

**BEFORE THE 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.

ATA No. 1455(4)2015

M/s. Pasupati Spinning & Weaving Mills Ltd.

Appellant

VS.

RPFC/APFC, Delhi (North)& others

Respondent

ORDER DATED:- 17.11.2021

Present:- None for the Appellant.

Shri Satpal Singh, Ld. Counsel for the Respondent No.1.

Shri Ashok Kumar Chaturvedi, Respondent No.2 in person.

This appeal challenges the order dated 28.09.2015 passed u/s 7A of the Act by the RPFC Delhi North assessing Rs. 64,985/- towards the deficit EPF deposit, defaulted by the appellant/establishment in the account of one beneficiary named A.K Chaturvedi an ex-employee of the appellant/establishment.

The facts leading to 7A inquiry and the appeal and relevant for adjudication of the appeal in short is that the appellant is a public limited company covered under the Provisions of EPF and MP Act. On 24.08.2003 the employee A.K Chaturvedi made a complaint to EPFO alleging that his employer establishment i.e. the appellant has not extended the benefits of PF Act to him and has not deposited the PF dues in respect of the wage earned by him for the period 04/1999 to 04/2003. Pursuant thereto an inquiry was conducted and 7A proceeding was held. By order dated 23.04.2005 the Assistant Provident Fund Commissioner assessed an amount of Rs. 56065/- payable by the appellant establishment in respect of the contribution in different funds in the account of employee A.K Chaturvedi. The appellant establishment being aggrieved filed the appeal before the EPF Appellate Tribunal registered as ATA No. 564(4) of 2007. The appeal being dismissed by the tribunal the appellant establishment approached the Hon'ble High court by filing writ petition bearing no. 2182 of 2011. The Hon'ble High Court after hearing the matter by order dated 04.12.2014 set aside the orders passed both by the RPFC and EPF Tribunal and remanded the matter for determination of the amount afresh. After considering whether the complainant A.K Chaturvedi had rendered service to the establishment acquiring the status of an employee of the establishment. In view of the order of the

Hon'ble High court a fresh inquiry u/s 7A was initiated by summon dated 31.12.2014 and the complainant A.K Chaturvedi and the establishment were directed to appear with all relevant documents and records. Before that the inspection was conducted by the AEO. During the inquiry the parties including the complainant produced their documents and argued the matter in their favour. The commissioner after hearing all the parties by order dated 28.09.2015 passed the impugned order which was communicated to the appellant on 19.10.2015. The commissioner in the said order came to hold that the establishment has defaulted to deposit 64985/- towards the EPF contribution of the complainant A.K Chaturvedi for the period 09/1999 to 04/2003. Being aggrieved by the said order the present appeal has been filed.

Being noticed the respondent and the complainant A.K Chaturvedi appeared and filed their respective objections.

The appellant has stated that the commissioner though directed by the Hon'ble High Court to conduct a fresh inquiry, acted in an illegal manner by solenly relying upon the report of the AEO. All the stand taken by the appellant during the inquiry were ignored and the establishment was not given the chance of proper hearing. His demand to cross examine the complainant was also denied by the commissioner which makes the order illegal. With regard to the merit of the matter it has been stated that the appellant establishment for want of sound financial position was engaging persons as retainers for assistance in tax and related assignments. One of such persons was the complainant A.K Chaturvedi. He had rendered the consultancy service to the appellant/establishment for the period September/1999 to April/2003. During this period he was getting a consolidated remuneration of Rs. 8000/- per month which, on the request of the complainant A.K Chaturvedi was being shown as house rent. This arrangement was done on the request of A.K Chaturvedi who intended to derive some tax benefits from that. There was no employer and employee relationship between the appellant and said A.K Chaturvedi. On 30.04.2003 when the complainant severed his relationship with the appellant establishment received Rs. 8000/- towards full and final settlement and executed a receipt to that effect. Four months thereafter he raised a complaint before an EPFO leading to the previous and the impugned order. On behalf of the appellant argument was advanced that the Hon'ble High Court while deciding WPC No. 2182 of 2011 clearly stated that the receipts filed by the appellant corroborate the fact that the respondent No. 2 was not the employee and both parties have failed to produce documents from which a clear opinion can be formed. The matter was thus remanded to the commissioner for consideration of the facts afresh. By filing several documents which are in the nature of handwritten vouchers showing receipt of Rs.

8000/- by the claimant the appellant argued that the commissioner without application of mind and relying upon the EO report passed the impugned order.

The respondent in his reply while supporting the impugned order took a plea that the appellant establishment could not produce documents at the time of inquiry to prove that no salary was paid to the appellant except these 8000/- rupees. The complainant on the contrary took a stand that besides this 8000/- he was getting basic salary of Rs. 5000/- per month and ex-gratia gratuity of Rs. 2500/- per annum. The establishment had intentionally bifurcated the basic salary by giving the same a different name i.e house rent to avoid the employer's liability for the EPF dues. He thereby insisted for dismissal of the appeal.

The complainant A.K Chaturvedi had stated during inquiry that before joining the appellant establishment he was working with another establishment and had EPF account no. For working with the appellant establishment he was getting basic salary of Rs. 5000/- and house rent of Rs. 8000/- per month besides Rs. 2500 as ex-gratia per annum. The establishment in order to deny the PF benefits to the complainant had intentionally bifurcated the salary to house rent only and suppressed the basic salary paid to him per month. He thereby argued for confirming the order passed by the commissioner.

The commissioner as seen from the impugned order had served the notice during inquiry on the establishment and the complainant calling them to file their written submissions. In response thereto the complainant had filed an affidavit alongwith certain documents which are the photocopies of the attendance register leave application some letter correspondence made between the CMD of the company and the complainant, photocopy of the sales tax assessment order showing complainant A.K Chaturvedi as the accountant of the establishment review order of the employees for the year 1999-2000 and the document relating to his PF Account. All these documents were supplied to the establishment to raise objection if any. At first the establishment sought for time and then requested to cross examine the complainant. He was called upon to file a written objection before cross examination and that having not been done the right was closed. On behalf of the establishment the balance sheet salary register rent ledger account rent payment voucher eligibility register of PF membership etc were filed. Having considered all the documents the commissioner came to hold that there was employer employee relationship between the establishment and the complainant and moreover the plea of the establishment that the complainant was working as a consultant on receiving house rent only is unbelievable and thus, made the assessment.

The undisputed facts as per the establishment and the complainant are that the complainant A.K Chaturvedi was working with the establishment during the inquiry period i.e from 09/1999 to 04/2003. It is also not disputed that he was receiving Rs. 8000/- per month from the appellant/establishment towards house rent. The appellant in his pleading at one point of time has admitted that the amount paid is not the salary but house rent paid to the complainant A.K Chaturvedi and the same cannot be construed as wage. At other point of time the appellant has admitted that on the request of the complainant the entire amount payable to him was shown as house rent. Several vouchers to this effect have been filed by the appellant. But the evidence so filed doesn't inspire confidence that a person was working as a consultant on receipt of house rent only. Not only that the conduct of the appellant clearly shows that he was agreeing to the illegal demand if any by the complainant to avoid the PF liabilities. The affidavit filed by the complainant during the inquiry states that he was getting basic salary of Rs. 5000/- per month besides the amount of Rs. 8000/- shown as house rent. As seen from the order of the commissioner the establishment could not produce complete record for talling the amount claimed as basic salary of the complainant.

Section 2(b) As defined under of EPF and MP Act basic wages means all emoluments which are earned by an employee while on duty or (on leave or on holidays with wages in either case) in accordance with the terms of the contract of employment and which are paid or payable in cash to him, but does not include-

- (1) The cash value of any food concession;
- (2) Any dearness allowance (that is to say, all cash payments by whatever name called paid to an employee on account of a rise in the cost of living) house rent allowance, overtime allowance, bonus commission or any other similar allowance payable to the employee in respect of his employment or of work done in such employment.

In the case of M/s Gain Financial Consultant Bombay vs. RPFC it has been held that the retainers engaged for wage for the work of establishment are the employees of the establishment. In this case since the establishment has admitted that 8000/- paid was shown as house rent on the request of the complainant the commissioner has rightly concluded that the complainant a consultant was the employee of the establishment and the amount paid to him for the work done is wage. The said amount paid was intentionally shown as house rent which cannot exonerate the establishment of its liability for depositing the PF dues of the employee. Thus, it is held that the impugned order passed by the commissioner suffers from no infirmity and cannot be interfered with. Hence, ordered

ORDER

The appeal be and the same is dismissed on contest. The order of the commissioner assessed in the appeal is confirmed. On perusal of the record it appears that the appellant establishment has already deposited a Cheque of Rs. 56086/- with the Regional Provident Fund commissioner and the Hon'ble High Court while disposing the WPC No.2182 of 2011 by order dated 4th December 2014 had directed the RPFC to invest the said amount in form of FDR and to release the same with the interest accrued subject to the outcome of the inquiry. Now that a fresh inquiry has been made assessing Rs. 64985/- and the said assessment order has been confirmed in this appeal, the respondent is directed to take action for recovery of the balance amount excluding 56086/- and remit the same in the account of the complainant A.K Chaturvedi alongwith the amount invested in the FDR together with the accrued interest. Consign the record as per law.

Presiding Officer