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

NO. CGIT/LC/EPFA-18/2021

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

M/S Ankit Steel

APPELLANT

Versus

The Assistant Provident Fund Commissioner
Raipur (Chhattisgarh)

RESPONDENT

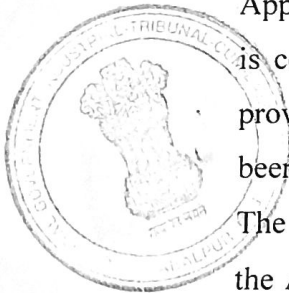
Shri Shri Rajesh Chandra : Learned Counsel for Appellant.

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

(JUDGMENT)

(Passed on 1-4-2022)

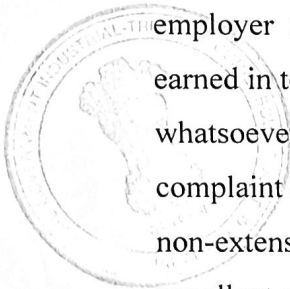
1. Under challenge in this appeal is order dated 1-10-2004 passed by the Respondent Authority under Section 7A of the Employees Provident Fund And Misc. Provisions Act, 1952, herein after referred to the word "Act", holding the appellant establishment liable to pay the employees provident fund dues of its employees.
2. Facts connected in brief to the appeal are mainly that the Appellant is still engaged in business of steel work on contract and is covered under the Act. The Appellant was allotted employees provident fund code No.MP-11078 for which it had applied and had been paying the employees provident fund dues regularly thereafter. The Respondent Authority initiated proceedings under Section 7A of the Act. The appellant was served with a notice and filed its reply before the Respondent Authority during the inquiry, but the owner of the Firm Mr. Shyam Agarwal could not appear thereafter, as he



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was hospitalized in New Delhi for treatment of cancer for a long time . the Respondent Authority passed an ex-parte order on 1-10-2004 holding the appellant liable to deposit the employees provident fund dues of its employees for the period April-1997 to March-2004 and assessed the amount to the tune of Rs.7,63,214/-. The Appellant thereafter filed a review petition which was rejected by the Respondent vide order dated 29-10-2004. Thereafter the appellant filed a Writ No.4026/2004 before Hon'ble High Court of Chhattisgarh at Bilaspur and Hon'ble High Court was pleased to stay the recovery of the amount. Hon'ble High Court further granted liberty to the appellant to file appeal before the Tribunal within 60 days from the date of the Award.

3. The grounds of appeal taken in the memo are mainly that the order is an ex-parte order. The assessment was made on the basis of wages at the rate of Rs.150/- per day for 30 days for the period April-1997 to March-2004, is perverse and illegal because the employees for whom this assessment was made were employees who were engaged through contractor on contract basis. Further that the impugned order is contrary to the facts on record. The finding of the Respondent Authority that 8 employees were employed for 7 to 8 year is against facts.
4. In its counter, the Respondent has come up with the case that the Act provides that the employees provident fund dues of the employees had to be deposited by the employer by the 15th of the next month in which the employees have worked. Any effort by the employer to deny the employees their dues, which he has fully earned in terms of the Act, requires to be looked upon with suspicion whatsoever, may be the reasons forwarded by the employer. The complaint dated 29-7-2008 was received by the Respondent alleging non-extension of provident fund benefits to some employees of the appellant establishment, which is Annexure R-1 to the Counter. A notice dated 1-1-2004 was issued to the Appellant Establishment to



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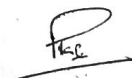
produce its record. The reply of the Appellant Establishment was not satisfactory, hence inquiry under Section 7A of the Act was initiated. Summons dated 9-7-2004 was issued. The complainant appeared during the inquiry. Mr. Bhagat Ram Sinha for the first time appeared on behalf of the appellant during the inquiry on 23-9-2004 and sought time. Observing that much time was already given to the appellant, the inquiry was closed and impugned order was passed. A review petition against the said order was dismissed because it was not in proper format. The appellant filed an appeal before this Tribunal in Delhi which was dismissed after hearing the parties vide their judgment dated 7-12-2010. The appellant filed a writ. It has further been stated that after service of first notice, the case was adjourned for many dates but the appellant did not appear. According to the Respondent, the impugned order does not suffer from any illegality or fact in law. Appellant has filed rejoinder also, wherein it has mainly reiterated its case.

5. The appellant has filed additional evidence in the form of documents, vide annexure P-5. They are mainly documents of sickness of the owner of the company and his treatment. Annexure P-6 is Award of the Labour Court with respect to same employees who are involved in this proceeding as a complainant.

6. I have heard arguments of Shri Rajesh Chandra, learned counsel for the Appellant and Shri J.K.Pillai, learned counsel for the Respondent and I have gone through the record as well.

7. Perusal of the record in the light of rival arguments reveals the following point for determination:-

“1. Whether the finding of the Respondent Authority that the appellant establishment is liable to pay the employees provident fund dues of its 8 employees on whose complaint the proceedings were initiated, can be faulted in law or fact or not?”



2. Whether the computation of amount as employees provident fund dues in the impugned order made by the Respondent Authority can be faulted in fact or law or not?"

8. POINT FOR DETERMINATION NO.1

The main argument of learned counsel for the Appellant on this point is that since these workers were engaged by contractor, hence the appellant establishment was not under obligation to pay their employees provident fund dues, rather it was the contractor who was under the obligation. The learned Counsel has referred to an Award of Labour Court, Raipur passed in Case No.181/2005 of Industrial Disputes Act (Babulal & Others Vs. Ankit Rolling Mills) wherein these workman had claimed their termination/retrenchment, illegal. The case was referred to the Labour Court. The Award was passed holding the retrenchment not illegal and held that the workman are not entitled to any relief. Learned Counsel has submitted that this finding corroborates the claim of the appellant that these workers are not their employees.

9. In its Memo of Appeal, it has been stated that these workers were engaged through contractors, hence they are employees of the contractor and Respondent Authority committed error in law in holding the appellant establishment liable to deposit its employees provident fund dues, instead of the contractor. The perusal of the award of the labour Court referred to from the side of the appellant, makes it clear that before the Labour Court, the case taken by the appellant was that these workers were temporary labourers working with them and they were paid wages on daily basis. Also that they never worked continuously for 240 days. Section 2(F) of the Act defines employees for the purposes of this Act which is 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 3[an establishment] and who gets his wages directly or indirectly from the employer, 4[and includes any person,-

P. K. G.

- (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 Apprentice Act, 1961 (52) of 1961) or under the standing orders of the establishment];

10. It is clear from perusal of Section 2F of the Act that even a worker employed through a contractor for the work of the establishment is an employee of the Establishment for the purposes of these Act, hence the argument of learned counsel for the appellant that being engaged by contractor these workers were not employees of the appellant establishment for the purposes of the Act, fails. Moreover, the case of the Appellant Establishment before the Labour Court, in this respect is that these workers were engaged by them as daily wagers. Nowhere the appellant establishment takes a stand before the labour Court that they were workers engaged through the contractor. There is no record produced by the Appellant Establishment before this Tribunal also or any other evidence to show that these workers were engaged by contractor. Hence, in the light of the above facts and circumstances, the finding of the Respondent Authority that the Appellant Establishment is under obligation to pay the employees provident fund dues of the complainant workers, cannot be held bad in law or fact. Hence, holding this finding according to law, it is confirmed. **Point for determination No.1 is answered accordingly.**

11. **POINT FOR DETERMINATION NO.2:-**

There is no evidence produced before the Respondent Authority or Tribunal to show that these workers are not engaged for the period mentioned in the impugned order. The perusal of the impugned order reveals that this period were taken established by the Respondent on the basis of the complaint of the complainant workers. Hence in the absence of any evidence before the Respondent Authority and before this Tribunal, the computation of amount also cannot be held bad in law and fact and is affirmed accordingly, holding it according to law. **Point for determination No.2 is answered accordingly.**



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

ORDER

Appeal stands dismissed. No order as to costs.


(P.K.SRIVASTAVA)

PRESIDING OFFICER

JUDGMENT SIGNED , DATED AND PRONOUNCED.


(P.K.SRIVASTAVA)

PRESIDING OFFICER

Date:1-4-2022