

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

NO. CGIT/LC/EPFA-59-2019

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

M.P.Housing & Infrastructure
Development Board,
Jabalpur.

APPELLANT

Versus

The Regional Provident Fund Commissioner
Jabalpur

RESPONDENT

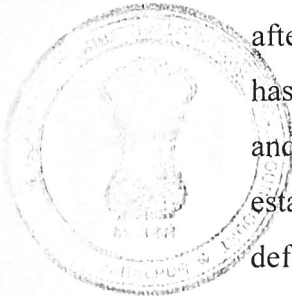
Shri Kapil Duggal : **Learned Counsel for Appellant.**

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

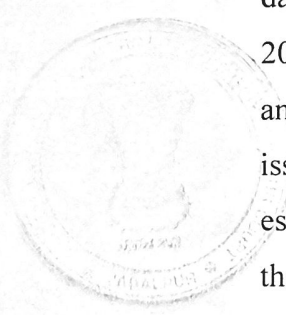
(J U D G M E N T)

(Passed on this 15-6-2022)

1. The present appeal is directed against the order dated 24-4-2019 passed by the Respondent Authority under Section 7(1) of the Employees Provident Fund And Misc. Provisions Act, 1952, (herein after referred to the word Act"), by which the Respondent Authority has held the provisions of the Act applicable on the daily wagers and contractual and casual employees working for the appellant establishment and has further held that the Appellant establishment defaulted payment of employees provident fund dues of such employees within the period of April-2005 to March-2017, has computed the employees provident fund dues to the tune of Rs.1978703/-.

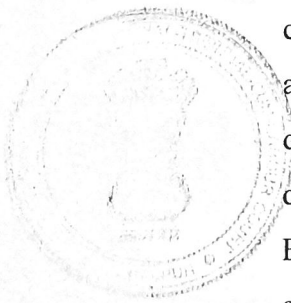


2. The case connected in brief are that according to the appellant establishment, that the appellant establishment is a statutory body created under M.P.Greh Nirman Evam Udhog Sanrachna Vikas Mandal Adhiniyam,1972 (hereinafter referred by the word Act of 1972”) and works on the rates approved by the Public Works Department of the State. The provisions of the Act are not applicable to the PWD nor it is applicable to the appellant establishment as no notification under Section 1(3)(b) of the Act to the effect that the Act would be applicable to the Appellant Establishment. According to Section 15 of the Act of 1972, remuneration and conditions of service of employees of the appellant establishment are determined by regulations, Section 18 of the Act of 1972 provides that the appellant establishment shall establish a provident fund for Housing Commissioner, officers and servants of the appellant establishment and such provident fund shall not withstanding anything contained in Section 8 of the Provident Fund Act,1925, shall be deemed to be a Board Provident Fund for the purposes of the said Act of 1925. Furth Regulation-5B of Regulations of 1998 as well subsequently maintained Regulations of 2015 provider that the Regular Officers and Servants of the Board shall have to subscribe to the general General Provident Fund w.e.f. 1-1-1973 consequent upon introduction of Pension Scheme. The subscription to the general provident fund was to be read in accordance with the provision of M.P.General Provident Fund Rules. Hence the Appellant Establishment is under obligation to contribute and deposit provident fund of only its regular servants who are called Ashthai Karmi and not to the daily wagers. A complaint was made by the 33 daily wagers working with the Appellant Establishment on 15-9-2006 to the provident fund that they also be granted benefit of Act and be enrolled for provident funds. The Respondent Authority issued a notice on 24-4-2007 on this complaint. The appellant establishment submitted in its reply dated 25-6-2007 taking a stand that the provisions of the Act are not applicable to the Appellant Establishment. Thereafter a show cause notice dated 27-7-2007 was issued by the Respondent Authority under Section 7A of the Act. Ultimately culminated into issuing of order dated 21-7-2010 by the



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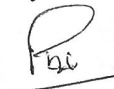
Respondent Authority holding the Act was applicable to the daily wagers of the Appellant establishment. The Appellant Establishment had filed response before the Respondent Authority taking a stand that the daily wagers of State Government were not governed by the Act, hence the Act was not applicable to the Appellant Establishment and also that the so called list of 119 employees working as daily wagers was not supplied to the appellant establishment. The order dated 21-7-2010 was passed ignoring this stand of Appellant Establishment. Thereafter the appellant establishment filed a review petition under Section 7(b) of the Act which was dismissed by the Respondent Authority vide order dated 10-9-2010 with a finding that the Review Petition was not filed in prescribed format. Thereafter the Appellant establishment further filed a second Review Petition in prescribed format which has also dismissed by the Respondent Authority vide order dated 7-10-2010 on the ground of limitation. The Appellant Establishment, thereafter filed an appeal before this Tribunal against the original order dated 21-7-2010 and order in review dated 10-9-2010 passed by the Respondent Authority. The Appellate Tribunal vide its judgment dated 10-6-2014 set aside the impugned orders as mentioned above and remanded the matter back to the Respondent Authority with a direction to decide the matter on merits. After that the Respondent Authority passed the order dated 30-9-2016 delivered on 3-10-2016 holding the act Applicable on the appellant establishment and directed the appellant establishment to extend the benefits under the Acts to all eligible employees i.e. casual/contract/daily wage employees, who have not been granted any provident fund benefit from the due date of their eligibility and directed the Appellant Establishment to remit the dues within 15 days of the order. It is further the case of the Appellant Establishment that a Regularization Scheme was introduced in the establishment. One condition of regularization as that the concerned daily wagers would have to withdraw all the cases filed against the appellant establishment. The workers applied for regularization and filed affidavit the cases filed against them has been withdrawn and they have got benefits of regularization. It is further the case of the



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appellant that the Responded Authority passed another order on 24-4-2019 under Section 7A of the Act holding that dues of 107 employees for the period April-1982 to January-2015 and dues of employees Rajesh Singh Chauhan driver for the period June-1982 to March 2017 were also payable by the Appellant Establishment.

3. The grounds of appeal taken in the Memo of Appeal are mainly that the order of 30-9-2016 delivered on 3-10-2016 is merged in the final order dated 24-4-2019 that the impugned order is against law. The impugned finding that provisions of the Act are applicable to the appellant establishment are against law in ignorance of Section 1(3)(a) of the Act and also Section 15 and 18 of the Act of 1972 mentioned earlier. The Respondent Authority committed error in entertaining joint complaint by 33 daily wagers/casual/contractual employees though their claims were different from each other. The Respondent Authority committed illegality in not providing the list of the daily wagers to the appellant establishment and also committed illegality in ignoring the fact that the workers were regularized only on the condition that they file an affidavit that they had withdrawn their claims before any Court/Tribunal with respect to any matter. Accordingly it has been prayed that the impugned orders be quashed. In its reply/counter, the case of the Respondent Authority is that the impugned order has been passed by it exercising powers under Section 7A of the Act towards the provident fund dues of 119 daily wagers/contractual/casual employees who are not extended the benefit of provident Fund Scheme or any other such scheme as extended to the regular employees of the appellant establishment between April-2005 to March-2017. It is further the case of the Respondent Authority that the final order dated 30-9-2016 delivered on 3-10-2016 held the contractual/casual/daily wage employees of the appellant establishment entitled to benefits of employees provident fund scheme under the Act because they were not extended this benefit which was being availed by the regular workers of the appellant



establishment. This order was a final order. The appellant establishment did not care to file appeal against this order within time, hence this order holding the responsibility of the appellant establishment as mentioned above has attained finality and cannot be challenged in the present appeal. This is also the case of the Respondent Authority that the finding of the Respondent Authority that the contractual/casual/daily wagers/ working for the appellant establishment were also entitled to the benefits of the Act at par with the regular employees is justified in law and fact and cannot be faulted. According to the Respondent Authority the order dated 24-4-2019 is only regarding assessment of the dues when the original order dated 30-9-2016 determining the liability of the appellant establishment has attained finality. The assessment order dated 24-4-2019 which is consequential to the order dated 30-9-2016 cannot be agitated against and should not be set aside. Accordingly, it has been prayed that the appeal be dismissed.

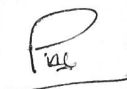
4. I have heard argument of learned Counsel Mr. Kapil Duggal for the appellant establishment and Mr. J.K.Pillai for the Respondent Authority. I have gone through the record as well.

5. On perusal of record in the light of rival arguments, the following points come up for determination:-

(1)Whether the order dated 30-9-2016 holding the provisions of the Act applicable to the contractual/casual/daily wagers/ of the appellant establishment has attained finality.

(2)Whether the finding of the Respondent Authority holding the Appellant Establishment liable to pay the employees provident fund dues of contractual/casual/daily wagers/ working for the appellant establishment and covered by the Act can be faulted in law or fact or not?

6. Since both the points are interconnected, hence they are being taken together.



POINT FOR DETERMIANTION No.1 and No.2:-As regards the point No.1 regarding finality of order dated 30-9-2016 deciding application of the Act, learned counsel for the Respondent Authority submits that this order was never appealed against it at any point of time hence after lapse of limitation it has attained finality. Learned Counsel for the appellant establishment submits that this order is emerged in the order dated 24-4-2019 against which this appeal has been preferred. I have perused these two orders which are on record. It comes out that vide order dated 30-9-2016 delivered on 3-10-2016 the respondent authority recorded a finding that Section 16(1)(b) and 16(1)(c) of the Act are not applicable in the case in hand, thus rejected the defense of appellant establishment regarding non-applicability of the provisions of the Act on the grounds mentioned under Section 16(1)(b) and 16(1)(c) of the Act and held the provisions of the Act applicable to the appellant establishment so far as it relates to the contractual/casual/daily wagers/ working for the appellant establishment. This order further directed the appellant establishment to submit all prescribed statutory returns within 15 days from the receipt of the order. This is not disputed that the appellant establishment did not prefer any appeal or any remedy against this order.

7. Thereafter as the record reveals, on the basis of the order dated 30-9-2016 & 3/10/2016 notices were issued to the Appellant Establishment under Section 7A of the Act for assessment of all dues with respect to eligible employees and the appellant establishment was directed to appeal before the Respondent Authority that all relevant records on the date fixed in the notice. This order dated 24-4-2019 further reveals that the respondent authority has recorded a finding that the point of application of the Act has been settled by the order of 2016 as mentioned above and has attained finality. Now he is considering only the assessment of dues only in the light of that order date of 30-9-2016/3-10-2016 and as assessed the amount to be recovered. Section 7A of the Act reads as under :-

[7A. Determination of moneys due from employers. –

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5[(1) The Central Provident Fund commissioner, any Additional Central Provident Fund Commissioner, any deputy Provident Fund Commissioner, any Regional Provident Fund Commissioner, or any Assistant Provident Fund Commissioner may, by order,-

(a) In a case where a dispute arises regarding the applicability of this Act to an establishment, decide such dispute; and

(b) Determine the amount due from any employer under any provision of this Act, the Scheme or the 1[Pension] Scheme 2[or the Insurance Scheme], as the case may be, And for any of the aforesaid purposes may conduct such inquiry as he may deem necessary.]

(2) The officer conducting the inquiry under sub-section (1) shall, for the purposes of such inquiry have the same powers as are vested in a court under the Code of Civil Procedure, 1908 (5 of 1908), for trying a suit in respect of the following matters, namely:-

(a) Enforcing the attendance of any person or examining him on oath;

(b) Requiring the discovery and production of documents;

(c) Receiving evidence on affidavit;

(d) Issuing commissions for the examination of witnesses,

And any such inquiry shall be deemed to be a judicial proceeding within the meaning of section 193 and 228, and for the purpose of section 196 of the Indian Penal Code (45 of 1860).

3) No order 1[***] shall be made under sub-section (1), unless 2[the employer concerned] is given a reasonable opportunity of representing his case.

3[(3A) Where the employer, employee or any other person required to attend the inquiry under sub-section (1) fails to attend such inquiry without assigning any valid reason or fails to produce any document or to file any report or return when called upon to do so, the officer conducting the inquiry may decide the applicability of the Act or determine the amount due from any employers, as the case may be, on the basis of the evidence adduced during such inquiry and other documents available on record.]

4[(4) Where an order under sub-section (1) is passed against an employer ex-parte, he may, within three months from the date of communication of such order, apply to the officer for setting aside such order and if he satisfies the officer that the show cause notice was not duly served or that he was prevented by any sufficient cause from appearing when the inquiry was held, the officer shall make an order setting aside his earlier order and shall appoint a date for proceeding with the inquiry ;

Provided that no such order shall be set aside merely on the ground that there has been an irregularity in the service of the show cause notice if the officer is satisfied that the employer had notice of the date of hearing and had sufficient time to appear before the officer.

Explanation. - Where an appeal has been preferred under this Act against an order passed ex-parte and such appeal has been disposed of otherwise than on the ground that the appellant has withdrawn the appeal, no application shall lie under this sub-section for setting aside the ex-parte order.

(5) No order passed under this section shall be aside on any application under sub-section (4) unless notice thereof has been served on the opposite party.].

8. A perusal of this provision reveals that the Respondent Authority has two powers in this provision. First to hold whether the provisions of the Act are applicable or not and if he finds that the provision of the Act are applicable then secondly to assess the amount to be recovered under this provision. Normally both the powers are exercised in one order as is the

normal practice but in the case in hand and the order dated 30-9-2016/3-10-2016 passed under Section 7A of the Act is limited only with regards to the application and the second order under Section 7A of the Act assessing the dues is with regard to assessment of the amount. The present appeal has been filed against the order dated 24-4-2009 which is the assessment order passed on the basis of order dated 30-9-2016/3-10-2016 deciding the application of the Act. These two orders deeply interconnected but are independent of each other. The appellant did not prefer any appeal as statutorily provided in the Act against the first order of 30-9-2016/3-10-2016, within limitation or even beyond limitation seeking condonation of delay, hence naturally this order has attained finality between the parties and the argument of learned counsel for the appellant that this order has merged in the order dated 24-4-2019 has no leg to stand.

8. In the light of the above discussion, the finding of the respondent Authority that order dated 30-9-2016/3-10-2016 deciding applicability of the Act is a separate order and order dated 24-4-2019 against which the present appeal has been preferred is an order consequential to the first order and also that both the orders have not merged cannot be faulted in law or fact and his affirmed. **Point for determination No.1 is answered accordingly.**

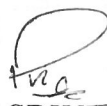
9. In the light of the aforesaid finding the **point for determination no.2 is also answered against the Appellant.**

10. No other ground has been pressed.

ORDER

**Accordingly the appeal sans merit and deserves to be dismissed.
The Appeal is dismissed.**

No order as to cost.


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

JUDGMENT SIGNED , DATED AND PRONOUNCED.


(P.K.SRIVASTAVA)

PRESIDING OFFICER

Date:15-6-2022