

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

NO. CGIT/LC/EPFA-79/2017

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

Chhattisgarh State Civil Supplies
Corporation Ltd.
Hitvad Campus,
Avanti Vihar,
Raipur(C.G.

APPELLANT

Versus

Asst. Provident Fund Commissioner
Employees Provident Fund Organisation,
Regional Office Block D, Scheme No.32,
Indira Gandhi Vyavasaik Parisar,
Pandri, Raipur

RESPONDENT

(J U D G M E N T)

(Passed on this 24 th day of February-2021)

1. The present appeal is directed against the order dated 14-5-2007 passed by the Respondent/Authority whereby the respondent has held the appellant/company liable for Rs.61,39,571/- as dues for their employees provident fund contribution for the period May-2001 to June -2003.
2. The facts connected in brief are that the appellant/company is a government owned company engaged in transportation and distribution of food grains under various schemes in Public Distribution System. The appellant/company engages the services of contractors for the transportation of food grains who in turn engages potters (locally called Hamals). These Hamals also do the work of other organisations like Food Corporation of India, Forest Corporation, Fertililzer Company and other private Rice Mills are storing their material in their ware houses where the food grains of

the appellant/company are stored. According to the appellant the contractors engage these Hamals, pay them their remuneration and the appellant/company has no supervision/control over their working. According to the appellant/company a complaint was filed by the Union namely All India Trade Union Congress and Lal Jhanda Warehouse Worker's Union on which notices were issued by the Respondent/Authority to appellant. The Respondent/Authority wrongly recorded a finding that the Hamals were employees of the appellant/company and wrongly assumed that their wages were Rs.1500/- per month for the period under inquiry which is based on no evidence what so ever. On this wrongly recorded findings the Respondent/Authority wrongly assessed the dues of Rs.61,39,571/- for the period from May 2001 to June 2003 which cannot be sustained in law or fact and liable to be quashed. The grounds of appeal in brief are mentioned in the (paragraph-9) of the appeal which are mainly that the impugned order is bad in law and facts as such they are illegal. The findings recorded are without any material on record as they have been recorded without holding any proper inquiry and without considering the evidence which established otherwise. These findings are against established principles of justice. The finding of Respondent/Authority that Hamals are employees of the appellant/company under Section 2(f) of the EPF Act is bad in law and fact. The Respondent/Authority further committed error in law in proceeding with assessment without identifying the beneficiaries. The impugned order is based on assumptions, surmises and conjectures and established principle of law propounded by Hon'ble High Court's and Hon'ble Supreme Court. The assumption of wages of Hamals is also against any evidence on record, hence the Respondent/Authority committed error in law on this point also.

3. Accordingly the appellant company has prayed for the relief of setting aside the impugned order, holding it bad in law and facts.

4. The appeal memo is supported with affidavit and Photocopy self-certified documents which are Exhibits A-1 to A-15, to be referred to as and when required.
5. In their counter which is not supported with any affidavit the Respondent/Authority has defended the impugned order with a case that its finding that the Hamals are employees of the appellant corporation is based on fact and law recorded on evidence produced before them. The assumption regarding wages is also recorded as according to law and also that the Respondent Authority has recorded a finding that the beneficiaries are identifiable which is bases on evidence on record produced by the Union and not rebutted by the appellant. This finding also cannot be interfered with on facts and law, accordingly, the Respondent/Authority has prayed for the appeal to be dismissed.
6. No rejoinder has been filed by the Appellant Company.
7. The said appeal which was first filed in the year 2011 was earlier pending at Employees Provident Fund Appellate Tribunal, New Delhi from where it was received on transfer to this Tribunal.
8. After service of notices, so many dates were given for final arguments and lastly on 12-1-2021 the date fixed for final arguments no counsel appeared. This Tribunal could have dismissed the appeal on the ground of non-presence of parties itself, but looking into the period of pendency and the fact that pleadings have been exchanged, I proceed to decide the appeal on merits on the basis of material on record. However, on 17-2-2021 the arguments of Shri J,K,Pillai, learned counsel were heard for respondent on his request.

9. Parties were given 15 days' time to file written arguments. From the perusal of the record, in the light of the written arguments, the following points arise for determination:-

POINT NO.1:- “Whether the finding of the Respondent Authority that the Hamals are employees of the Appellant Company is correct in law and fact?.

POINT NO.2:- “Whether the finding of the Respondent Authority that beneficiaries have been duly identified is correct in law and fact?.”

POINT NO.3:-“Whether finding of Respondent/Authority holding the Appellant Company liable for payment of EPF dues for the periods in question is correct in law and fact.”

10. POINT NO.1;-The Respondent/Authority has held that the Hamals are employees of the Appellant/Establishment. The basis behind this finding is that the hamals are employees engaged by contractor but for the work of Appellant/Establishment. The question is not about place of work but about the work place and it does not matter as to who owns the warehouse and where the corporation stores the goods etc. The main question is about the employees who work for the corporation, what so ever the place be. The Respondent/authority as referred to **Section 2(f) of the Employees Provident Fund & Misc. Provisions Act,1952**, hereinafter referred to as the word ‘Act’ which reads as follows:-

2 (f) “employer” 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,-

(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 (52) of 1961) or under the standing orders of the establishment];

11. It is not disputed that the hamals were engaged by the contractors for transporting and storing the goods belonging to the appellant/establishment, to and from the warehouse. Hence it is undisputed that they were engaged for the work of appellant/establishment, therefore, in the light of definition mentioned in Section 2(f) of the Act, they will be employees of the appellant/establishment for the purposes of this Act. The Respondent/Authority cannot be faulted in law in recording this finding. The Respondent/Authority has correctly observed that the question is not about work place or who owned the workplace, it is about the work force and whose work the person was doing. This is also not material, as to through whom the persons were engaged. The Respondent/Authority has rightly mentioned in para 8.5 of the agreement between the Transporter and Appellant/Establishment, wherein it has been provided that the transporter shall furnish the list of employees stating their names, addresses and photographs to the District Manager of the Appellant/Corporation. This is also established as mentioned in the impugned order that the rates for hamali were approved by the appellant/establishment and were paid to the hamals through the contractors. Hence the finding of the Respondent/Authority that hamals were employees of Appellant/Establishment for the purposes of the act, cannot be faulted in law and fact and is affirmed accordingly. **Point No.1 is answered accordingly.**

12. POINT NO.2;-

On this point, the Respondent/Authority has held that the beneficiaries are not identified. According to the impugned order, the complainant/Union had filed before the Authority documentary evidence, certificate issued by the Officer of the Appellant/Establishment containing their names and signatures of Hamals. The Union also filed list of 29 lead go-downs showing names, age and address of employees working in each go-down. Hence the contention of appellant/establishment that beneficiaries were unidentifiable or were not identified also cannot be sustained in

law and fact and case laws referred on this point in their memo of appeal are of no help to the appellant/establishment. It is further corroborated by Clause 8.5 of the Contract Agreement mentioned earlier in which the contractors engaged were obligated to furnish the names and address of the employees/hamals engaged for the work along with their photographs. Hence the finding of the Respondent/Authority that beneficiaries are identifiable and are identified also cannot be faulted in law and fact and is affirmed accordingly. **Point No.2 is answered accordingly**

13.POINT NO.3:-

The Respondent/Authority has referred to some provisions of the Act which are as follows:-

Para- 36 of EPF Scheme'1952'-Duties of employers:-

36. Duties of employers:-(1) Every employer shall send to the Commissioner, within fifteen days of the commencement of this Scheme, a consolidated return in such form as the Commissioner may specify, of the employees required or entitled to become Members of the Fund showing the [basic wage, retaining allowance (if any) and dearness allowance including the cash value of any food concession] paid to each of such employee:

[Provided that if there is no employee who is required or entitled to become a Member of the Fund, the employer shall send a 'NIL' return.]

(2) Every employer shall send to the Commissioner within fifteen days of the close of each month a return—

(a) in Form 5, of the employees qualifying to become Members of the Fund for the first time during the preceding month together with the declaration in Form 2 furnished by such qualifying employees, and

(b) 7[in such form as the Commissioner may specify], of the employees leaving service of the employer during the preceding month:

[Provided that if there is no employee qualifying to become a Member of the Fund for the first time or there is no employee leaving service of the employer during the preceding month, the employer shall send a 'NIL' return.]

(3) Omitted.

(4) Every employer shall maintain an inspection note book in such form as the Commissioner may specify, for

an Inspector to record his observations on his visit to the establishment.]

[(5)] Every employer shall maintain such accounts in relation to the amounts contributed to the Fund by him and by his employees as the Central Board may, from time to time, direct, and it shall be the duty of every employer to assist the Central Board in making such payments from the Fund to his employees as are sanctioned by or under the authority of the Central Board.

[(6)] Notwithstanding anything hereinbefore contained in this paragraph, the Central Board may issue such directions to employers generally as it may consider necessary or proper for the purpose of implementing the Scheme, and it shall be the duty of every employer to carry out such directions.

Para 30 of the EPF scheme '1952': Payment of Contributions:-

[30. Payment of contribution:-(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 contributions 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 10[***].

(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 11[***].]

[*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 contributions 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.”

14. On perusal of the aforesaid provisions , it reveals that though the contractor who had engaged the Hamals and registered with the EPF Organisation owed the primary responsibility of deducting employees provident fund contribution and adding employers contribution and to deposit it as per rules. The principal employer also cannot escape his liability in ensuring the compliance by the Contractor as it has been provided in Rule 30 of the Employees Provident Fund Scheme,1952. Hence the liability of the Principal Employer i.e. the Appellant/Establishment in the case in hand is joint and several with the Contractor. Accordingly, the finding of Respondent/Authority that the Appellant/Establishment, being Principal Employer is liable under the Act to pay the money also cannot be faulted in law and fact and is affirmed, accordingly.

15. On the basis of the above discussion the appeal lacks merits and is liable to be dismissed with costs.

ORDER

Appeal stands dismissed with costs.

(P.K.SRIVASTAVA)

PRESIDING OFFICER

JUDGMENT SIGNED , DATED AND PRONOUNCED.

(P.K.SRIVASTAVA)

PRESIDING OFFICER

Date:24-2-2021