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

सत्यमेव जयते

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

(Thursday the 21st day of October, 2021)

Appeal No. 297/2019

Appellant	:	M/s. K.M Corporates (Branch Kodampuzha) RKP 9433 A , Farook College P.O, Pallimethal Kozhikode – 673 632.
		By Adv. M.P. Radhakrishnan
Respondent	:	The Assistant PF Commissioner EPFO, Sub Regional Office Eranhipalam Kozhikode – 673006
		By Adv. Dr. Abraham.P.Meachinkara

This case coming up for hearing on 12.04.2021 and this Industrial Tribunal-cum-Labour Court issued the following order on 21/10/2021.

ORDER

Present appeal is filed from order No. KR/ KKD / 17073 / Enf-II (2) / 2018 / 2014 dt. 08/11/2018 assessing dues U/s 7A of EPF & MP Act, 1952 (hereinafter referred to as 'the Act') with regard to non-enrolled employees and review order U/s 7B of the Act dt.24/05/2019. The total dues assessed is Rs. 5,45,994/-.

2. The appellant establishment is covered under the provisions of the Act w.e.f 01/07/2017 and was regular in compliance. On 24/04/2018 an Enforcement Officer conducted an inspection of the appellant establishment and pointed out that 27 employees for the period from 07/2017 to 03/2018 and 23 casual laboures for the period from 08/2017 to 03/2018 were not extended the benefit of provident fund. The respondent initiated an enquiry U/s 7A of the Act. The appellant attended the hearing and remitted contributions in respondent of 23 casual labourers for the period from 08/2017

to 03/2018. In respect of 27 employees who were not enrolled to the fund, the representative of the appellant clarified that those employees were excluded under Para 2(f) of EPF Scheme as they were drawing more than Rs.15000/- at the relevant point of time. It was also clarified that reduction in net pay was due to the loss of pay leave taken by the concerned employees for the relevant months. Ignoring the contentions of the appellant, respondent authority issued the impugned order. The appellant filed a review application U/s 7B of the Act. The appellant also produced the wage register for 07/2017 and 01/2018. The respondent authority rejected the review application. The appellant has arrived at the proportionate basic pay for the days of duty attended and the applicable DA. In other words the proportionate loss of pay is reduced from the basic pay and DA. The finding of the respondent that the minimum wages payable is multiplied by the number of days attended is wrong and due to wrong perception of facts. The minimum wage is arrived at by dividing the wages payable by

30 days. The respondent ought to have accepted the appointment letters as documents evidencing the fact that the said employees were on pay scales above Rs. 15,000/-.

3. The respondent filed counter denying the above allegations. The appellant establishment failed to remit contributions in respect of 27 regular employees and 23 casual employees. An enquiry U/s 7A was initiated and summons dated 19/09/2018 was issued to the appellant directing them to appear before the respondent authority on 25/10/2018 with necessary records. A representative of the appellant attended the enquiry. The appellant, during the intervening period, remitted contribution in respect of 23 non-enrolled casual labours for the period from 08/2017 to 03/2018 . However the appellant failed to enroll 27 eligible employees' to provident fund. The appellant was afforded adequate opportunity to produce the records to substantiate their claim. On perusal of the appointment orders it is seen that the monthly salary

including DA is fixed more than Rs.15000/-. But on verification of the wage register on 07/2017 and 01/2018 it is noticed that the minimum rate of wages payable per day has been shown and the same have been multiplied by the number of days attended. Hence the claim of the appellant that these 27 employees were drawing more than Rs.15000/- as salary cannot be accepted and therefore these employees cannot be treated as excluded employees. The appellant also filed a review application which was rejected as the appellant failed to produce any new and important evidence which could not be produced at the time of 7A. Eventhough the appellant has fixed monthly salary of more than Rs.15000/-, actual salary is based on the number of days and none of these employees drew Rs.15000/- per month from the date of joining. As per Sec 2(b) of the Act basic wages means emoluments which are earned by an employee while on duty or on leave or on holidays with wages, in either case, in accordance with terms of contract of employment which are paid or payable in cash.

4. The appellant failed to enroll 27 regular employees to provident fund membership from 07/2017 to 03/2018 on the ground that they were excluded employees as per Sec 2(f) of EPF Scheme as they were drawing more than Rs.15000/- per month as basic and DA. There was also dispute in respect of non-enrollment of 23 casual employees for the period from 08/2017 to 03/2018. During the course of hearing U/s 7A before the respondent authority, the appellant remitted the contribution and enrolled the casual employees to provident fund membership. The only issue remains in this appeal is whether the 27 regular employees who were not enrolled to the fund are excluded employees as per Sec 2(f) of EPF Scheme. According to the learned Counsel for the appellant all these employees are drawing more than Rs.15000/- as wages and therefore they are excluded employees. According to the learned Counsel for the respondent none of these employees were drawing more than Rs.15000/- as salary, though the appointment orders states that they are drawing a salary of

Rs.15000/- and DA. According to him the appellant is actually showing the minimum wages payable, ie, the minimum basic and DA and the same is multiplied by number of days they worked which is paid as the monthly salary. These payment never exceeded Rs.15000/-. According to the learned Counsel for the appellant the monthly salary is fixed and is divided by 30 to arrive at the basic and DA per day and the same is multiplied by the number of days that these employees worked, to arrive at the actual wages. It is seen that the appellant has adopted a unique formula for excluding these employees from provident fund membership. The appellant fixed the salary of these 27 employees beyond the statutory limit of Rs.15000/- and the said salary is divided by 30 to arrived the minimum rate of wages payable, separately for basic and DA and then the same is multiplied by the number of days that the employees worked. In this unique mode of calculation an 'employee' will have to work for 30 days in a month to get the salary beyond the statutory limit of

Rs.15000/-. For example in the month of August 2017 an employee by name Shri.Hassan was supposed to draw a basic salary of Rs.14,400/- and DA of 1350/-. To earn this salary Shri.Hassan will have to work for 30 days. According to the learned Counsel for the appellant Shri.Hassan is an excluded employee because he was promised a salary beyond 15000/- if he worked for 30 days in a month. In the month of August 2017 it is seen that Shri.Hassan worked for only 22 days and his minimum basic wages is worked out Rs.480/- and DA Rs.45/-. Therefore Shri.Hassan was paid a salary of Rs.11,347/-. The appellant is very clear that an employee cannot work for 30 days in a month without availing atleast one or two holidays which are mandated as per the labour legislations. In this case, since the salary is fixed above Rs.15000/- (basic and DA) the appellant can claim that the employees are excluded under the provisions of EPF Scheme. However they will be actually drawing less than Rs.15000/- in view of the unique calculation of wages made by the appellant establishment. It is a most inhuman way of dealing with the employees by an establishment by denying not only weekly holidays but also the social security benefits under the Act. In view of the above finding, I am inclined to hold that all these 27 employees are required to be enrolled to provident fund membership from their date of eligibility and the contribution assessed as per the impugned order are required to be paid.

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

Hence the appeal is dismissed.

Sd/-

(V. Vijaya Kumar)
Presiding Officer