

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 4TH DAY OF FEBRUARY 2015/15TH MAGHA, 1936

W.P.(C).No.18589 of 2011 (W)

PETITIONER(S):-

M.ABDUL RAHIM, AGED 47 YEARS, SON OF MOHAMMED KUNJU,
PROPRIETOR, RNS CASHEWS,
CHEKKALA JUNCTION, NEDUMPANA.P.O., KOLLAM DISTRICT.

BY ADVS.SRI.B.ASHOK SHENOY
SMT.LAKSHMI B.SHENOY.

RESPONDENT(S):-

1. EMPLOYEES PROVIDENT FUNDS APPELLATE TRIBUNAL,
CORE 2, 4TH FLOOR, SCOPE MINAR,
LAXMI NAGAR, NEW DELHI-110092.
2. THE ASSISTANT PROVIDENT FUND COMMISSIONER,
EMPLOYEES PROVIDENT FUND ORGANISATION,
SUB REGIONAL OFFICE, MANNANNIA COMPLEX,
ANDAMUKKOM, KOLLAM-691001.
3. THE RECOVERY OFFICER,
EMPLOYEES PROVIDENT FUND ORGANISATION,
SUB REGIONAL OFFICE, MANNANNIA COMPLEX, ANDAMUKKOM,
KOLLAM-691001.

R2 & 3 BY STANDING COUNSEL SRI.V.V.SURESH.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
04-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:-

- EXT.P1 TRUE COPY OF NOTICE NO.KR/KLM/22321/ENF.I(1)/08/6879
DATED 8.7.2008 ISSUED BY 2ND RESPONDENT TO PETITIONER.
- EXT.P2 TRUE COPY OF ORDER NO.KR/KLM/22321/ENF.I(1)/08/15321
DATED 10.11.2008 ISSUED BY 2ND RESPONDENT TO PETITIONER.
- EXT.P3 TRUE COPY OF CHALLAN FOR RS.5342/- DATED 11.12.2007
BEARING RECEIPT SEAL DATED 10.12.2007 OF STATE BANK
OF INDIA, KOLLAM.
- EXT.P4 TRUE COPY OF CHALLAN FOR RS.5994/- DATED 15.1.2008
BEARING RECEIPT SEAL DATED 15.1.2008 OF STATE BANK
OF INDIA, KOLLAM.
- EXT.P5 TRUE COPY OF CHALLAN FOR RS.9148/- DATED 16.5.2008
BEARING RECEIPT SEAL DATED 16.5.2008 OF STATE BANK
OF TRAVANCORE, KUNDARA, KOLLAM.
- EXT.P6 TRUE COPY OF APPEAL DATED 4.3.2009 FILED BY PETITIONER
BEFORE 1ST RESPONDENT.
- EXT.P7 TRUE COPY OF ORDER DATED 23.09.2009 PASSED BY
1ST RESPONDENT IN ATANO.136(7)2009.
- EXT.P8 TRUE COPY OF LETTER DATED NIL SUBMITTED BY
PETITIONER TO 2ND RESPONDENT, BEARING ACKNOWLEDGEMENT
SEAL OF 2ND RESPONDENT DATED 21.10.2009.
- EXT.P9 TRUE COPY OF ORDER DATED 7.2.2001 PASSED BY
1ST RESPONDENT IN ATANO.136(7)2009.

RESPONDENT'S EXHIBITS:-

NIL.

VKU/-

(TRUE COPY)

K. Vinod Chandran, J.

W.P(C) No.18589 of 2011-W

Dated this the 04th day of February, 2015

JUDGMENT

The petitioner, an employer under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 [for brevity "EPF Act"], impugn the orders passed under Section 7A of the EPF Act and affirmed in appeal, produced herein as Exhibit P2 and P9.

2. Proceedings were initiated by Exhibit P1 notice, asking the petitioner to produce the records, since information was received by the Assistant Provident Fund Commissioner [APFC] that the provident fund contributions of the period February, 2007 to May, 2008 was in shortfall with respect to 50 non-enrolled employees. Pursuant to the notice, even going by Exhibit P2, the petitioner had produced certain registers, like Cash Book, Ledger Book, ESIC file, Holiday Wages Book and Wage Register for the relevant period. On 08.09.2008 when the matter was posted, none appeared. The APFC, hence, called for a report from the Enforcement Officer, as to the records produced by the petitioner before the APFC. Based on the report, the petitioner was assessed. In appeal, the Tribunal, on the

basis of the contention raised by the petitioner, found that admittedly there were 50 employees who were temporarily employed and, hence, there was no ground for appeal.

3. The specific contention raised by the petitioner before the Tribunal was that the 50 employees were those exempted under Section 2(f) of the EPF Act. The contention seems to be that, amongst those employees were persons who were retired from various cashew factories; who were in fact enrolled under the EPF Act and Scheme and were also receiving pension. It was also contended that the other employees were of other Companies, again covered under the EPF Act and the Scheme, employed temporarily. The specific contention was raised only in the context of the establishment being a seasonal industry. On the aforesaid contention, the Tribunal ought not to have found that there is admission that those 50 non-enrolled employees are temporary employees and that alone would determine the eligibility to be assessed under Section 7A of the EPF Act.

4. One other compelling circumstance is that, the petitioner was not put to notice of the Enforcement Officer's report. Admittedly an inspection was conducted in the premises and the

report of the Enforcement Officer is what led to Exhibit P1 being issued. There is no reference to the report, in Exhibit P1; nor is it seen sent to the petitioner. The petitioner, in such circumstance, was disabled from filing any objection, since nothing was stated in Exhibit P1 but for the employment of 50 un-named employees. The petitioner was in fact directed to produce registers by Exhibit P1 notice. The petitioner had produced the registers as called for in Exhibit P1. Though the petitioner was not present for a day, on the APFC seeking a report from the Enforcement Officer as to the registers produced, necessarily the petitioner ought to have been put to notice of the report of the Enforcement Officer, in which circumstance the petitioner would have had a further opportunity to establish before the officer that the employees temporarily engaged were all exempted under Section 2(f) of the Act.

5. In the above circumstances, finding that no reasonable opportunity was granted to the petitioner as indicated in sub-section (3) of Section 7A of the EPF Act, Exhibit P2 and P9 are hereby set aside. It is made clear that this Court has not found on the merits of the claim made and has set aside the orders only on grounds of violation of principles of natural justice. The petitioner

shall appear before the officer on 19.02.2015. The respondent-authority shall issue the petitioner with a report of the Enforcement Officer, which he obtained after the registers were verified; and the initial report, which led to Exhibit P1. The petitioner shall be given sufficient opportunity to establish that the employees temporarily engaged were exempted under Section 2(f) of the EPF Act. The petitioner shall be given a month's time to produce sufficient evidence. After production of such evidence, the petitioner shall be intimated of a hearing date and the matter shall be expedited and finalised within three months from the date of production of the objection and documents by the petitioner. The remittance made by the petitioner pursuant to interim orders issued by the Tribunal shall be retained by the EPF Organisation and shall be adjusted towards any subsequent demand and if there is no demand, the same shall be refunded to the petitioner.

Writ petition allowed with the above observations.

Sd/-
K.Vinod Chandran
Judge.

vku/-

(true copy)