

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

NO. CGIT/LC/EPFA-222-2017

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

M/S Food Corporation of India
JABALPUR

APPELLANT

Versus

The Regional Provident fund Commissioner
Jabalpur(M.P.)

RESPONDENT

Shri Shailendra Pandey : Learned Counsel for Appellant.

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

(J U D G M E N T)

(Passed on this 13-5-2022)

- 1.* Under challenge in this appeal is order dated 30-11-2016 whereby the Respondent Authority has held that the complainant Ramsingh(hereinafter referred to by the word complainant) is entitled to PF/EFPS/EDLI Membership against amount of Rs.

1,13,004/- recovered by the Respondent Authority in pursuance of order dated 26-5-1992 passed under Section 7A of the Employees Provident Fund And Misc. Provisions Act,1952, herein after referred to the word Act”, for the period from 23-3-1986 to 3-1-1989.

2. Facts connected in brief are mainly that the appellant establishment is a Corporation established under Food Corporation Act 1962 engaged in the business of procurement , storage and distribution of food grain throughout the Country. In order to effectively implement the Food Programme of the Government of India and to protect the consumers, the Jabalpur Unit engaged contractors for handling and transporting food grains during the period 23-3-1986 to 3-1-1989 and from 3-1-1989 to December-1993 the casual workers working under MATE System were engaged for this and thereafter from 1-1-1994 direct payment system scheme came into existence for this. The Contractors between the period 1986 to 1989 were registered under Contract Labour Regulation and Abolition Act,1970. The proceedings under the Act was initiated by Respondent Authority with regard to 149 Members working under the Contractor for this period and it was held by Respondent Authority vide order dated 26-5-1992 that laborers of the Contractor are entitled for their employees provident fund dues to be deposited during the period of 23-5-1986 to 3-1-1989 without identifying the specific workman beneficiaries the amount was computed as Rs.1,13,004/- as employees provident fund dues which were deposited by Appellant Establishment. The complainant who

was earlier working as a contract worker was also included in the MATE System and continued in Direct Payment System from 1-1-1994. He retired on 20-5-1996. He was given all the benefits from 1-4-1994 as per rules. The amount of employees provident fund was deducted and deposited in his EPF Account only since 3-1-1989 when MATE System was enforced. Prior to that, since he was contractor worker from 23-3-1986 to 3-1-1989 and was not member of EPF Scheme, he became member of EPF Scheme only from 3-1-1989 after MATE system was enforced. The complainant was not entitled to any pension from the Appellant as he had not completed 10 years in service, neither had he opted for Membership of Pension Scheme prior to 1-3-1989. The complainant approached Hon'ble High Court of M.P.at Jabalpur by way of filing Writ Petition No.1884/2006 claiming benefits of Pension given to him. This writ petition was disposed of finally by Hon'ble High Court vide order dated 13-11-2014 directing the complainant to make a representation before Regional Commissioner under paragraph 26(b) of Employees Provident Fund Scheme,1952, hereinafter referred to by the word "Scheme". He made a representation before the Regional provident Fund Commissioner i.e. Respondent. The Appellant Establishment filed a written reply in detail and submitted the concerned documents before the Respondent in response to the notice issued by the Respondent No.1 on the representation of complainant before him. The Respondent thereafter passed the impugned order holding the complainant entitled to pension from the assessed amount under Section 7A of the Act for the period 23-3-1986 to 3-1-1989 Rs.1,13,004/-.

3. The grounds of Appeal taken by the appellant in the Memo of Appeal are mainly that the impugned order and finding is against law and fact, passed by Respondent ignoring the evidence on record and is perverse. The Respondent failed to consider the fact that the complainant had not opted for Family Pension during the year 1986 to 1-1-1994. No consent was given by the complainant to join this Scheme, hence no deduction could be made for family pension scheme, in absence of expressed consent of complainant to join the scheme. The respondent also failed to consider the fact that Claimant had not completed 10 years of service as provided under Para 12(1)(b) of the Scheme, hence not entitled to family pension. Also that the Claimant was not a Member of the earlier Pension Scheme 1971, hence it could not be said that he became automatic member of the new Pension Scheme 1995. The Respondent further failed to consider the fact that the amount assessed under Section 7(A) of the Act with respect to 147 members vide order of Respondent dated 26-5-1992 Rs.1,13,004/- was already deposited by Appellant Establishment on 15-9-1993. The name of Claimant was not in the list of 147 Members.

4. In its counter/reply to the appeal, the case of Respondent No.1 is mainly that Respondent No.2 Ram Singh filed a representation under paragraph 26(b) of the Employees provident Fund Scheme 1952 read with Section 7A of the Act with a copy of order of Hon'ble High Court passed in W.P.No.1884/2006. Inquiry was conducted by Respondent, the notices were issued to Appellant

Establishment. The Appellant Establishment participated during the inquiry. They submitted their reply. The Departmental Representative, The Enforcement Officer was directed to submit his deposition report. The copy of Report was handed over to Claimant and Appellant Establishment during the inquiry. The Claimant contended that he was employed in the establishment right from 26-1-1967 to 18-5-1996. He received salary after deduction of 10% from salary about which he was informed by the Appellant Establishment that this deducted amount of 10% of the amount has been deposited with the Employees Provident Fund commissioner. There was no contractor in the Appellant Establishment between the period of 1967 to 1988. The salary was paid by Mukadam-Shri Ramdev Prasad from 1969 to 1979, Dariyamal Gyanchand was the contractor for the establishment. From 26-12-1979 Shri R.K.Jain and Shri Sanjay Kapoor were the contractors. From 23-3-1986 to 3-11-1989. Again R.K.Jain was the contractor for this establishment. From 3-11-1989 MATE System was introduced and salary of Claimant was paid by the Appellant Establishment thereafter. From 1-1-1994 DPF system was introduced. The contractors did not remit the employees provident fund dues with the Respondent. The employees provident fund dues were determined by Respondent for the said period as Rs.1,13,004/- which was deposited by the Appellant Establishment. It is further the case of Respondent that the Claimant contended that from 23-3-1986 to 18-5-1996 the date of his superannuation, he was under contractor, thereafter under MATE System and thereafter under Direct Payment System with the Appellant Establishment and thus had completed 10 years 2 months

and 16 days of service, hence entitled for pension. The case of the Appellant Establishment was that Respondent No.2 became member of the EPF Scheme only from 3-11-1989. The Appellant Establishment submitted form No.9 in this respect. It also submitted withdrawal form of 19 and 10-C with respect to Claimant. The contractor R.K.Jain who executed the work for Appellant Establishment within the period of 23-3-1986 to 3-1-1989 did not submit any record or information regarding the laborers of the Principal Employer i.e. Appellant Establishment, hence the amount was assessed by Respondent No.1 vide order dated 26-5-1992 and was deposited by the Appellant Establishment . The withdrawal forms No.19 and 10C with respect to Claimant show 3-11-1989 as date of joining of Claimant in the Scheme. Hence in the light of these facts, the impugned finding that Claimant was entitled to PF/EFPS/EDLI Membership against the amount recovered under order dated 26-5-1992. Further it is the case of Respondent that since the legislation is a welfare legislation and law settled by Hon'ble the Apex Court in the case of **RPFC Vs. Shibu Metal Workers 1964-65** (27) FJR 491, according to which if two views are reasonably possible, the Court should prefer the view which helps in the achievement and furtherance of the object. Accordingly the Respondent No.1 has prayed that the Appeal be answered against the Appellant Establishment.

5. A rejoinder has been filed by the Appellant Establishment in which it has mainly reiterated the case as mentioned in the Memo of Appeal.
6. Learned Counsel for Appellant Shri Sahilendra Pandey has preferred to file written argument which is on record. Shri J.K.Pillai for Respondent has made his oral submission. I have gone through the written arguments filed by the Appellant Establishment and the record.
7. On perusal of the record in the light of rival arguments, the following points come up for determination in the case in hand:-

1. Whether the finding of Respondent No.1 that Respondent No.2 is entitled to benefits of pension scheme from the assessed amount of Rs.1,13,004/- assessed for the period between 26-3-1986 to 3-11-1989 vide order of Respondent Authority No.1 dated 26-5-1992 can be faulted in law or fact or not?

8. It is undisputed that the order under Section 7 A of the Act as mentioned above is final between the parties. The main contention of the Appellant Establishment is that the beneficiaries were not identified by the Respondent Authority. The Respondent Authority has wrongly held that Claimant Ram Singh was one of the beneficiary of EPF Scheme with respect to the assessment under Section 7A of the Act as recorded above which is without evidence

and is perverse. The finding of Respondent that Claimant Ram Singh had completed 10 years of qualifying service, hence he is entitled to pension is also against evidence, in the light of the fact that there are documents that he expressed his written consent to join this Scheme only in the year 1989 on 1-1-1989.

9. The point which arises for discussion here is that whether without a written consent can a member be a beneficiary of the EPF Scheme or not. Section 2(f) of the Act defines the word 'employee' as follows:-

2 (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,-

(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. Section 3 of the Act which reads as follows , provides about applicability of the Act and the Scheme.

3.-(1) There shall be established a Fund to be known as the Provident Fund.

(2) The Minister shall appoint a Board of Management who shall be responsible for the control and management of the Fund in accordance with the provisions of this Act and of any regulations made thereunder. The Chairman of the Board shall be such person as the Minister shall appoint.

(3) The moneys paid into the Fund shall, so far as practicable, be invested by the Accountant-General in such securities yielding interest as the Board

may approve, or, with the approval of the Board, be deposited by him in the Workers Savings and Loan Bank.

(4) The Accountant-General shall keep a separate account for the moneys of the Fund.

(5) The Accountant-General shall keep separate accounts of the moneys paid into the Fund in respect of depositors in the public service, in the parochial service, [The inclusion of this page is authorized by L.N. 31/1977] *PROVIDENT FUND 5* and in the service of any scheduled body. The account in respect of depositors in the parochial service and in the service of any scheduled body shall show separately the moneys paid into the Fund in respect of each Parish Council and scheduled body.

(6) The Board shall to the Minister as soon as practicable after the thirty-first day of March in each ' 3. year, a full statement showing the working of the Fund and all claims thereon, and containing full particulars of all transactions connected with the working of the Fund.

(7) All accounts required under this section to be kept shall be audited by the Auditor-General.

11. Para 26 and 26A of the Scheme 1952 prescribes the classes of employees identified and required to join the provident fund and retain the membership as is follows:-

Chapter IV Rule-26 and 26(A) reads as follows-

26. Classes of employees entitled and required to join the Fund-

(1)(A) Every employee employed in or in connection with the work of a factory or other establishment to which this Scheme applies, other than an excluded employee, shall be entitled and required to become a member of the Fund from the day this paragraph comes into force in such factory or other establishment.

(b) Every employee employed in or in connection with the work of a factory or other establishment to which this Scheme applies, other than an excluded employee, shall also be entitled and require to become a member of the fund from the day this paragraph comes into force in such factory or other establishment if on the date of such coming into force, such employee is a subscriber to a provident fund maintained in

respect of the factory or other establishment or in respect of any other factory or establishment (to which the Act applies) under the same employer:

Provided that where the Scheme applies to a factory or other establishment on the expiry or cancellation of an order of exemption under Section 17 of the Act, every employee, who but for the exemption would have become and continued as a member of the Fund, shall become a member of the fund forthwith.

(2) After this paragraph comes into force in a factory or other establishment, every employee employed in or in connection with the work of that factory or establishment other than an excluded employee who has not become a member already shall also be entitled and required to become a Member of the fund from the date of joining the factory or establishment.

(3) An excluded employee employed in or in connection with the work of a factory or other establishment to which this Scheme applies shall, on ceasing to be such an employee, be entitled and required to become a member of the fund from the date he ceased to be such employee.

(4) On re-election of an employee or a class of employees exempted under paragraph 27 or paragraph 27-A to join the fund or on the expiry or cancellation of an order under that paragraph, every employee shall forthwith become a member thereof.

(5) Every employee who is a member of a private provident fund maintained in respect of an exempted factory or other establishment and who but for exemption would have become and continued as a Member of the fund shall, on joining a factory or other establishment to which this Scheme applies, become a member of the fund forthwith.

(6) Notwithstanding anything contained in this paragraph an officer not below the rank of an Assistant Provident Fund Commissioner may, on the joint request in writing of any employee of a factory or other establishment to which this Scheme applies and his employer, enroll such employee as a member or allow him to contribute more than (rupees six thousand five hundred) of his pay per month if he is already a member of the fund and there upon such

employee shall be entitled to the benefits and shall be subject to the conditions of the fund, provided that the employer gives an undertaking in writing that he shall pay the administrative charges payable and shall comply with all statutory provisions in respect of such employee.

[26-A, Retention of membership:-

(1) A member of the Fund shall continue to be member until he withdraws under paragraph 69 the amount standing to his credit in the fund or is covered by a notification or exemption under Section 17 of the Act or an order of exemption under paragraph 27 or paragraph 27-A,

Explanation- In the case of claim for refund by a member under sub-paragraph(2) of paragraph 69, the membership of the Fund shall be deemed to have been terminated from the date the payment is authorized to him by the authority specified in this behalf by Commissioner irrespective of the date of claim.

(2) Every member employed as an employee other than an excluded employee, in a factory or other establishment to which this Scheme applies shall contribute to the fund, and the contribution shall be payable to the fund in respect of him by the employer. Such contribution shall be in accordance with the rate specified in paragraph 29:

Provided that subject to the provisions contained in sub-paragraph(6) of paragraph 26 and in sub-paragraph-1 of paragraph 27, or sub-paragraph(1) of paragraph 27-A, where the monthly pay of such a member exceeds[six thousand and five hundred rupees] the contribution payable by him, and in respect of him by the employer, shall be limited to the amounts payable on a monthly pay of [six thousand and five hundred rupees] including[dearness allowance, retaining(if any) and cash value of food concession]).

12. Para 12 A of Employees Pension Scheme 1995 also requires to be referred and is being reproduced as follows:-

12. Monthly Member's Pension. - (1) A member shall be entitled to : - (a) superannuation pension if he has rendered eligible service of 10 years or more and retires on attaining the age of 58 years ;

13. From the perusal of the Section 2(f) it is established that even the workers of the Contractors who work in the establishment are beneficiaries of the Act and they are employees of the Principal Employer for the purposes of this Act. Perusal of above noted provisions also make it clear that there is no requirement of any written consent in joining the Employees Pension Scheme 1995. As it is apparent from the perusal of Para 1(3) of the Employees Pension Scheme 1995 which reads as follows:-

1(3) Subject to the provisions of Section 16 of the-Employees' Provident Funds and Miscellaneous Provisions Act, 1952, this Scheme shall apply to the employees of all factories and other establishments to which the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 applies or is applied under sub-section (3) or subsection (4) of Section 1 or Section 3 thereof.

14. As regards the finding of Respondent Authority regarding the fact that Claimant was one of the 147 workman engaged by the contractor for the work of Appellant Establishment, the Principal Employer. Perusal of the record shows that it was decided on the strength of claim of the workman in this respect because there was no evidence otherwise. It is also in the impugned order that the Contractor did not furnish the list of contractor workers' engaged

during the period of 23-3-1986 to 3-1-1989. It has been observed by the Respondent Authority that the matter is quite old, hence may not be available. More over it is not the case of any other parties that the Claimant is 178th worker of contractor, hence this finding of Respondent on this point also cannot be held against law and fact and is affirmed accordingly. Consequently the finding of Respondent with regard to entitlement of Claimant regarding his pension claim is also held justified in law and fact and is affirmed accordingly. The point for determination is answered accordingly.

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

ORDER

The Appeal stands dismissed. The impugned order passed by the Respondent No.1 is affirmed.

No order as to costs.

(P.K.SRIVASTAVA)

PRESIDING OFFICER

JUDGMENT SIGNED , DATED AND PRONOUNCED.

(P.K.SRIVASTAVA)

PRESIDING OFFICER

Date:13-5-2022