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

EPF Appeal No.- 200/2017
Present – P.K. Srivastava
H.J.S. (Retd.)

M/s Nalanda Co-ed Higher Secondary School,
Kolar Road,
Bhopal (M.P.)

Appellant

V/s

Assistant Provident Fund Commissioner,
Employees Provident Fund Organization,
Sub-Regional Office,
59, Arera Hills,
Bhopal (M.P.)- 462011

Respondent

Shri Pranay Choubey : Learned Counsel for Appellant.

Shri Harshit Patel : Learned Counsel for Respondent.

JUDGMENT

(Passed on 30th day of June, 2026)

The present appeal is directed against the **order dated 11.07.2016,** passed by Respondent Authority under section ***7-A of The Employees Provident Fund & Miscellaneous Provisions Act, 1952***, hereinafter referred to as the ***'Act'***, by which the Respondent Authority has recorded the finding that the Appellant Establishment is under liability to deposit of PF dues of its employees for the period from July, 2007 to June, 2013 because it is covered under the Act as it had employed 21 employees during the said period and has assessed the amount at Rs. 13,47,622/-, has further directed to deposit the amount within time prescribed in the order itself.

The skeletal facts connected to present appeal are mainly that the Appellant Establishment was earlier not covered under the Act because the total strength of employees working in the Establishment was below 20. It applied for coverage in the year 2011 when its employees became more than 20, and it was allotted a PF code applicable from 01.12.2011. It has been regularly depositing the PF dues of its employees since then. The Establishment was inspected by Enforcement Officer from the Office of the Respondent Authority on the basis of some wrong information that it had employed more than 20 persons since July, 2007 which was incorrect. The inspection report was prepared by the Enforcement Officer on 16.12.2015 which stated that the total strength of employees in the Establishment has been 20 and more since 2007. The Respondent Authority issued a notice with respect to enquiry in which the Appellant Establishment participated.

It is further the case of the Appellant Establishment that they produced, before the Respondent Authority, original documents i.e., attendance register, salary register and reply of the report of Enforcement Officer in which they rebutted the finding of the Enforcement Officer that there were more than 20 employees in the Appellant Establishment since 2007. The Respondent Authority blindly relied on the report of the Enforcement Officer and passed the impugned order with impugned findings and assessments without applying his own mind and considering the documents, *viz;* salary register, attendance register, etc., produced by the Appellant Establishment in the enquiry. The Respondent Authority passed its findings on the basis of balance sheet and Audit Report for the year 2007-2008. It is further the case of the Appellant Establishment that they preferred a Review Petition dated 27.07.2016 u/s 7-B of the Act seeking review of the order dated 11.07.2016 which was rejected without considering the grounds vide order dated 22.08.2016. Hence, this Appeal.

Grounds of Appeal, taken in the memo of appeal are mainly that the impugned findings and assessments have been passed without application of mind and are perverse, hence bad in law. The Respondent Authority failed to exercise its jurisdiction u/s 7-A of the Act in a just and legal manner by ignoring the fact that the inspection report itself discloses that the total strength of employees in the Appellant Establishment was not 21 in the month of July, 2007, hence committed error in law. The Respondent Authority further ignored the salary register of July, 2007 and thereafter, in recording the impugned finding that the Appellant Establishment had employed 21 employees since 2007, hence was covered under the Act, thus committed error in law. The Respondent Authority further ignored the established fact that from the period under assessment in the impugned order the total strength of employees was never 20 or more. Thus, committed error in law.

In its counter to appeal, the Respondent Authority has taken a case that the Act is a beneficial legislation, any Establishment which employs 20 or more persons in any date is covered under the Act. Since, the Act is a beneficial legislation, any of its provision capable of two interpretations, one favouring the beneficiaries, will be considered. The Appellant Establishment was covered under the Act, it failed to deposit the PF dues of its employees for the period December, 2011 to June, 2013. A notice was issued in this respect, which was later extended from July, 2007 to June 2013. An enquiry was initiated in which the Appellant Establishment participated. The Appellant Establishment was asked to produce all records but they failed to submit complete and substantial records. The Enforcement Officer filed its report submitting that the Appellant Establishment is covered from 01.12.2011. However, it had employment strength of 21 employees in July, 2007 hence it should be covered from July, 2007. The Appellant Establishment did not submit any wages/salary details from July, 2007 hence dues from July, 2007 to March, 2011 was calculated on the basis of salary as shown in the Audit Report. It is from 04/ 2011, the PF dues were calculated on the basis of salary details provided by the Appellant Establishment. The findings and assessments were recorded on the basis of record produced at the time of enquiry. The report of the Enforcement Officer discloses that the Appellant Establishment had engaged 21 employees in July, 2007 and list of such employees was provided by the employer itself. However, the Appellant Establishment succeeded in manipulating the record and all names of all 21 employees were mentioned in the attendance register. Hence, the findings were recorded on the basis of record available which was Audit Report for the year. The findings and assessments cannot be faulted in law and fact.

No rejoinder has been filed by the Appellant Establishment.

I have heard argument of Mr. Pranay Choubey, Learned Counsel for the Appellant Establishment and Mr. Harshit Patel, Learned Counsel for the Respondent Authority. I have gone through the record.

Learned counsel for the Appellant Establishment has submitted that the counter to the reply itself discloses that documents in form of salary register from July, 2007 and thereafter as well the attendance register were supplied to the Enforcement Officer at the time of his inspection. The findings of the Respondent Authority that on verification of records it was found that it had strength of 21 employees in July, 2007 and thereafter, is perverse and is based solely on the report of Enforcement Officer which is against fact. The Respondent Authority did not consider the attendance register, salary register for the period and recorded the impugned findings against facts. The documents produced before it during the enquiry itself discloses that the number of employees working in the establishment were less than 20 since July, 2007 to 2011 hence, the findings of the Respondent Authority that Appellant Establishment was covered under the Act for this period as it had employed 21 employees during this period is against record. The impugned order requires to be set aside.

Learned counsel for the Respondent Authority has submitted that in any establishment who employs 20 or more persons on any date in a year is covered under the Act. He has referred to section 1(3) of the Act in this respect. He further submits that the impugned finding regarding employment of 21 persons by the Appellant Establishment has been correctly recorded in law on the basis of documents available particularly the Audit Report hence, cannot be faulted in law or fact.

After perusal of record in light of rival arguments, following point arises for determination;

- ***Whether the impugned findings of the Respondent Authority that the Appellant Establishment was covered under the Act as it had employed 21 employees in July, 2007 and thereafter till the period of assessment in the impugned order as well the assessment have been recorded correctly in law or fact?***

Before proceeding, ***section 1(3)*** ***of The Employees‟ Provident Funds & Miscellaneous Provisions Act, 1952*** is being reproduced as under:-

"1. Short title, extent and application.—

(3) Subject to the provisions contained in section 16, it applies—

(a) to every establishment which is a factory engaged in any industry specified in Schedule I and in which twenty or more persons are employed, and

(b) to any other establishment employing twenty or more persons or class of such establishments which the Central Government may, by notification in the Official Gazette, specify in this behalf:

Provided that the Central Government may, after giving not less than two months‟ notice of its intention so to do, by notification in the Official Gazette, apply the provisions of this Act to any establishment employing such number of persons less than twenty as may be specified in the notification."

The case of the Appellant Establishment is that from July, 2007 till 2011, the total strength of employees with it was less than 20.

During arguments, documents with respect to enquiry proceedings conducted before the Respondent Authority were summoned and have been produced by their learned counsel in a sealed cover which was opened before the parties during the hearing. There is an Inspection Report of the Enforcement Officer dated 16.12.5015 which is the basis of the impugned findings and assessments, discloses that the Appellant Establishment had produced attendance register of its employees with regards to 2007, it does not contain 21 employees as claimed. It further discloses that the salary register of its employees from July, 2007 was not produced but the Audit Report for the period 2007-2008 to 2010-2011 has been produced. Also, it discloses that since salary sheets were not produced, the amount has been assessed for the period 2007-2008 and thereafter on the basis of salary component shown in the Audit Report. Further, it discloses that Appellant Establishment had produced before the Enforcement Officer, salary sheets of its employees from April, 2011, hence due from April, 2011 and thereafter have been calculated on the basis of the salary sheets.

It is further the case of the Appellant Establishment that they did filed the Review Petition against order u/s 7-A of the Act. This Review Petition is *Annexure-A/6* to the memo of Appeal. This petition also states that original attendance register is filed in the Office of Respondent Authority during the enquiry and that all the documents required have been filed during the enquiry dated 11.07.2016. An order of Review Petition passed on 22.08.2016 is *Annexure-A/7* to the memo of Appeal which discloses that no new facts were disclosed in the review and on this basis the order review was refused.

Now, it is established that the basis of the impugned finding that the Establishment had employed 21 persons with it since July, 2007 is only the Audit Report and it has not been produced before this Tribunal. Moreover, no Audit Report discloses the number of employees, it discloses the salary component only. The calculation sheet prepared by the Enforcement Officer filed with his report is in the documents summoned, which goes to show that numbers of employees for the period from July, 2007 to March, 2011 was 21. The point is whether the Audit Report showed number of employees also or not, this fact is not established before this Tribunal. The salary component mentioned in the Audit Report is inclusive of allowances, also some of the allowances are eligible for PF deduction and some are not. In its counter to the Appeal, the Respondent Authority has taken a case that the Appellant Establishment has manipulated about the number of employees within the period July, 2007 to March, 2011 but, there is no basis for this argument and this finding/contention. As stated earlier, the Inspection Report itself discloses that the list of employees employed by the Appellant Establishment in July, 2007 was given to the Enforcement Officer but this list is not available for perusal. The Enforcement Officer further states that the attendance register of the employees did not contain 21 employees. Now, the situation is that the list of employees, said to be given by the Appellant Establishment to the Enforcement Officer is not being produced, Audit Report is not being produced and is not a part of enquiry proceedings as it has been found on opening of the sealed bundle. Also, that the Audit Report does not contain number of employees and it is also not available for perusal. In these circumstances, the finding of the Respondent Authority with respect to employment of 21 employees in July, 2007 and thereafter, till March, 2011 is solely based on the report of Enforcement Officer which itself is selfcontradictory. **Accordingly, this impugned finding is held to have been recorded against fact and law and is liable to be set aside.**

As regards, assessment of amount for this period from July, 2007 to March, 2011, since the salary component as said to be shown in Audit Report includes allowances also and there is nothing to show that amount has been calculated excluding the excluded allowances, **the assessment of amount for this period July, 2007 till March, 2011 is held to have been recorded against fact.**

As regards, **the finding and assessment with respect to March, 2011 to June, 2013 the findings and assessments are held to have been recorded correctly in law and fact.**

***The* point *for determination is answered accordingly*.**

No other point was pressed.

On the basis of above discussion and finding, the Appeal is allowed partly.

ORDER

"The Appeal is allowed partly. The impugned finding and assessment with regards to the period from July, 2007 to March, 2011 is set aside. The finding and assessment with respect to the period after March, 2011 to June, 2013 is affirmed."

No order as to cost.

Date:- 30/06/2026 **P.K. SRIVASTAVA**
(PRESIDING OFFICER)

Judgment Signed, dated and pronounced.

Date:- 30/06/2026

P.K. SRIVASTAVA
(PRESIDING OFFICER)