

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

NO. CGIT/LC/EPFA-3-2018

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

M/s Unique Security & consultants

APPELLANT

Versus

Assistant Provident Commissioner,
Bhopal

RESPONDENT

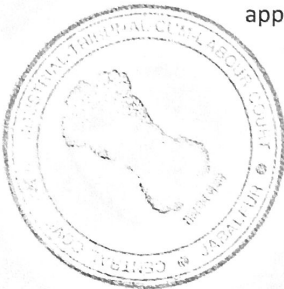
Shri Uttam Maheshwari : Learned Counsel for Appellant.

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

(J U D G M E N T)

(Passed on this day of 29TH NOVEMBER-2021)

1. Under challenge in this appeal is order dated 21-12-2017 passed by the Respondent Authority under Section 14-B of the Employees Provident Fund And Misc. Provisions Act, 1952, wherein after referred to the word 'Act', holding the appellant establishment guilty of willful delay in depositing the employees provident fund dues between the period 2-7-2011 to 5-6-2013 and imposed damages Rs. 4,48,325/-.
2. The facts connected in brief are that the appellant company had earlier provided contract labour to government agencies to work under the contract of Principal Employer who were under the control and supervision of Principal Employer. The appellant was assessed for contribution towards employees provident fund dues for the period June-1998 to March-2003 by the Respondent Authority. Since there was no clause of employees provident fund dues deposit in the agreement between the Principal employer and appellant establishment, for providing man power, the appellant



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establishment filed a review before the Authority which was allowed and the liability of payment of employees provident fund dues was fixed on the Principal Employer vide order of Respondent Authority dated 10-2-2004. The Principal Employer filed employees provident fund appeal against this review order before this Tribunal which was registered as EPF No.399(8)2004 and was dismissed by the order of this Tribunal vide order dated 21-10-2010. A Review Petition filed by the Principal Employer against this order in Appeal was also dismissed by this Tribunal vide its order dated 27-1-2011 and the order of the Respondent Authority dated 10-2-2004 holding the Principal Employer liable to pay the employees provident fund dues became final between the Respondent Authority and the Principal Employer. The Respondent Authority initiated proceedings under Section 14-B and 7Q of the Act. The appellant establishment replied to notice where in it is stated that the liability to deposit the employees provident fund dues was so fixed on the Principal Employer, hence any damages and interest should be recovered from the Principal Employer itself. The Respondent Authority brushed aside the contention of the Appellant establishment and wrongly held the appellant establishment liable to pay the interest under 7Q of the Act and damages under Section 14-B of the Act which is against law and requires to be set aside.

3. The grounds of appeal are mainly that the impugned order is bad in law and fact, passed by the Respondent Authority without considering the fact that the liability to deposit the employees provident fund dues was held to be that of Principal Employer by the Respondent Authority which is final between the parties, hence the interest and damages which are consequential to the liability could not be recovered from the appellant establishment.

4. The Respondent Authority has stated in its counter that firstly no appeal is maintainable before this Tribunal under Section 7Q of



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the Act as regards payment of damages under Section 14-B of the Act, the liability of Principal Employer and Contractor which is joint and several, hence it could be recovered from the Appellant Establishment who is the contractor.

5. I have heard arguments of Mr. Uttam Maheshwari , learned counsel for the appellant and Shri J.K.Pillai, learned counsel for the respondent. I have gone through the record as well.

6. After having considered the material on record, in the light of rival argument, the following points come up for determination in the case in hand for determination”:

“Whether the finding of the Respondent Authority holding the Appellant Establishment liable to pay the damages under Section 14-B of the Act, particularly when the Principal Employer was held liable to pay the employees provident fund dues , by the Respondent Authority itself is bad in law and fact.”

7. Before proceeding, it is made clear that since the appeal against order under Section 7Q of the Act is not maintainable before this Tribunal, hence accepting the argument of learned counsel for the Respondent, this appeal is being dealt only with respect to order under Section 14-B of the Act. **The appeal, so far it relates to order under Section 7Q of the Act is held not maintainable before this Tribunal.** The Appellant is at liberty to seek remedy before the appropriate forum in this respect.

Section 2E of the Act defines Employer as :-

“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, the person so named; and



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(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 2F of the Act defines Employee as :-

(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

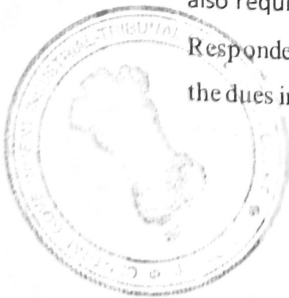
(i) employed by or through a contractor in or in connection with the work of the establishment;

(ii) engaged as an apprentice, not being an apprentice engaged under the Apprentices Act, 1961, or under the standing orders of the establishment];

8. Para 30(2) of the Employees Provident Fund Scheme 1952 is being referred as follows:-

(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 contribution) and also administrative charges 4 [***

The reference of the order dated 10-2-2004 passed by the Respondent Authority under Section 7A of the Act holding the Principal Employer liable to pay the employees provident fund dues also requires to be mentioned, wherein it has been observed by the Respondent Authority that the Principal Employer was liable to pay the dues in the case in hand with relation to the employees engaged by

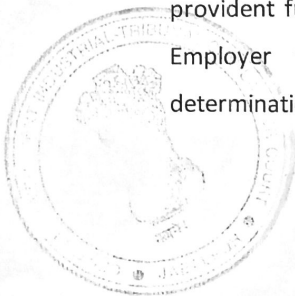


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them. They are liable to pay their contribution through contractors under their code after adjusting the amount already paid in this respect and had further ordered that the respective Principal Employer be served a copy of the order for compliance including the interest under Section 7Q of the Act.

9. Needless to mention here that liability to pay the employees provident fund dues is the main liability and the liability of interest and damages there on is consequential to the main liability as the scheme of the Act states. No doubt that this liability is joint and several and both the Principal Employer as well as the Contractor are jointly and severally liable to pay it as provided in the Act, in the case in hand, where the main liability has been fixed on the Principal Employer and this order is final between the parties as it has been approved by the Respondent Authority, the consequential liability of payment of damages under Section 14-B cannot be fixed on the shoulders of the contractor in such circumstances. The Respondent side is not in a position to explain when the order of the Respondent Authority itself means that notice under Section 7Q of the Act to pay interest be issued to the Principal Employers, this notice was issued to the present appellant who is the contractor and the Principal Employer was spared.

10. IN the light of the above discussion, the impugned order of the Respondent Authority under Section 14-B cannot be held to be justified in law and fact. It is held that in the light of order dated 10-2-2004 passed by the Respondent Authority itself holding the Principal Employers liable to pay the employees provident fund dues, which become final between the parties and the delay, if any was caused by the Principal Employer in depositing the employees provident fund dues and it could be recovered from the Principal Employer themselves, in the case in hand, the point for determination is decided accordingly.




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11. In the light of the above, discussion, the impugned order is liable to be set aside and Appeal deserves to be allowed.


ORDER

Allowing the appeal, the impugned order dated 21-12-2017 passed by the Respondent Authority is set aside.

No order as to costs.


(P.K.SRIVASTAVA)
PRESIDING OFFICER

JUDGMENT SIGNED, DATED AND PRONOUNCED,


(P.K.SRIVASTAVA)
PRESIDING OFFICER
Date:29-11-2021

