

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

EPFAppeal No.- 27/2019

Present – P.K. Srivastava

H.J.S. (Retd.)

**M/s Samrat Ashok Technological
Institute, Through its Principal,
R.K. Soni, Aged about 52 years,
S/o Shri Dayaram Soni
R/o Civil Lines, Vidisha (M.P.) 464001**

Appellant

Vs.

**Regional Provident Fund Fund Commissioner,
Employees Provident Fund Fund Organization,
59, Jail Road, Arera Hills,
Bhopal (M.P.) 462004**

Respondent

Shri Uttam Maheswari : Learned Counsel for Appellant.

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

JUDGMENT

The present appeal is directed against order of Respondent Authority dated 02.05.2019 whereby the Appellant Establishment has been directed to comply with the provisions of Section 15(2) of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (in short the 'Act') and transfer the up to date balance of Provident Fund accumulation in the Employees Provident Fund account of the respective employees.

Facts connected are mainly that, the Appellant Establishment is a Registered Society which runs an institution named Samarat Ashok Technological Institute. They constituted Provident Fund Trust for their employees for which authorization was granted by the Governing

body of the society and State of M.P. This Trust has its own rules regarding remittance of contribution, accumulation of interest, lapse of contribution and investment thereof. The Respondent Authority issued a notice to the Appellant Establishment requiring them to deposit the Provident Fund collected by them and maintained in their Trust for the period April, 1982 to March, 2003 along with all interest which was complied with. According to the Appellant Establishment, they have been regularly depositing the PF Dues thereafter. The Appellant Establishment further alleged that they sought a permission from Respondent Authority which was granted vide letter of Respondent Authority dated 11.07.2005 which permitted that apart from their regular contributions being remitted to Respondent Authority, the Trust was allowed to continue deposit of additional contributions by their employees to enable them to earn higher rate of interest on their deposits with the Trust. Also, as it is the case of the Appellant Establishment, an inspection of their premises and documents was carried on behalf of Respondent Authority on 16.12.2008 for the period April, 2002 to April, 2008 which found that there was no default in deposit of EPF dues for this period. The Respondent Authority issued a notice on 19.06.2017 directing the Appellant Establishment to deposit all the balance amount in the Provident Fund Fund Trust maintained by the Appellant Establishment. The Appellant Establishment responded to the notice with the case that all the amount of the assessments has been deposited and there is no amount of Provident Fund Fund contribution under the Act which required to be deposited or left in the Trust. Thereafter, the Respondent Authority again issued a legal notice on 22.08.2018 along with a complaint which did not contain any details of employees or escaped contribution left with the Appellant Establishment. The Appellant Establishment again responded to the notice with the case that the balance of amount available in the Provident Fund Trust maintained by them, were of Vikas Nidhi and not of Provident Fund account maintained by the Respondent Authority. Hence, they were not required to be deposited with the Respondent Authority because of orders of the Respondent Authority and amounts

assessed have already been transferred . They also took a case that the complainant related to matters about gratuity, DA, sale time scale pay but the Respondent Authority passed the impugned order and direction which is unjust, arbitrary and against law.

Grounds of appeal, taken in memo of appeal, are mainly that the Respondent Authority committed error in law in recording a finding with the amount left in the Provident Fund Trust maintained by Appellant Establishment is PF Amount and interest thereon whereas it was amount in Vikas Nidhi. Respondent Authority further committed error in law in ignoring the fact that the amount in the Trust was of Vikas Nidhi. The Respondent Authority further committed error in law in reopening the assessment after 16 years when it becomes final between the parties.

The Respondent Authority has taken a case that, **firstly**, the Appeal is not maintainable against the order dated 02.05.2015, which is only an interlocutory order passed on order sheet recording the proceedings and not a final order. According to them, the final order was passed on 31.05.2019. It is also the case of Respondent Authority that the Appellant Establishment is covered under the Act and PF Code has been allowed to them, further established a Provident Fund Trust in 1956 in which they used to deposit the Provident Fund dues. A complaint made by one Ashok Kumar Jain, president of Retired Employees Union, of the Appellant Establishment was received by the Respondent Authority in which it was alleged that after the coverage under the Act, the Appellant Establishment has kept in the Provident Fund Trust of the employees maintained by them, a huge amount Provident Fund contribution is lying there in the books of the Trust, out of which 50% amount available for the Trust and remaining 50% have been diverted to the employees directly. The complaint also contained a copy of note-sheet dated 11.08.2011 of the Appellant Establishment which showed that as on 31.03.2010 amount of Rs. 10335426/- was laying in the books of accounts of the Trust out of which, 50% has been paid to the employer and the remaining amount 50% is available in the

Trust, and has been illegally withheld by the Appellant Establishment. A notice was issued to the Appellant Establishment and enquiry preceded. During the course of enquiry, the Appellant Establishment submitted copies of Balance Sheet of the Trust for the year 2009-10 and 2011-12 and also the Balance Sheet of Vikas Nidhi for 2011-2012 onward. They also take a case that all due contribution under the Act has been transferred from the Trust to the Provident Fund Account and left nothing remains to be paid. Also that, the amount in the Balance Sheet of the Trust and Vikas Nidhi is not the Provident Fund contribution rather it is a interest earned by the Trust. This is also the case of the Respondent Authority that the Appellant Establishment filed written submissions with them in which they had taken that same stand as mentioned above. They also submitted that after transfer of accumulation with respect to individual employees and compliance of assessment order passed from time to time, the Management committee of the Appellant Establishment decided that the balance amount still laying with the Trust could be distributed among the employees. This decision was taken vide resolution dated 23.06.2011. It was found by the Respondent Authority that according to the Balance Sheet of the Trust for the year 2009-10 there was a balance of Rs. 10734319.05/- and it became Rs. 12028816.96/- in 2011-12 out of which an amount of Rs. 9088246.96/- was transferred to Vikas Nidhi in 2011-12. It also came out that, amount of Vikas Nidhi now became Rs. 23485017.05/- as on 31.03.2017. The Respondent Authority further observed that this was the amount which was of the Employees and required to be transferred to their Provident Fund Account and the accumulations prior to the period of coverage of the Establishment under the Act, w.e.f. 01.04.1982 was also required to be transferred as past accumulation in the light of Section 15(2) of the Act. Thus passed the impugned order which is correct in law and fact.

The Appellant Establishment has field rejoinder wherein they have retreated their case.

The intravenor complainants also appeared in the case through their Learned Counsel. They were not made party in the appeal, but their arguments were heard at the time of final arguments they mainly who the argument submitted from the side of Respondent Authority.

I have heard arguments of Learned Counsel Mr. Uttam Maheswari for Appellant Establishment and Mr. J.K. Pillai for Respondent Authority. I have gone through the written arguments filed by parties and interveners & the record as well.

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

1. *Whether, the present appeal is maintainable?*
2. *Whether the findings of the Respondent Authority that the Appellant Establishment is under obligation in law to deposit the fund accumulated in their PF transactions.*

Point for determination No. 1 -

Learned Counsel for Respondent Authority has submitted that the order dated 02.05.2019 which has been appealed against, is only record of proceedings and not a final order. But I am not inclined to accept this argument because bare perusal of this order, discloses certain findings have been recorded and directions to transfer the amount accumulated in the Trust have also been issued in the order-sheet of 02.05.2019 itself which is on record. Moreover, there is on record, a detailed order passed by Respondent Authority which has been passed on 02.05.2019 as this order discloses. The date of signing of this order is 31.05.2019. Hence, since there are two orders passed on 02.05.2019 one on order sheet and second a detailed order which are one and same in pith and substance, hence this appeal is held to be maintainable as an order under Section 7A of the Act.

Point for determination No. 1 is answered accordingly.

Point for determination No. 2 -

Before entering into any discussion, Section 6 & 15 of the Act, requires to be reproduced, which is follows :-

6. Contributions and matters which may be provided for in Schemes. —

The contribution which shall be paid by the employer to the Fund shall be ten per cent of the basic wages, dearness allowance and retaining allowance (if any) for the time being payable to each of the employees whether employed by him directly or by or through a contractor, and the employees' contribution shall be equal to the contribution payable by the employer in respect of him and may, if any employee so desires, be an amount exceeding ten percent of his basic wages, dearness allowance and retaining allowance, if any, subject to the condition that the employer shall not be under an obligation to pay any contribution over and above his contribution payable under this section Provided that in its application to any establishment or class of establishments which the Central Government, after making such inquiry as it deems fit, may, by notification in the Official Gazette specify, this section shall be subject to the modification that for the words ten per cent., at both the places where they occur, the words twelve per cent shall be substituted:

Provided further that where the amount of any contribution payable under this Act involves a fraction of a rupee, the Scheme may provide for the rounding off of such fraction to the nearest rupee, half of a rupee or quarter of a rupee.

Explanation 1.—For the purposes of this section, dearness allowance shall be deemed to include also the cash value of any food concession allowed to the employee.

Explanation 2.—For the purposes of this section, “retaining allowance” means an allowance payable for the time being to an employee of any factory or other establishment during any period in which the establishment is not working, for retaining his services.

15. Special provisions relating to existing provident funds. —

(1) Subject to the provisions of section 17, every employee who is a subscriber to any provident fund of an establishment to which this establishment in which he is employed, continue to be entitled to the benefits accruing to him under the provident fund, and the provident fund shall continue to be maintained in the same manner and subject to the same conditions as it would have been if this Act had not been passed.

(2) On the application of any Scheme to an establishment, the accumulations in any provident fund of the establishment standing to the credit of the employees who become members of the Fund established under the Scheme shall, notwithstanding anything to the contrary contained in any law for the time being in force or in any deed or other instrument establishing the provident fund but subject to the provisions, if any, contained in the Scheme, be transferred to the Fund established under the Scheme, and shall be credited to the accounts of the employees entitled thereto in the Fund.

The Respondent Authority has observed in the impugned order that the entire accumulated amount in the PF Trust which was maintained by the Appellant Establishment before and during coverage by the Act, were required to be deposited/ transferred to the Provident Fund Account maintained with the Respondent Authority. The Appellant Establishment has taken a case that **firstly**, this money is accumulated amount of PF of employees before the period of coverage and **secondly**, the PF dues for the period of coverage ie; 04/1982 to 03/2003 has been deposited as per the Act hence, this accumulated amount which is related to the period before coverage and which is beyond the required amount to be deposited u/s section 6 of the Act as EPF dues after coverage under the Act in PF account with the Respondent Authority will not be legally justified.

A bare reading of Section 15(2) of the Act, shows that **firstly**, it does not distinguish between the pre and post coverage period.

Secondly, as the section 6 of the Act and the scheme provides, the minimum percentage to be deducted from the salary of an employee and the contribution of employee thereon which required to be deposited with the department. But this Act does not provide that firstly, an amount greater than the minimum amount prescribed as contribution of PF from the salary of employee can not be deducted hence, if the Appellant Establishment has deducted the amount which is more than the required minimum amount from the wages of its employees and was deposited in their Trust, they are required under law to be transmitted of the amount deducted and interest earned on that amount in the spite of the Section 15(2) of the Act.

Thus the finding of the Respondent Authority that he accumulations shown in the PF Trust in the year 2009-10, 2011-12 required to be deposited form the Trust by the Appellant Establishment with the Respondent Authority cannot be held to be recorded against fact or law and it is affirmed.

Point for determination No. 2 is answered accordingly.

No other point was raised. सत्यमेव जयते

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

ORDER

Appeal dismissed.

No order as to cost.

Date:-02/04/2025

**P.K. Srivastava
(Presiding Officer)**

Judgment Signed, dated and pronounced.

Date:-02/04/2025

**P.K. Srivastava
(Presiding Officer)**