meeting its normal administrative expenses, fix.

32. Recovery of a member's share of contribution

(1) The amount of a member's contribution paid by the employer or a contractor shall, notwithstanding the provisions in this scheme or any law for the time being in force or any contract to the contrary, be recoverable by means of deduction from the

wages of the member and not otherwise: Provided that no such deduction may be made from any wages other than that which is paid in respect of the period or part of the period in respect of which the contribution is payable: Provided further that the employer or a contractor shall be entitled to recover the employee's share from a wage other than that which is paid in respect of the period for which the contribution has been paid or is payable where the employee has in writing given a false declaration at the time of joining service with the said employer or a contractor that he was not already a member of the Fund: Provided further that where no such deduction has been made on account of an accidental mistake or a clerical error, such deduction may, with the consent in writing of the Inspector, be made from the subsequent wages.

(2) Deduction made from the wages of a member paid on daily, weekly or fortnightly basis should be totalled up to indicate the monthly deductions.

(3) Any sum deducted by an employer or the contractor from the wages of an employee under this Scheme shall be deemed to have been entrusted to him for the purpose of paying the contribution in respect of which it was deducted.

The M.P. Ashaskiya Shikshan Sanstha (Anudan Ka Pradaya) Adhiniyam, 1978

5. Constitution of institutional fund for payment of salary of teachers etc. and amounts to be deposited therein. –

(1) There shall be opened in an nationalised bank, a separate account which shall be constituted as a separate fund for the Institution (hereinafter referred to as the Institutional Fund) in accordance with the rules made in this behalf.

(2) The grant as fixed by the State Government, from time to time, shall be payable to the institution as a block grant. The grant shall be given to the institution after furnishing by it the utilisation certificate of the previous grant alongwith detailed audited account and annual account statement.

(3) The management shall place at the credit of the Institutional Fund by the last day of every month the total amount of fees recovered from the students of the Institution.

(4) In addition to the fee deposited under sub-section (3), the management shall place to the credit of the Institutional Fund by the 10th of every month for payment of salary to teachers and employees of the institution for the preceding month such further sums as may be required to make the 1/12th of the total amount credited under sub-section (2) together with amount credited under sub-section (3) equivalent to 1/12th of the total salary payable to teachers and employees of the institution with institution's contribution to the provident fund account of those teachers and employees per annum.

(5) No money credited to the Institutional Fund shall be applied for any purpose except the following, namely :-

(a) payment of salaries falling due for any period after the appointed date;

(b) credit of the institution's contribution, if any to the provident fund accounts of the teachers and employees.

The M.P. Ashaskiya Shikshan Sanstha (Institutional Fund) Rules, 1983

3. Constitution of Institutional Fund.

- There shall be opened in a Treasury/Sub-Treasury of the area where the institution is situated a separate account for each institution under the head "K-Deposit Advance non-Interest bearing Deposit 843-Civil Deposits-F-Personal Deposits" under which the Institutional fund for the institution shall be deposited.

6. Payment of Grant by State Government Ayog.

- The sum required to be paid under sub-section (2) of Section 5 by the State Government of the Madhya Pradesh Uchcha Shiksha Anudan Ayog shall be credited to the institutional fund by 20th of the salary month.

- 11.** As it comes out the perusal of the impugned order, the Respondent Authority has held that the Appellant Establishment has been receiving grant-in-aid during the period under enquiry. The deposits were to be made from the institutional fund as mentioned above where the grant-in-aid and other income of the Appellant Establishment is deposited, hence it is the Appellant Establishment which is under obligation to deposit the EPF dues of its employees and the State Government was not a necessary party to the proceedings.
- 12.** As it is described in the **M.P. Act of 1978 and Rules of 1983**, the EPF dues of employees of Non Governmental aided educational institutions is to be paid from the institutional fund. The grant-in-aid, received by the institution is credited to the institutional fund according to the Act of 1978 Section 5(2). This account is jointly operated by institution and the Education Officer.
- 13.** Since, there is nothing on record to show that the employees of the Appellant Establishment are appointed or terminated by State Government. Only because the State Government has power to regulate it does not become 'employer' as defined under Section 2(e) of the Act.

14. Hence, in the light of above discussions **the finding of the Respondent Authority holding the Appellant Establishment liable to deposit EPF dues of its employees for the period under enquiry in the impugned order cannot be faulted in law or fact and is affirmed.** Needless to say the Appellant Establishment has always an option to ask the State Government for additional grant if the grant provided in the years is not sufficient to deposit of EPF dues of employees.
15. **As regards the finding** of the Respondent Authority with regard to the amount assessed, it is based on a detailed tabulation filed by the Enforcement Officer during the enquiry against which there is no material at any stage. Hence, the finding of the Respondent Authority on this point is also affirmed.
16. No other point was pressed.
17. In the light of the above discussion, the appeal is *sans merit* and is liable to be dismissed.

ORDER

Appeal is dismissed. No order as to cost.

No order as to costs.

Date:- 01/08/2024

P.K. Srivastava
(Presiding Officer)

Judgment Signed, dated and pronounced.

Date:- 01/08/2024

P.K. Srivastava
(Presiding Officer)