

**BEFORE THE HON'BLE PRESIDING OFFICER, CENTRAL
GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT-II,
ROUSE AVENUE, DISTRICT COURT COMPLEX, DELHI.**

Present:

Smt. Pranita Mohanty,
Presiding Officer, C.G.I.T.-Cum-Labour
Court-II, New Delhi.

M/s. Mckinsey Knowledge Centre India Private Limited

Appellant

Vs.

RPFC/APFC, Gurugram

Respondent

ATA No. 87(16)2011

ORDER DATED:- 29.10.2021

Present:- None for the Appellant.
Shri S.N. Mahanta, Ld. Counsel for the Respondent.

The appeal has been preferred u/s 7I of the EPF and MP act 1952 (herein after referred to as the Act) challenging the order dated 01.12.2010 passed by the RPFC Gurgaon directing the appellant to deposit the deficit PF dues amounting to Rs. 19,36,966/- towards the unpaid EPF dues of its employees for the period 10/2007 to 03/2010.

The stand of the appellant according to the narratives in the appeal memo in short is that it is a Company registered under the Companies Act 1956 and covered under the EPF and MP Act 1952. The appellant company had executed a trust deed dated 28th June 2000 for creation of its own EPF Trust which would be effective from 01st April 2000. The appellant on 01st February 2008 was granted exemption u/s 17(1)(a) of the Act. Since then the company was making contribution towards the Provident Fund for all its eligible employees in the said Trust. A squad constituted by the EPFO carried out an annual inspection of the records of the trust and reported certain non compliance. Thus, one observation memorandum dated 15th January 2010 was issued by the RPFC to the appellant establishment who submitted a detailed response to the same on 10th February 2010. But the commissioner found the report unsatisfactory and issued a showcause notice dated 19.03.2010 as to why proceeding shall not be initiated. Thereafter the RPFC Gurgaon issued summoned dated 19.05.2010 to the appellant establishment directing to appear in person and participate in the proceeding to be held u/s 7A of the Act for determination of the dues payable by the appellant to different funds. Since the appellant had already submitted a detailed reply to the observation memorandum had nothing more to reply on the summon. But to his utter surprise, it received the order dated

01.12.2010 passed by the RPFC u/s 7A of the Act assessing Rs. 19,36,966/- payable by the appellant for the delay in remittance for the period 10/2007 to 03/2010. In the said order the commissioner had made the assessment in respect of the individuals who are not the employees of the establishment but engaged as consultant/trainees to render professional service for fixed short term varying from 3 months to 9 months. The commissioner in the order had failed to appreciate that these persons had not entered into any contract of service with the establishment but had contacted for service as professionals for which they were being paid gross amount to which withholding tax rates are applicable. Not only that the RPFC committed error by not distinguishing between the regular employees, consultant and trainees and treated all of them as regular employees. The other point raised is that the Provident fund contribution is payable to the employees employed on wage of Rs. 6500/- or less. But the RPFC while passing the impugned order failed to appreciate that the consultant/trainees engaged by the appellant were being paid much higher amount than 6500/- and as such they were the excluded employees. Since the consultant and trainees are not in the regular employment of the appellant establishment could not be treated as the employees in terms of section 2(f) of the Act. They can very well fall under the category of apprentice. Citing the judgment of the Hon'ble Apex Court in the case of RPFC Manglore vs. M/s Central Aerocnut and Coca marketing and Processing Cooperative Limited reported in AIR 2006 SC 971 the appellant has pleaded that the apprentice is a learner who is paid allowance during the period of training. Similarly trainees are paid stipend during the training and they had no right to employment. Thus, the trainees were apprentice under the establishment as per the standing order and thus, excluded from the definition of section 2(F) of the Act as employee. With such assertion the appellant pleaded that the trainees appointed under a training scheme for a specific period without guarantee of an employment and when paid stipend only cannot be treated as employee for the purpose of EPF and MP Act. To support the contention reliance has been placed in the judgment of the Hon'ble high Court of Madras in the case of Shri Ram Vilas Services Limited vs. RPFC reported in 2000ICLR385. With such assertion the appellant has pleaded that the commissioner committed error and illegality while passing an impugned order which is liable to be set aside.

The respondent in its reply while supporting the impugned order took a stand that the RPFC after considering all the materials on record and being fully aware of the different provisions of EPF and MP Act and the scheme framed there under has passed the impugned order. The appellant has intentionally kept the consultant and trainees out of the purview of the provisions of EPF and MP act. During the inquiry u/s 7A the establishment could not produce any order under

the Apprentice Act 1961. While drawing attention to the provisions of EPF and MP act defining Apprentice he submitted that the Apprentice means a person who as per the certified standing order applicable to the factory or establishment is an Apprentice or who is declared to be an apprentice by the authority specified in his behalf by the appropriate Government. Thereby the Ld. Counsel for the respondent has pleaded that the appellant establishment has engaged individuals to render professional service for a typical time frame of 3 to 9 months and has intentionally described them as apprentice though no order of the appropriate Government could be produced during the 7A inquiry. With regard to the ceiling in the pay to be eligible for coverage under the Act and Scheme the respondent has pleaded that the appellant establishment having its own Trust fund for the EPF dues of its employees had applied for exemption u/s 17 of the EPF and MP Act and the commissioner of Income Tax vide certificate dated 06.12.2007 issued exemption. For grant of such exemption the appellant establishment had informed that they are covering all the employees with Provident Fund Contribution at the rate of 12% on actual salary and not restricting it to the ceiling limit of Rs. 6500/- and this coverage is available from the date of joining. The commissioner during day inquiry found the establishment not extending the benefits of the Provident Fund to the consultants, trainees and the employees employed by independent contractors with whom the appellant establishment had entered into valid contract. During the inquiry the submissions of the department was taken into consideration but no rebuttal evidence was adduced by the appellant establishment. Hence, the commissioner has appropriately passed the order which is legal and needs no interference.

Ld. Counsel for the respondent advanced detailed argument in support of his stand whereas none appeared to canvass the grounds of appeal.

Perusal of the impugned order shows that the inquiry was held on the basis of the squad report and the appellant had not submitted any reply to the showcause notice though a detailed reply was submitted to the observation report pursuant to the squad visit. The Ld. Counsel representing the respondent during course of argument submitted that the establishment is required to make contribution on the remuneration and wage paid to the persons employed through the contractor and also to the consultants and trainees. When the establishment omitted to do so the commissioner has rightly assessed the amount.

Perusal of the impugned order shows that the commissioner during the inquiry took into consideration the list of the contractors and the persons employed by those contractors as furnished by the appellant establishment being attested by its controller of Finance and

Administration. The commissioner had also perused the ledger account produced by the establishment for the financial year 2008-2009 and noticed payment under the head legal and professional charges in the sub head General Consultancy expenditure. He also noticed the establishment to have engaged a large number of contractor visa-vis individual persons and had shown deduction of TDS u/s 194C of the Income Tax Act and these deductions were shown in respect of the contractors. Since the documents produced by the establishment with regard to the contractor and the persons employed through the contractor were insufficient the commissioner experienced difficulty in computing the dues and identifying the beneficiaries and observed for initiation of a separate proceeding for that purpose. But in respect of the consultants and trainees for the period January 2007 to March 2010 which was extended during inquiry upto June 2010 he observed that the establishment had engaged persons in the names of intern consultant and trainees but omitted to extend the benefit of Provident Fund to them. The commissioner has further observed in the impugned order that the appellant establishment is engaged in providing IT enabled service including data processing and do not have a separate benefit policy for which all the employees are treated in the same footing where their jobs in the nature of trainee or otherwise which is evident from the disclosure made during the application made for exemption u/s 17 of the Act. The impugned order also reveals that the establishment has also extended PF benefits to all direct employee except the consultants and trainees who are also getting salary for more than the statutory limit of Rs. 6500/- per month. Thus, the commissioner has concluded that the establishment is liable to make the EPF contribution of the consultants and trainees and those trainees cannot be treated as apprentice since no order to that effect was produced by the establishment from the appropriate authority. From the totality of the materials placed on record and the reasoning given by the commissioner in the impugned order it is evidently clear that the appellant was evading payment of Provident Fund contribution to a section of the workmen on the guise of having engaged them as consultants or trainees, when they were being paid wages for a specific time period of their engagement varying from 3 months to 9 months. The description of the said workmen as consultants or apprentice shall not help the appellant to escape the liability prescribed under the statute.

The EPF commissioner being a statutory authority while exercising power conferred on him had factually found that the appellant is liable to pay contribution to the EPF Fund and also observed that the said consultants and trainees are the employees and not the apprentice. This tribunal finds no perversity in the said finding

of the commissioner. Hence, the order passed by the commissioner challenged in this appeal is hereby confirmed. Hence, ordered.

ORDER

The appeal be and the same is dismissed on contest. Consign the record as per law.

Presiding Officer