

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP-21404-2017 (O&M)
Date of decision : 18.10.2023

CENTRAL BOARD OF TRUSTEES, EMPLOYEES PROVIDENT
FUND ORGANIZATION AND ANOTHER

- ...Petitioners

Versus

PRESIDING OFFICER, EMPLOYEES PROVIDENT FUND,
APPELLATE TRIBUNAL AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Sanjay Tangri, Advocate
for the petitioners.

Mr. A.D.S. Jatana, Advocate
for respondents No.2 and 3.

HARSH BUNGER, J.

1. Central Board of Trustees, Employees Provident Fund Organization and another (petitioners) have filed the instant writ petition under Articles 226/227 of the Constitution of India, seeking quashing of impugned order dated 26.11.2015 (Annexure P-13) passed by the Employees Provident Fund Appellate Tribunal, New Delhi; whereby, the appeal filed by respondent No.2-Army College of Nursing, has been partly allowed by setting aside the order dated 25.11.2010 passed by the Assistant Provident Fund Commissioner, Jalandhar and held that petitioner No.2-Department is entitled to assess the dues from December-2006 to October-2010 instead of 01.12.2004 to October-2010. A further direction was issued to petitioner No.2, herein to adjust the recovered amount for the period from 01.12.2004

to November-2006 towards establishment account, in calculation of future dues.

2. Briefly, respondent No.3-Army Welfare Education Society (AWES), vide its resolution dated 04.06.2003 (Annexure P-1) decided to establish Army Nursing College at Jalandhar Cantt. and the Government of Punjab, vide its letter dated 03.09.2003 (Annexure P-2) granted 'No Objection Certificate' to the Army Welfare Education Society, for starting B.Sc. Nursing Course for 50 seats. Subsequently, vide letter dated 01.03.2006 (Annexure P-3), Baba Farid University of Health Sciences, granted affiliation to Army College of Nursing, Jalandhar for the Session 2005-06.

3. It appears that vide letter dated 20.03.2008 (Annexure P-6), the Army College of Nursing was allocated Provident Fund Code No.PB/JAL/35077 and it was directed to comply with the provisions of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (in short 'EPF Act') w.e.f. December-2004. As per Annexure P-6, it would be apparent that the Army College of Nursing was sought to be covered under the EPF Act, *inter alia*, on the ground that the said establishment had employed more than 19 persons on or before 01.12.2004. The Army College of Nursing, did not comply with the provisions of the EPF Act, accordingly, assessment proceedings were initiated under Section 7-A of the EPF Act by the concerned authority by serving a notice dated 24.06.2008 (Annexure P-7).

4. The representative of the Army College of Nursing, participated in the proceedings under Section 7-A of the EPF Act and submitted that their establishment has been covered w.e.f. 01.12.2006, by claiming that the

Army College of Nursing was/is being run by the Managing Committee independently out of its own sources and finances and the said Committee is not dependent upon any other institution. It was also claimed that the establishment reached the strength of 20 employees in December-2006 and accordingly, the establishment/Army College of Nursing would be covered under the EPF Act w.e.f. December-2006.

5. The Assistant Provident Fund Commissioner, vide order dated 25.11.2010 (Annexure P-8) came to the conclusion that the establishment (Army College of Nursing) is run under the Army Welfare Education Society and thus, the establishment has been rightly covered under Section 2-A of the EPF Act w.e.f. 01.12.004. Accordingly, an amount of Rs.2,81,589/- was assessed, to be payable by the establishment (Army College of Nursing).

6. Thereafter, the establishment-Army College of Nursing, sought review of the afore-said order, which was also dismissed by the Assistant Provident Fund Commissioner, vide its order dated 05.01.2011 (Annexure P-10).

7. Being dis-satisfied, the establishment (Army College of Nursing) filed an appeal before the Employees' Provident Fund Appellate Tribunal, New Delhi. It is relevant to mention here that at the time of filing of an appeal, the entire amount assessed as against the establishment was paid by it.

8. The Appellate Tribunal, vide its order dated 26.11.2015 (Annexure P-13) partly allowed the appeal by setting aside the order dated 25.11.2010 passed by the Assistant Provident Fund Commissioner, Jalandhar and held that petitioner No.2-Department is entitled to assess the

dues from December-2006 to October-2010 instead of 01.12.2004 to October-2010 with a further direction to adjust the recovered amount for the period from 01.12.2004 to November-2006 towards establishment account, in calculation of future dues. The Appellate Tribunal held as under :-

“10. It is admitted case of both parties that in the month of December, 2006 appellant establishment applied for grant of PF Code to the appellant establishment. PF authorities granted code No.PN/35077 to the appellant establishment. As per case of appellant applicability of the Act was w.e.f. 01.12.2004. As pleaded in para No.6(A)(b) of the appeal, it is specific case of appellant that as and when number of staff reached 20, appellant establishment applied for PF code.

11. As per Rule 12 of the EPFAT (Procedure) Rules, 1997, respondent, if intending to contest the appeal, is required to specifically admit, deny and to explain the facts stated by the appellant in his appeal. In reply, respondent has not specifically stated that from the very beginning of starting appellant college, appellant college was having 20 or more than 20 employees.

12. It is settled law that Commissioner under the Act while conducting an enquiry under Section 7A has the same powers as are vested in the Court under the CPC for trying a suit. Respondent was duly empowered to enforce the attendance in person of all the alleged employees so that it might be clear that all the staff members for whom PF code was applied, were actually working with the appellant establishment since 01.12.2004. Respondent has also the power requiring the discovery and production of documents. This power is given to the Commissioner to decide not abstract question of Law, but also to determine actual concrete differences in payment of contributions and other dues by

identifying the workmen. Respondent should exercise all his powers to collect all evidence and to collate all material before coming to proper conclusion. That is the legal duty of the Commissioner.

13. A fiction is created under Section 7A an enquiry thereunder is deemed to be a judicial proceedings. Merely respondent granted opportunity of hearings is not sufficient to uphold the finding of respondent.

14. It is admitted case of respondent that alleged assessment taken place on the basis of Enforcement Officer report. There is no finding either of Enforcement Officer nor of respondent that appellant establishment was having 20 or more 20 employees since 01.12.2004 so respondent was not supposed to cover the appellant establishment from the date of starting/functioning of appellant establishment but respondent was supposed to cover the appellant establishment under the purview of the Act w.e.f. either from the date of application of appellant establishment or from the date of allotment of code i.e. 20.03.2008. Appellant establishment has no objection, as pleaded for coverage of appellant establishment from December, 2006 when appellant applied for allotment of code.

15. The submission of counsel of appellant that respondent passed impugned order illegally considering the fact that Army Welfare Education Society is running the present appellant establishment, is not sustainable because till today appellant establishment has not challenged the resolution passed by Army Welfare Education Society dated 06.06.2003.

16. Although before filing of appeal appellant establishment paid the assessed amount with the respondent under protest that act of appellant

establishment does not debar the appellant for filing present appeal within the parameters of the Act.

17. Keeping in view all the circumstances of the case, this Tribunal reached at a considered opinion that impugned order dated 25.11.2010 passed by respondent for assessing PF dues from 01.12.2004 to 10/2010 is illegal because respondent is entitled to assess the dues from 12/2006 to 10/2010. Hence, appeal filed by appellant is allowed partly. Respondent is directed to adjust the recovered amount of the period 01.12.2004 to 11/2006 towards appellant establishment account, in calculation of future dues. Copy of the order be sent to both the parties.”

9. In the afore-mentioned circumstances, the petitioners have filed the instant writ petition.

10. Learned counsel for the petitioners submits that the learned Appellate Tribunal below had erred in partly allowing the appeal filed by respondent No.2 by ignoring the fact that the Army Welfare Education Society (respondent No.3) was running different schools in different cities, covered under the EPF Code No.PN/17401 w.e.f. 01.04.1991 and accordingly, the establishment-respondent No.2 (Army College of Nursing) was rightly covered under Section 2-A of the EPF Act w.e.f. 01.12.2004. Learned counsel for the petitioners submits that the learned Appellate Tribunal has failed to consider that the respondent No.2-Army College of Nursing, Jalandhar Cantt. was established vide Resolution dated 04.06.2003, which is run by the Army Welfare Education Society (respondent No.3) and was thus coverable w.e.f. 01.12.2004. It is contended that the Appellate Tribunal has erred in holding that it was not proved that the establishment (Army College of Nursing) was employing 20 or more employees whereas, the same was to be adjudicated on the basis that the Army Welfare

Education Society (respondent No.3) was running the establishment in addition to various other educational institutions including Army Public School, Hoshiarpur, which is also covered under the EPF Act, 1952. Thus, the dues were required to be assessed from 01.12.2004 to October-2010 rather than from December-2006 to October-2010. Accordingly, it is prayed that the writ petition be allowed by setting aside the impugned order dated 26.11.2015 (Annexure P-13) passed by the Appellate Tribunal and restoring the order passed by the Assistant Provident Fund Commissioner, Jalandhar.

11. On the other hand, learned counsel for respondent No.2-establishment has argued in support of the order passed by the Appellate Tribunal by submitting that the same was a valid and justified order as the establishment was not being run by the Army Welfare Education Society (respondent No.3) rather the same is being run by the Institute Management Committee [as defined under Article 44 of the Army Welfare Education Society, Rules and Regulations] which is an independent decision making body. It was submitted that even in terms of Section 2-A of the EPF Act, only different departments or its branches are covered and not an independently controlled Establishment in itself. It is submitted that the Army Public Schools are run by the independent Institute Management Committees, who are governed under the separate code and rule book. It was contended that the Army Public School, either at Hoshiapur Road, Jalandhar Cantt. or at Bathinda or any other place are separate establishments and are not the branches or different departments associated with the Army College of Nursing (respondent No.2). It is also contended that even as per the case of the department before the Assistant Provident Fund Commissioner, there were only six employees as per the report of

Sh. Kashmir Singh. Thus, on the said ground itself, the establishment was not coverable between December-2004 till November-2006. It is submitted that as and when the number of staff of the establishment (Army College of Nursing) reached 20, it applied for the PF Code in December-2006, which was subsequently granted; therefore, the establishment would be covered under the EPF Act w.e.f. December-2006, onwards and there was no illegality or perversity in the order passed by the learned Appellate Tribunal below. Accordingly, it was prayed that the writ petition may be dismissed.

12. I have heard learned counsel for the parties and perused the paper book with the able assistance.

13. A perusal of the EPF Act, 1952 would manifest that Section 1(3) provides for the applicability of the Act subject to the provisions contained in Section 16 thereof. As per Section 1(3)(b), the provisions of the EPF Act would be applicable to an establishment employing 20 or more persons or class of such establishments which the Central Government may, by notification in the official gazette, specify in this behalf. Further, as per Section 1(5) of the EPF Act, an establishment to which, this Act applies, shall continue to be governed by this Act, notwithstanding that the number of persons employed therein at any time falls below 20.

14. A perusal of the afore-said provision leaves no manner of doubt that an establishment would be coverable under the provisions of the EPF Act, which employs 20 or more persons. Further Section 2-A of the EPF Act, provides as under :-

“2-A. Establishment to include all departments and branches.-For the removal of doubts, it is hereby declared that where an establishment consists of different

departments or has branches, whether situate in the same place or in different places, all such departments or branches shall be treated as parts of the same establishment.”

The afore-said provisions contained in Section 2-A of the EPF Act, have been interpreted by this Court in the case of ***Regional Provident Fund Commissioner v. Bombay Selection House, 2013(1) S.C.T. 457;*** wherein the following observations were made :-

“6. Before the matter is considered on merits, I deem it appropriate to refer to the law on the subject.

*7. In **Regional Provident Fund Commissioner, Jaipur v. Naraini Udyog and others, (1996) 5 SCC 522,** Hon'ble the Supreme Court upheld an order of clubbing of two establishments finding that two establishments had common telephone at Kota for residence and factories, some of the workers in one establishment were found to be working in other and their accounts were being maintained by same set of clerks.*

*8. In **M/s. Rajasthan PremKrishan Goods Transport Co.'s case (supra)** as well, clubbing of two entities for the purpose of coverage under the EPF Act was upheld by Hon'ble the Supreme Court considering a finding recorded by Regional Provident Fund Commissioner therein that there was unity of purpose on each count, inasmuch as the place of business and management was common, the letter heads of both contained same telephone numbers and 10 out of 13 partners were common. There was functional integrity pertaining to the employees. The trucks plied by two entities were owned by the partners which were being hired through both the establishments. On the basis thereof, legitimate inference was drawn and it was held that Regional Provident Fund Commissioner was well*

within his right to pierce the veil and read between the lines.

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9. In *Regional Provident Fund Commissioner and another v. DharamsiMorarji Chemical Co. Ltd.*, (1998) 2 SCC 446, Hon'ble the Supreme Court upheld a judgment of Bombay High Court accepting the plea of the establishment that even though both the firms were owned by one person, but still considering various parameters laid down, those could not be clubbed for the purpose of coverage under the EPF Act. Bombay High Court had set aside the order of clubbing of two establishments considering the facts and circumstances of the case, namely, that merely because both the establishments are owned by one person will not make any difference in case they have separate registration numbers for coverage under various statutes and maintain account books independently. They have separate staff at different places. The employees are not transferable from each other. There was no inter-connection in the matter of supervision, finance or management. The fact that at the initial stage, some experienced employees of the existing establishment were sent to the new establishment will also not make any difference.

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10. In *Noor Niwas Nursery Public School v. Regional Provident Fund Commissioner and others*, 2001(1) S.C.T. 369 : (2001) 1 SCC 1, Hon'ble the Supreme Court, while referring to its earlier judgment in ***Pratap Press v. Secy. Delhi Press Workers' Union*, AIR 1960 Supreme Court 1213**, where certain tests had been laid down to see as to whether two establishments are in fact one or not and while referring to the facts of the case in hand, upheld the order of clubbing. It was a case where two schools were being run by same management

adjoining to each other. In one of the schools, staff of only two teachers, one clerk and a peon had been engaged. It was disbelieved for the reason that a society, which runs 30 schools, would not run a separate school with such a small number of staff. The record pertaining to the school was found to be in knowledge and possession of the head clerk of other school. The link between the two was established.

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11. In *Regional Provident Fund Commr. v. Raj's Continental Exports (P) Ltd.*, 2007(2) S.C.T. 482 : (2007) 4 SCC 239, a judgment of Division Bench of Karnataka High Court setting aside the order passed by the Provident Fund Commissioner clubbing two establishments, was upheld by Hon'ble the Supreme Court. The case set up by the Employees' Provident Fund Organisation therein was that the second establishment was nothing but an extension of the existing one as the owner was common. The plea of the establishment therein was accepted for the reason that there was no financial integrity. They were registered independently under the Factories Act, Central Sales Tax Act, 1956, Income Tax Act, 1961 and the Employees' State Insurance Act. They were maintaining their accounts separately. Even if they were in same line of business, considering the fact that there was no financial or functional integrity, both could not be clubbed for the purpose of coverage under the EPF Act. The relevant paragraphs thereof are extracted below:

"6. In *Pratap Press v. Workmen*, it was *inter alia* held as follows: (AIR 1960 p. 1215, para 2)

"2. The question whether the two activities in which the single owner is engaged are one industrial unit or two distinct industrial units is not always easy of solution. No hard-and-fast rule can

be laid down for the decision of the question and each case has to be decided on its own peculiar facts. In some cases the two activities each of which by itself comes within the definition of industry are so closely linked together that no reasonable man would consider them as independent industries. There may be other cases where the connection between the two activities is not by itself sufficient to justify an answer one way or the other, but the employer's own conduct in mixing up or not mixing up the capital, staff and management may often provide a certain answer."

7. In *RPF Commr. v. DharamsiMorarji Chemical Co. Ltd.* it was held that unless there is clear evidence to show that there was any supervisory, financial or managerial control, it cannot be said that one is the branch of the other. As noted by the learned Single Judge, the respondent was separately registered under the Factories Act. It was separately registered under the Central Sales Tax Act and the Employees' State Insurance Act. It has also been found by the learned Single Judge that there was total independence of the two units. The learned Single Judge and the Division Bench were right in their conclusion that the respondent is not a branch of M/s Continental Exporters."

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15. What can be culled out of the various judgments on the issues, as referred to above, is that no straight-jacket formula has been laid down for considering as to whether two units should be considered one establishment for the purpose of coverage under the provisions of the EPF Act. Various steps, as are required to be considered for the purpose, are in the form of unity of ownership, management,

control, finance, labour, employment and functional integrity. Place of business of two units is another factor which may be relevant. The mere fact that both the units are owned by one person or some of the partners are common may not be sufficient to treat two units as one establishment...”

15. Coming to the facts of this case, the petitioners have not been able to show that prior to December-2006, the establishment had 20 or more employees working therein. Rather, the report of Sh. Kashmir Singh, as mentioned in order dated 25.11.2010 (Annexure P-8) passed by the learned Assistant Provident Fund Commissioner, clearly states that the records of the establishment i.e. salary/wages register etc. has been checked and only six employees are found eligible for the benefit of P.F. and other employees are excluded employees, whose salary is more than Rs.6500/- p.m. The afore-said report, nowhere, mentions that the establishment has more than 20 employees.

16. As regards the plea of the learned counsel for the petitioners that since the establishment (Army College of Nursing) is being run by the Army Welfare Education Society, which had already been granted the P.F. Code in the year, 1991 and thus, the establishment would be coverable w.e.f. December-2004 by placing reliance on resolution dated 04.06.2003; wherein, the Army Welfare Education Society had resolved to establish Army College of Nursing at Jalandhar Cantt.; I do not find any merit in the said submission. If the said contention is to be accepted then the establishment would have been coverable from August-2003, itself, when such resolution was passed or from September-2003 when the Government of Punjab had granted 'No Objection Certificate' for starting the B.Sc. Nursing Course in the said Army College of Nursing, Jalandhar Cantt.

17. In my considered view, once it has been clearly provided under the EPF Act that to attract the applicability of the 1952 Act, the requirement of 20 or more employees is required to be fulfilled and in the absence of any evidence/document/material to show that the establishment had 20 or more employees, at any point in time prior to December-2006, the EPF Act could not have been made applicable. Further, the petitioners have not indicated any material to show the financial integrity or management integrity as regards the establishment-respondent No.2 (Army College of Nursing) or any other School/College, being run by the Army Welfare Education Society (respondent No.3). In the absence of any material, to show any such integrity, it cannot be concluded that by resorting to provisions under Section 2-A of the EPF Act, the establishment would be coverable under the EPF Act w.e.f. December-2004.

18. In view of the above discussion, I do not find any illegality or perversity in the order dated 26.11.2015 (Annexure P-13) passed by the learned Employees Provident Fund Appellate Tribunal, New Delhi and the same is accordingly upheld. The instant writ petition, being bereft of any merit, is hereby dismissed.

19. All pending application/s, if any, shall also stand closed.

October 18th, 2023
gurpreet

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No