सत्यमेव जयते

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

Present: Shri.V.Vijaya Kumar, B.Sc., LLM, Presiding Officer.

(Thursday the, 12th day of May 2022)

APPEAL No. 180/2018

Appellant	:	M/s. Payyannur Printing Workers Industrial Co-operative Society Ltd. LL 54, Near Old Bus Stand, Payyannur Kannur District – 670 307 By Adv.M.Sasindran
Respondent	:	1. Area Enforcement Officer EPFO, Regional Office, V.K.Complex Kannur – 670 301 2. Regional PF Commissioner, EPFO, Regional Office V.K.Complex, Fort Road Kannur – 670 001 (Impleaded vide order in IA No.114/2021 dated 12.04.2021) By Adv. K.C.Santhosh Kumar

This case coming up for final hearing on 13.04.2022 and this Tribunal-cum-Labour Court on 12.05.2022 passed the following:

ORDER

Present Appeal is filed from order No. KR/KNR/1648414/ Enf.2(4)7A/2018-19/202 dated 16.05.2018 assessing dues under Sec 7A of EPF and MP Act 1952 (hereinafter referred to as 'the Act') for the period from 05/2000 to 10/2017. The total dues assessed is Rs.37,93,106/- (Rupees Thirty seven lakh ninety three thousand one hundred and six only)

2. The appellant is a Co-operative Society registered under the Kerala Co-operative Societies Act 1969. The appellant society would not come under the purview of the Act since the number of person worked in the society was less than 20. As per the decision taken by the Managing Committee, it was decided to contribute provident fund to the Kerala State Co-operative Societies Provident Fund Scheme notified under Sec 61 of Kerala Co-operative Societies Act 1969, after establishment of Kerala Co-operative Societies Employee's Pension Board and the Pension Scheme under Sec 80A of Kerala Co-operative Societies Act. The employees of the appellant society were enrolled therein making the contributions by the appellant. An Enforcement Officer of the respondent authority inspected the appellant establishment and

submitted a report dated 08.12.2015 alleging that the appellant engaged more than 19 employees and directed the appellant to enrol online with the EPFO portal. Since the appellant did not register, the Assistant Provident Fund Commissioner issued letter dated 10.02.2016 directing the appellant to register the society with EPFO. A true copy of the letter is produced and marked as Annexure A1. In response to Annexure A1 letter, the appellant gave a reply dated 16.02.2016. A true copy of the letter is produced and marked as Annexure A2. The Assistant Provident Fund Commissioner vide his letter dated 22.02.2016 informed that the question of granting exemption can be consider only after covering the establishment under the Act. The letter dated 22.02.2016 is produced and marked as Annexure A3. The respondent further issued a show cause notice directing the appellant to register in the ORLE Portal. A copy of the show cause notice is produced and marked as Annexure A4. The appellant vide its letter dated 04.07.2016 informed the respondent that the appellant establishment is already covered under the Kerala Co-operative Employee's Pension Scheme. A copy of the letter is produced and marked as Annexure A5. The respondent authority initiated an enquiry under Sec 7A of the Act. The appellant appeared before the respondent and filed a written statement, a copy of which is produced and marked as Annexure A6. The respondent authority without considering the submissions made by the appellant issued the impugned order directing the appellant to remit the contributions from 05/2002 to 10/2017. The impugned order is issued without conducting any proper enquiry. No opportunity was given to the appellant to produce evidence. The respondent authority failed to consider the pleading of the appellant that the appellant establishment never employed more than 20 persons.

3. The respondent filed counter denying the above allegations. The Enforcement Officer who is an inspector appointed under Sec 13 of the Act found, based on a return in Form No.6 that the appellant establishment was employing more than 19 employees. A copy of the return furnished by the appellant to Employees State Insurance Corporation for the period from October 2000 – March 2001 is produced and marked as Exhibit R1(a). The direction issued by the Enforcement Officer for registering the appellant establishment online was ignored by the

appellant. The respondent authority also issued repeated instructions to the appellant to register itself under the provisions of the Act. The contention taken by the appellant that the appellant establishment is contributing to Kerala State Co-operative Employee's Pension Scheme does not absolve the appellant from the statutory liability of registering the establishment under EPF Act. Since the appellant failed to register itself under the provisions of the Act for more than two years, it was decided to conduct an enquiry under Sec 7A and to assess the dues. Notice was issued on 19.06.2017 directing the appellant to attend enquiry on 30.06.2017. Thereafter the enquiry was adjourned to 12.07.2017, 11.08.2017 and 25.09.2017. Since the appellant was not co-operating or responding to the notices, a squad of officers were deputed to the establishment on 11.10.2017 and handed over the adjournment notice for hearing on 13.11.2017. The squad collected the details of ESI dues for the period from 10/2000. On a further scrutiny of the daybook, it was noticed that the appellant was remitting contribution to ESIC in respect of 20 employees from 05/2000. Accordingly the date of coverage of the appellant establishment was finalised as on

01.05.2000. The matter was finally heard on 11.05.2018 and the impugned order was issued assessing the dues. Government of Kerala has granted exemption to primary co-operative societies from the operation of Employee Pension Scheme 1995. It does not absolve the appellant from its duty to comply under Employee's Provident Fund Act and other Schemes. The appellant had collected the contribution from the employees and deposited the same with District Co-operative Bank. However there is no evidence to substantiate that a provident fund Scheme is formulated under the Kerala Co-operative Societies Act. The mere deposit of the amount without establishing the provident fund is inviolation of the provisions of Sec 61 of the Co-operative Societies Act. The day book maintained by the appellant for the month of 05/2000 shows that the appellant establishment has remitted ESIC contribution in respect of 20 employees. The copy of the day book for 31.05.2000 is produced and marked as Exhibit R1(b). The ESI return for the period from 10/2000 – 03/2001 would show the contribution in respect of 22 employees'. The copy of the return is produced and marked as Exhibit R1(c). Inspite of providing adequate opportunity, the appellant failed to adduce any evidence to substantiate their contentions. Exhibit R1(a) and Exhibit R1(b) would clearly substantiate the fact that the appellant establishment is statutorily coverable under the provisions of the Act w.e.f. 05/2000. The notification issued by Government of Kerala under Sec 17 of the Act exempts primary co-operatives from the operation of Employees' Pension Scheme 1995 and there is no exemption from the Employees Provident Fund Scheme and the Employees Deposit Link Insurance Scheme. There is absolutely no evidence to substantiate the contention that the appellant establishment has constituted a Provident Fund Scheme under Sec 61 of Kerala Co-operative Societies Act. Even the registration process under Co-operative Employees Self Financing Pension Scheme was initiated by the appellant on 25.01.2016, after the receipt of letter dated 08.12.2015 from the respondent. A copy of the letter dated 08.12.2015 is produced and marked as Exhibit R1(d). Copy of the requisition dated 25.01.2016 for registration of the appellant with Kerala State Co-operative Employee's Pension Board is produced and marked as Exhibit R1(e).

4. Present appeal was admitted by this Tribunal vide order dated 14.06.2019 on a pre-deposit of 30% of the assessed dues

under Sec 7O of the Act within a period of one month. The appellant sought extension of time for remitting the pre-deposit on 22.08.2019 and 01.10.2019. On 06.12.2019, the learned Counsel for the appellant submitted that they challenged the order of pre-deposit before the Hon'ble High Court of Kerala in W.P.(C) No.33198/2019 and the Hon'ble High Court has issued an interim direction not to reject the appeal for want of payment as directed by this Tribunal. Hence the matter was taken up for hearing without insisting for the pre-deposit as required under Sec 7O of the Act and as per the direction of this Tribunal.

5. The learned Counsel for the appellant raised two grounds challenging the impugned order. The first ground pleaded is that the appellant establishment never employed more than 19 employees and therefore it is not statutorily coverable. The second ground pleaded by the appellant is that the appellant has constituted a pension fund as required under Sec 61 of the Kerala Co-operative Societies Act and the contribution is being remitted into that fund. And further that Government of Kerala has exempted the contribution to Employees Pension Scheme for

primary co-operative societies participating in the Kerala Co-operative Society Pension Board Fund.

6. The learned Counsel for the respondent pointed out that the statutory returns filed by the appellant establishment would clearly establish the fact that the appellant was employing more than 19 employees in May 2000 and therefore the appellant establishment is statutorily coverable under the provisions of the Act w.e.f. 05/2000. The respondent authority also in the impugned order clearly indicated the name of 21 employees on the basis of the day book, at Page No.64, of appellant establishment to establish the fact that the appellant establishment was engaging more than 20 employees as on May 2000. Though the respondent authority has clearly established the fact in the impugned order itself, the appellant has not raised any objection regarding the same in this appeal. Hence the contention of the learned Counsel for the appellant that the appellant establishment was not engaging more than 19 employees as on May 2000 is clearly disproved by the respondent authority. The appellant has no case that the appellant establishment is not working with the aid of power. Therefore the appellant establishment is statutorily

coverable under Sec 1(3)(a/b) of the Act. The next question raised by the appellant is with regard to the exclusion under Sec 16 of the Act. According to the learned Counsel for the appellant, the employees of the appellant establishment are contributing to the provident fund Scheme notified under Sec 61 of the Co-operative Societies Act. However the appellant failed to establish the existence of any such Scheme or the details of contribution made under the Scheme in respect of the employees of the appellant. Even in the audit memorandum for the year 2017-18 produced in this appeal, did not indicate any remittance of provident fund contribution in respect of their employees to any provident fund. In the absence of any evidence to that effect, it is not possible to accept the claim of the learned Counsel for the appellant that there is a provident fund Scheme as per Sec 61 of Kerala Co-operative Societies Act and employees of the appellant are contributing the same. The learned Counsel for the appellant also pleaded that the employer's contribution in respect of pension fund is being remitted to the Co-operative Societies Pension Board and they are exempted from contributing to the Employee's Pension Scheme 1995. The learned Counsel for the respondent pointed out that the action for registering the appellant establishment with the Co-operative Pension Board was taken only after the respondent issued letter dated 08.12.2015 directing the appellant establishment to comply under the provisions of the EPF Act and Schemes thereunder. He pointed out that the 1^{st} request for registration under Kerala State Co-operative Employee's Pension Board was sent on 25.01.2016 after receipt of the letter from the respondent on 08.12.2015. However it is seen that the respondent authority has excluded the assessment of dues in respect of Employee's Pension Scheme 1995 in the impugned order considering the fact that the Government of Kerala has already exempted Primary Co-operative Societies from the provisions of Employees Pension Scheme 1995.

Considering the facts, circumstances, pleadings and evidence in this appeal, I am not inclined to interfere with the impugned order.

Hence the appeal is dismissed.

Sd/-
(V.Vijaya Kumar)
Presiding Officer