

**BEFORE THE HON'BLE PRESIDING OFFICER, CENTRAL  
GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT,  
DELHI; ROOM NO 208, ROUSE AVENUE DISTRICT COURT  
COMPLEX, NEW DELHI-110002.**

**Appeal No. 11(4)2017**

M/s.Skoda India Pvt. Ltd. -Appellant  
Through:- Proxy for the Appellant

Vs

APFC, Delhi (Central) -Respondent No. 1  
Through:- Shri S.N. Mahanta, Ld. Counsel for the Resp. No. 1

& Shri Mukesh Kr. Agarwal - Respondent No.2

**Order dated:- 24.11.2020**

The appeal challenges the order of assessment passed by the RPFC, Delhi in exercise of the power u/s 7A of the EPF & MP Act directing the Appellant to deposit Rs 1,37,215/- towards the omitted EPF contribution of its Respondent no 2 for the period 10/2013 to 2/2014.

Being noticed the Respondent no 1 appeared. A petition was filed by one Mukesh Ku Agarwal, the complainant, to be impleaded as an opposite party. That petition was allowed and said Mukesh Ku Agarwal was allowed to contest this appeal as Respondent No 2. Both the Respondents filed their respective reply and contested the Appeal. Respondent no 2 has placed several documents on record in support of its stand.

The contention raised by the appellant is that it is a company, principally established in Delhi, having branch offices at other places of India. Mukesh Ku Agarwal the person impleaded as Respondent no 2 was appointed as VC of the company office at Delhi. Being a senior functionary of the company he was the Trustee of the PF Trust of the company and responsible for compliance of different provisions of Law including deposit of PF Dues of the employees of the company. This deliberate omission of the Respondent no 2 caused serious loss to the company. However the Respondent no 2 continued to work in the Delhi office of the Respondent no 1 till Sept 2013, when he was asked to report for duty in the Kolkata office of Respondent no 1, for the low work load and no work in Delhi. The Respondent no2 instead of joining in Kolkata took time on some plea or other, thus he was given the ultimatum, either to join in Kolkata or take his entitlements towards full and final settlement. Being aggrieved Respondent no 2 filed a complaint before the authority under the payment of wages Act and the EPF Authorities. Pursuant there to a summon was served on the appellant establishment. The establishment appeared and submitted written submission stating that the complainant Sh. Mukesh Agarwal had worked for the appellant establishment up to Sept 2013 and till that period his salary was paid and EPF contribution was deposited. The complainant along with few other employees raised demand for payment of their EPF dues, which was considered and all the persons so demanding including the complainant Sh. Mukesh Agarwal were paid their EPF dues according to their entitlements. The complainant since had not worked after Sept 2013 and no salary was paid to him thereafter, the EPF dues deposited till then were paid. But he made false complainant and advanced frivolous claim about being in the service of the appellant till April 2015. He managed to obtain an order about his employment till April 2015, behind the back of the appellant. That order passed by the authorized officer under the payment of wages Act is pending by the Deputy Labour Commissioner. Hence, it can not be concluded in the appeal that Respondent No 2 was working with the Appellant till April 2015. It has also been pleaded that inadvertently some extra amount was deducted and deposited towards the EPF contribution of the Respondent No 2 till Feb 2014. Taking advantage of such wrong deduction the complainant has advanced the false claim. The RPFC during the 7A inquiry had failed to appreciate the matter in proper perspective. Hence the impugned order is liable to be set aside

The Respondent No 1 in its reply while supporting the impugned order has stated that all the pleas canvassed by the establishment were discussed by the commissioner, who on the basis of the documents filed by Respondent no 2

rightly came to a conclusion that the salary of the Respondent no 2 having been paid upto Feb 2014, his PF subscription was deposited and he is entitled to the same. The finding of the commissioner, being based upon strong reasoning, should not be interfered with.

The Respondent No 2 has filed a detailed written reply supported by several documents pleading therein that the finding of the commissioner be upheld and the appeal be dismissed. He has specified in his reply that the commissioner has given a clear finding that the pay register filed by the appellant since shows name of the Respondent no 2 and the amount of wage payable to him till Feb 2014, he is entitled to PF contribution till then.

The learned counsel representing the appellant during course of argument submitted that the commissioner took a wrong view of the facts that the wage register reflects the salary payable to the Respondent no 2 upto Feb 2014, and thus EPF contributions should have been made till then. The establishment which defaulted in doing so is liable for the deposit. Another set of dispute is pending adjudication in the appeal filed by the establishment before the Deputy Labour Commissioner. Before a decision in that matter is arrived, it would be wrong to say at this stage that the establishment committed wrong by not depositing the PF dues of the Respondent No 2 up to the period Feb 2014. On behalf of the Respondent no 2 several documents have been placed on record. Appellant has admitted in the appeal memo about its wage register produced before the E O for verification which reveals the wage payable to the Respondent no 2 up to Feb 2014. It has also been explained that inadvertently the appellant establishment made deposit of some extra amount against the Respondent no 2 towards EPS amount, which has been wrongly appreciated by the commissioner to conclude that the Respondent no 2 was in the employment of the appellant till Feb 2014 and passed the impugned order. It was also argued that any amount deposited in excess of the amount due, is liable to be adjusted in future deposits that mistake can not create a legal right in favour of the Respondent no 2. No document leading to a presumption that Respondent no 2 had not worked for the appellant after September 2013 has been placed on record. The respondent No 2 on the contrary has filed e-mail correspondences between him and higher management of the company, sanction order of his tour program etc from which it is clearly evident that the Respondent no 2 was working for the appellant up to Feb 2014 and the commissioner took due cognizance of the same while deciding the matter.

The plea of the establishment that the salary was not disbursed to the Respondent after Sept 2013, will not defeat his entitlement for the PF benefits since salary due may be deferred for one or more administrative grounds. The other plea of the appellant that the tenure of service of the Respondent no 2 is pending adjudication, can not create an obstacle for the legal and statutory dues of the respondent no 2 as the competent Authority has already decided the same in favor of the Respondent no 2 holding that he is entitled to gratuity for working in the appellant establishment up to April 2015 when that order of the competent Authority under the Payment of Gratuity Act has not been stayed by a competent court.

The learned counsel for the appellant by drawing attention to the judgement of the Hon'ble SC in the case of **Marthawada Gramin Bank Karmachari Sanghatana VS Management of Marthwada Gramin Bank**, submitted that the calculation of the EO is erroneous in view of the principle decided in the above said judgement as the employer could not be compelled to pay contribution on an amount in excess of the statutory wage limit. But this submission of the appellant has lost relevance in view of the salary slip filed by the Respondent no 2. Thus the impugned order which is the outcome of a thread bare analysis of the materials placed on record can not be held as an unreasoned order warranting interference in this appeal. Hence, ordered:-

**Order**

The appeal is held without merit and dismissed. The impugned order passed by the RPFC is hereby confirmed.

Sd/-  
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(Presiding Officer)