CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL/EMPLOYEES PROVIDENT FUND APPELLATE TRIBUNAL, JABALPUR

EPF Appeal No.- 246/2017
Present – P.K. Srivastava
H.J.S. (Retd.)

Disha Institute of Management Technology
Through Director Mr. S.K. Jain
S/o. S.N. Jain, Head Office, Disha Crown
Kachna Road, Shankar Nagar, Raipur (C.G.)

Appellant

Vs.

Assistant Provident Fund Commissioner
Block-D, Scheme No. 32, Indira Gandhi Commercial
Complex, Pandri, Raipur (C.G.)

Respondent

Shri Uttam Maheshwari	**:**	**Learned Counsel for Appellant.**
Shri J.K. Pillai	**:**	**Learned Counsel for Respondent.**

JUDGMENT

1. Under challenge in this appeal is order dated 20.09.2017 passed by the Respondent Authority under Section 7-A (1)(b) of the Employees Provident Fund and Misc. Provisions 'Act', 1952, hereinafter referred to the word ''Act'', whereby the Respondent Authority has held the Appellant Establishment liable for deposit of EPF dues of its employees for the period August–2014 to March-2015 amounting Rs. 8,98,654/- only and has directed to deposit the amount.

2. **Facts connected,** in brief, are that the Appellant Establishment is a society which runs the institute imparting education regarding Engineering & Management. It has employed teaching and non-teaching staff and has been complying with the provisions of the 'Act' by regularly depositing the EPF dues of its employees eligible for deduction. The respondent authority served a notice on 16.02.2015 alleging that there is an information regarding non extension of EPF benefits to the employees drawing wages more than Rs. 6500/- and below Rs. 15000/- only from September 2014 and was required to appear before the authority with documents mentioned in the notice. The Appellant Establishment took a case in its reply that the employees about whom the allegation of non extension of EPF benefits has been alleged, are in fact 'excluded employees' because they have been drawing wages more than Rs. 15000/- during the period of the inquiry. A report of Enforcement Officer was sought by the Respondent Authority. The Enforcement Officer, in his report dated 09.06.2016 stated that records of total 69 employees were produced out of which 47 have been extended the benefit of the 'Act', two of them were paid salary of 07/2014 and left the institute. Remaining 20 employees have not been extended EPF benefits on the ground that there basic pay and D.A. were more than the wage ceiling of Rs. 6500/- before August 2014 and Rs. 15000/- after August 2014. The Enforcement Officer further stated that in fact the wages of these 20 employees have been abruptly raised by Appellant Establishment just to deprive them the benefits of the 'Act' on the pretext of they being 'excluded employees'. The Enforcement Officer cited example of three employees namely Sarita Sharma who was paid wages (Basic Pay + D.A.) Rs. 8290/- in August 2014, whereas her Basic Pay + D.A. was raised to Rs. 15400/-, an increase of 86%, Ms. Shweta Shrivastava and Ritesh Bora have also been given hike of 85% in their Basic Pay and D.A., hence according to the Enforcement Officer, this extra ordinary hike in the wages of these 20 employees was subterfuge to justify non extension of EPF benefits to them. The Appellant Establishment submitted in its reply that these employees were in the category of 'excluded employees' even before September 2014 i.e. when the ceiling limit was Rs.

6500/- only and increase in wages is a matter between employer & employee also that there is no illegality in increasing the wages of these employees, who are the Assistant Professors, Associate Professors etc. The Respondent Authority recorded a finding that the Appellant Establishment had failed to pay the provident fund and other allied dues with respect to the said 20 employees and calculating the amount at Rs. 8,98,654/-, directed to deposited the amount. Hence this appeal.

3. **The grounds of the appeal** taken in the Memo of Appeal are mainly **that** the impugned order is bad in law and facts and as such is illegal, that it is a non speaking order without considering the submissions of Appellant Establishment and settled proposition of law laid down by Hon'ble the Apex Court without considering the objections of Appellant Establishment taken before the Respondent Authority. The finding of the Respondent Authority regarding liability of the Appellant Establishment to deposit the EPF dues of these 20 employees, though they are in the category of excluded employee is against law and facts.

4. In its **counter/reply**, the Respondent Authority has defended the impugned order on the ground that the liability of the Appellant Establishment to pay the employees provident fund dues of its employees has been adjudicated correctly under Section 7A of the 'Act'. It is further the case of Respondent Authority that the Appellant Establishment is the 'Employer' and its employees including the teaching staff are their 'Employees' as defined in the 'Act', hence is bound in law to deposit the EPF dues of its employees within time prescribed because it is settled that the employees of the Appellant Establishment are covered under the 'Act'. Also it has been stated that the Appellant Establishment has purposely increased the wages of its 20 employees just to deprive them the benefit of the 'Act', hence the Respondent Authority was justified in law to remove the smokescreen behind this increase of wages. According to Respondent Authority the order holding the Appellant Establishment liable to deposit EPF dues cannot be faulted in law or fact.

5. I have **heard arguments** of Shri Uttam Maheshwari learned Counsel for the Appellant Establishment and Shri J.K. Pillai, learned Counsel for the Respondent Authority. Both the sides have filed written arguments. I have gone through the record and the written arguments as well.

6. After perusal of the record in the light of rival arguments, the following point arises for determination :-

> **"Whether the finding of the Respondent Authority that the Appellant Establishment is liable to deposit EPF dues of its employees for the period 08/2014 to 03/2015 and the assessment can be faulted in law or fact or not ?"**

7. Both the learned Counsel have attacked and defended the impugned finding in their arguments. The main contention of learned Counsel for Appellant Establishment is that though it is recognized by AICTE, but since it does not receive any grant-in-aid from Government, it is free to frame its own rules regarding Governance and service condition of its employees. No law bars it from raising the salaries of its employees nor does any law limits the increase in salary of allowance. Also it has been submitted that even before the increase of ceiling limit to Rs. 15000/-, these 20 employees were getting wages more than Rs. 6500/-, hence were in the category of 'excluded employees', not eligible for extension of EPF benefits. The learned Counsel further submits that the observation of the Enforcement Officer that the increase in wages was just for awarding liability regarding EPF dues is without basis and the Respondent Authority has committed error in law in relying this observation while recording its finding.

8. Learned Counsel for Respondent Authority has countered this argument on the ground that the 'Act' has been framed with the purpose of granting coverage of Provident Fund to the employees and is a social welfare legislation. Hence, its provisions should be interpreted in way to promote social welfare. Also it has been submitted by him that the Respondent Authority is fully justified in law to lift the veil and see through it, while determining the coverage of the 'Act'. Learned Counsel further submits that sudden and extra ordinary hike in wages itself shows that it was done only with a purpose to exclude these 20 employees from the benefit of the 'Act'. Hence, according to the learned Counsel, the findings warrant no interference.

9. **The first point** which arises for consideration is regarding the coverage of the 'Act' with regards to the Appellant Establishment is not disputed between the parties.

10. Section 1(3), 2(e), 2(f), Section 16 of the 'Act' required to be reproduced and are being reproduced as follows :-

Section 1(3) Subject to the provisions contained in section 16, it applies—

(a) to every establishment which is a factory engaged in any industry specified in Schedule I and in which twenty or more persons are employed, and

(b) to any other establishment employing twenty or more persons or class of such establishments which the Central Government may, by notification in the Official Gazette, specify in this behalf: Provided that the Central Government may, after giving not less than two months' notice of its intention so to do, by notification in the Official Gazette, apply the provisions of this 'Act' to any establishment employing such number of persons less than twenty as may be specified in the notification.

Section 2(e) "employer" means—

(i) in relation to an establishment which is a factory, the owner or occupier of the factory, including the agent of such owner or occupier, the legal representative of a deceased owner or occupier and, where a person has been named as a manager of the factory under clause (f) of sub-section (1) of section 7 of the Factories 'Act', 1948 (63 of 1948), the person so named; and

(ii) in relation to any other establishment, the person who, or the authority which, has the ultimate control over the affairs of the establishment, and where the said affairs are entrusted to a manager, managing director or managing agent, such manager, managing director or managing agent;

Section 2(f) Employee in connection with the work of an establishment, and who gets his wages directly or indirectly from the employer, and includes any person—

(i) employed by or through a contract or in or in connection with the work of the establishment; for "and includes any person employed by or

through a contractor in or in connection with the work of the establishment".

(ii) engaged as an apprentice, not being an apprentice engaged under the Apprentices 'Act', 1961 (52 of 1961), or under the standing orders of the establishment.

(f) "excluded employee" means—

(i) an employee who, having been a member of the Fund, withdrew the full amount of his accumulations in the Fund under clause (a) or (c) of sub-paragraph (1) of paragraph 69;

(ii) an employee whose pay at the time he is otherwise entitled to become a member of the Fund, exceeds fifteen thousand rupees per month;

Explanation : --'Pay' includes basic wages with dearness allowance retaining allowance (if any) and cash value of food concessions admissible thereon;

(iii) omitted;

(iv) an apprentice.

Explanation :-- An apprentice means a person who, according to the certified www.epfindia.gov.in 19 standing orders applicable to the factory or establishment, is an apprentice, or who is declared to be an apprentice by the authority specified in this behalf by the appropriate Government;

26. Classes of employees entitled and required to join the fund

(1) (a) Every employee employed in or in connection with the work of a factory or other establishment to which this scheme applies, other than an excluded employee, shall be entitled and required to become a member of the Fund from the day this paragraph comes into force in such factory or other establishment.

(b) Every employee employed in or in connection with the work of a factory or other establishment to which this Scheme applies, other than an excluded employee, shall also be entitled and required to become a member of the fund from the day this paragraph comes into force in such factory or other establishment if on the date of such coming into force, such employee is a subscriber to a provident fund maintained in respect of the factory or other establishment or in respect of any other factory or establishment (to which the 'Act' applies) under the same employer:

Provided that where the Scheme applies to a factory or other establishment on the expiry or cancellation of an order of exemption under section 17 of the 'Act', every employee who but for the exemption would have become and continued as a member of the Fund, shall become a member of the Fund forthwith.

(2) After this paragraph comes into force in a factory or other establishment, www.epfindia.gov.in 33 every employee employed in or in

connection with the work or that factory or establishment, other than an excluded employee, who has not become a member already shall also be entitled and required to become a member of the Fund from the date of joining the factory or establishment.

(3) An excluded employee employed in or in connection with the work of a factory or other establishment, to which this Scheme applies shall, on ceasing to be such an employee, be entitled and required to become a member of the Fund from the date he ceased to be such employee.

(4) On re-election of an employee or a class of employees exempted under paragraph 27 or paragraph 27-A to join the Fund or on the expiry or cancellation of an order under that paragraph, every employee shall forthwith become a member thereof.

(5) Every employee who is a member of a private provident fund maintained in respect of an exempted factory or other establishment and who but for exemption would have become and continued as a member of the fund shall, on joining a factory or other establishment to which this Scheme applies, become a member of the fund forthwith.

(6) Notwithstanding anything contained in this paragraph an officer not below the rank of an Assistant Provident Fund Commissioner may, on the joint request in writing, of any employee of a factory or other establishment to which this Scheme applies and his employer, enroll such employee as a member or allow him to contribute more than rupees fifteen thousand rupees of his pay per month if he is already a member of the Fund and thereupon such employee shall be entitled to the benefits and shall be subject to the conditions of the Fund, provided that the employer gives an undertaking in writing that he shall pay the administrative charges payable and shall comply with all statutory provisions in respect of such employee.

The comparative salary structure which is not disputed between the parties shows that all of these 20 employees were getting wages (Basic Pay + D.A.) more than Rs. 6500/- before September 2014, hence were in the category of 'excluded employees'. In September 2014, they were given pay hike and their wages i.e. Basic Pay + D.A. was between Rs. 15000/- to 18000/- depending on their service tenure. No rule or law of decision of any court has been referred to from the side of Respondent Authority, which prohibits an employer to increase the wages of its employees or sets the limit of such increase. This is also undisputed that the Appellant Establishment is a self financing institution. One more fact, requires to be noticed is that all of these 20 employees are teachers i.e. Assistant Professors and/or Associate Professors of a Technical Institute imparting education with respect to B-Tech and Management courses. Had they been in Government service, they would have been getting their salary, according to their pay scales approved by Government which is many times of what they have been getting even after increase in salary. Fixation of salary is matter between employer and employee and third party has nothing to do with it. Increase in their salary cannot be compared with the increase in salary of non teaching staff.

In the light of this discussion, the impugned finding of Respondent Authority that the increase in salary of these 20 employees was just to deny EPF benefits and hence the Appellant Establishment is under obligation in law to deposit their EPF dues is nothing but arbitrary and has no force of law. Holding, this finding against law it is liable to be set aside.

No other point was pressed.

Accordingly, setting aside the impugned order, the appeal deserves to be allowed.

ORDER

Appeal is allowed with cost. The impugned order dated 20.09.2017 passed by the Respondent Authority is set aside. Any deposits made by the Appellant Establishment U/S. 7-O of the 'Act', with the Respondent Authority shall be returned with interest accrued on it within 30 days from this Order.

Date:- 26/09/2024 **P.K. Srivastava**
(Presiding Officer)

Judgment Signed, dated and pronounced.

Date:- 26/09/2024 **P.K. Srivastava**
(Presiding Officer)