

**CWP-17545-2012 (O&M)**

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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****CWP-17545-2012 (O&M)****Reserved on: 04.02.2026****Pronounced on: 29.04.2026****Uploaded on: 29.04.2026****ASSISTANT PROVIDENT FUND COMMISSIONER****-PETITIONER****V/S****M/S CHANDIGARH COLONISERS PVT. LTD. AND ANOTHER****-RESPONDENTS****CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI**

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

Mr. Gaurav Mohunta, Sr. Advocate, with
Mr. Deepak Jaglan, Advocate, and
Mr. Pratyush Sood, Advocate
for the respondent No.1.

*********KULDEEP TIWARI, J. (ORAL)**

1. The instant writ petition is directed against the order dated 02.07.2012 passed by the respondent No.2- Employees' Provident Fund Appellate Tribunal (hereinafter referred to as the "Appellate Tribunal"), whereby the statutory appeal preferred by the respondent No.1 (hereinafter referred to as the "Establishment") was allowed, and the order dated 12.09.2011 passed by the petitioner- Assistant Provident Fund Commissioner, in proceedings under Section 7-A of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the "EPF Act"), was set aside.

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FACTUAL MATRIX

2. Concisely stated, the Establishment was brought within the ambit of the EPF Act w.e.f. 01.02.2006 and was accordingly allotted a code number. Upon failure of the Establishment to remit contributions towards the provident fund, employees' provident family pension fund, and insurance fund for the period February 2006 to November 2010, an inquiry under Section 7-A of the EPF Act was initiated for determination of the statutory dues payable in respect of its regular employees as well as those engaged through contractors. The proceedings were triggered on the basis of a report dated 20.12.2010 submitted by the Enforcement Officer's squad.

3. During the course of the inquiry, it emerged that the Establishment had engaged 36 contractors, out of whom only 03 were independently covered under the EPF Act. At the request of the Establishment, the said three contractors were summoned, however, none appeared. The Establishment also failed to produce the requisite records. Consequently, on the basis of the material available on record, including copies of the balance sheets of the Establishment for the period 2004-2005 to 2009-2010 and the trial balance for April 2004 to November 2010, the petitioner assessed a sum of ₹2,15,42,175/- as payable by the Establishment vide order dated 12.09.2011. This order caused pain to the Establishment and propelled it to seek review thereof by filing an application under Section 7-B of the EPF Act, which was dismissed vide order dated 08.11.2011. Thereafter, the Establishment preferred a statutory appeal under Section 7-I of the EPF Act, which was allowed by the Appellate Tribunal through the

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impugned order dated 02.07.2012, resulting in the setting aside of the order dated 12.09.2011. Thus, the order dated 02.07.2012 constitutes the bedrock for the institution of the instant writ petition.

CONTENTIONS OF LEARNED COUNSEL FOR THE PETITIONER

4. Learned counsel for the petitioner contends that it is the sole responsibility of the Establishment to furnish necessary information for the identification of beneficiary employees, as such information is peculiarly within its knowledge and possession. It is submitted that the statutory obligation of the EPF authorities is, in the first instance, to detect default/evasion, assess the dues payable, and initiate recovery proceedings. Identification of beneficiaries is a subsequent step, for which the Establishment is required to provide adequate and relevant data, as the authorities cannot reasonably be expected to possess such detailed records. It is further contended that the Establishment cannot be permitted to take advantage of its own default by withholding relevant information, and that the absence of beneficiary details cannot preclude the EPF authorities from assessing and recovering statutory dues.

5. Learned counsel places reliance upon Paragraph 30 of the Employees' Provident Funds Scheme, 1952, to submit that the principal employer bears the primary liability to pay both its own contribution as well as that payable on behalf of employees engaged directly or through contractors. Further, it is submitted that Section 29 of the Contract Labour (Regulation and Abolition) Act, 1970 (hereinafter referred to as the "Act of 1970"), mandates every principal employer and contractor to maintain

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registers and records containing particulars of contract labour employed, the nature of work performed, the rates of wages paid, and such other prescribed details. It is thus argued that the Establishment is statutorily obligated to maintain and produce such records before the EPF authorities to facilitate identification of rightful beneficiaries, and failure to do so disentitles it from claiming any benefit arising from its own non-compliance. Reliance is also placed on Rule 78(1)(c) of the Contract Labour (Regulation And Abolition) Central Rules, 1971 (hereinafter referred to as the “Rules of 1971”), which similarly imposes an obligation to maintain records pertaining to contract labour.

6. Finally, learned counsel relies upon the judgment of the Hon’ble Supreme Court in “*Regional Director, E.S.I. Corporation vs. Kerala State Drugs & Pharmaceuticals Ltd. and ors.*”, 1995 (Suppl. 3) *SCC 148*, to contend that once an establishment is covered under the EPF Act, the employer is liable to pay contributions in respect of all employees, whether engaged directly or indirectly. Whether such employees are unidentifiable today or not is, therefore, irrelevant so long as the contribution was liable to be paid on their behalf, when they were in employment.

SUBMISSIONS OF LEARNED SENIOR COUNSEL FOR THE ESTABLISHMENT

7. *Per contra*, learned senior counsel for the Establishment stoutly defends the impugned order and submits that no interference is warranted. It is contended that the Establishment is engaged in the business of

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construction and involves, among others, engaging independent agencies which complete the work contracted for, along with material and other processes. Such agencies employ their own labour and are independently covered under the EPF Act. It is urged that these agencies do not fall within the ambit of “contract labour” as defined under Section 2(1)(c) of the Act of 1970. Emphasis is laid on the contention that the arrangement is a contract “for service” and not “of service”, and that no contract within the meaning of the Act of 1970 came into existence.

8. It is further submitted that identification of beneficiary employees is mandatory for determination under Section 7-A of the EPF Act, and the onus lies upon the EPF authorities to identify such beneficiaries, particularly where the contractors are independently registered under the EPF Act, thereby excluding liability of the principal employer. It is also contended that, in terms of Rule 80(3) of the Rules of 1971, records are required to be preserved only for a period of 03 years, and failure to produce records beyond such period cannot invite any adverse inference. Finally, it is contended that, in the present case, no employer-employee relationship has been established with respect to the contract labour, and since the beneficiaries have not been identified, the demand raised is only a notional assessment and is not based on actual wages paid.

ANALYSIS OF THE IMPUGNED ORDER

9. A studied survey of the impugned order reveals that the Appellate Tribunal has set aside the petitioner’s order dated 12.09.2011 on two principal grounds, which are summarized hereunder:-



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(i) *Prior to assessment and recovery, the EPF authorities are under an obligation to identify the workers. The initial burden of identification rests upon the EPF authorities and once it discharges the said burden by producing the records of inspection, the burden shifts to the Establishment. However, in the present case, no such effort was undertaken by the EPF authorities regarding identification.*

(ii) *The assessment period is from February 2006 to November 2010, and in view of Rule 80(3) of the Rules of 1971, all registers and records are to be preserved for only 03 calendar years from the date of the last entry. Consequently, no adverse inference can be drawn against the Establishment for non-production of records pertaining to periods beyond that limitation.*

10. Notwithstanding the above, the Appellate Tribunal itself recorded that since the workers were engaged in connection with the work of the Establishment, it is its responsibility to pay for the PF liability and thereafter to recover such amounts from the contractor.

ISSUE(S) ARISING FOR DETERMINATION

11. The pivotal question of law arising for determination is ***“whether the EPF authorities are, in the first instance, required to identify the beneficiary employees before proceeding to assess and recover statutory dues, or whether assessment and recovery constitute the primary obligation of the EPF authorities, with identification of beneficiaries as a***



subsequent step?”

12. The answer to the hereinabove formulated question is discernible from the combined reading of Section 29 of the Act of 1970 and Rules 78(1)(c) and 80(3) of the Rules of 1971, which are extracted hereunder:-

“29. Registers and other records to be maintained.—(1) Every principal employer and every contractor shall maintain such registers and records giving such particulars of contract labour employed, the nature of work performed by the contract labour, the rates of wages paid to the contract labour and such other particulars in such form as may be prescribed.

(2) Every principal employer and every contractor shall keep exhibited in such manner as may be prescribed within the premises of the establishment where the contract labour is employed, notices in the prescribed form containing particulars about the hours of work, nature of duty and such other information as may be prescribed.”

“78. Muster Roll, Wages Registers, Deduction Register and Overtime Register.—

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1(c) Every contractor shall obtain the signature or thumb impression of the worker concerned against the entries relating to him on the Register of Wages or Muster Roll-cum-Wages Register, as the case may be, and the entries shall be authenticated by the initials of the contractor or his authorised representative and shall also be duly certified by the authorised representative of the principal employer in the manner provided in rule 73.

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80. (3) All the registers and other records shall be preserved in original for a period of three calendar years from the date of last entry therein.”

13. Section 29 imposes an unequivocal statutory obligation upon

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every principal employer and every contractor to maintain registers and records containing particulars of contract labour employed, the nature of work performed, the rates of wages paid, and other prescribed details. Rule 78(1)(c) imposes a similar obligation, while Rule 80(3) mandates preservation of such records in original for a period of 03 calendar years from the date of the last entry therein.

14. In the present case, the default period under assessment spans February 2006 to November 2010, and the assessment proceedings were initiated in 2010 itself. The Establishment was, therefore, well within the prescribed period of limitation and under statutory obligation to maintain and produce records for the period 2007 to 2010, which it failed to produce. In such circumstances, the Establishment cannot be permitted to take advantage of its own default by contending that beneficiaries must first be identified by the EPF authorities before assessment and recovery can be undertaken.

15. The contributions that fell due and became payable during the relevant period are recoverable irrespective of whether the concerned employees remain in employment. Gainful reference in this regard can be placed upon the verdict rendered by the Hon'ble Supreme Court in the case of ***Regional Director, E.S.I. Corporation (supra)***, categorically holding that whether the employees are unidentifiable today or not is, therefore, irrelevant so long as the contribution was liable to be paid on their behalf, when they were in employment. The relevant paragraph of the said verdict is extracted hereinbelow:-



“3. There is thus no quid pro quo between the persons insured and the benefit available under this Act. As regards the finding that the workmen were unidentifiable, what is forgotten is that under the act, once an establishment comes to be covered by the Act. the employer becomes liable to pay the contribution in respect of the employees in his employment directly or indirectly. The contribution which had become payable for the relevant period has to be paid even if the employees concerned are no longer in employment. Whether the employees are unidentifiable today or not is, therefore, irrelevant so long as the contribution was liable to be paid on their behalf, when they were in employment.”

16. Accordingly, this Court answers the hereinabove formulated question of law thus:

“The primary obligation of the EPF authorities is to assess the statutory dues payable and effect recovery thereof, and the exercise of identifying beneficiaries is a subsequent step.”

17. The finding of the Appellate Tribunal that recovery cannot be effected in the absence of identification of beneficiaries is, therefore, legally untenable and does not withstand judicial scrutiny.

18. At this juncture, it is also apposite to observe that the obligation to produce records before the EPF authorities rests upon the Establishment, which bears the statutory duty to maintain such records. Where an Establishment withholds records with a view to defy the assessment proceedings, it is disentitled from claiming any benefit arising from such non-production, and an adverse inference is required to be drawn against it.

19. The Appellate Tribunal, while correctly recording that the principal employer bears primary liability for PF dues with the right to

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recover from the contractor, fell into manifest error in simultaneously setting aside the legally valid and sustainable assessment order passed by the petitioner.

20. As regards the finding of the Appellate Tribunal concerning Rule 80(3) of the Rules of 1971, the same is predicated upon a factual error. The assessment was initiated in 2010 in respect of the period February 2006 to November 2010. The Establishment was, therefore, under a statutory obligation to maintain and produce records for the period from 2007 onwards. Its failure to do so disentitles it from claiming any benefit.

21. Insofar as the contention of the Establishment that it engaged independent agencies/contractors for the supply of finished products, and is therefore not covered under the EPF Act, is concerned, the same is devoid of merit. There is no material on record, either before the Appellate Tribunal or this Court, to ascertain or evaluate the nature of the contractual arrangements between the Establishment and such agencies/contractors. Once the Establishment specifically asserts non-coverage of such agencies/contractors under the EPF Act, the initial burden of proof rests upon it to substantiate the claim by producing cogent and relevant documentary evidence. However, in the present case, the position is altogether different, as the Establishment has failed to produce the relevant documents before the EPF authorities.

FINAL ORDER

22. In aftermath, the **instant writ petition is allowed**. The impugned order dated 02.07.2012 passed by the Appellate Tribunal is set



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aside, and the order dated 12.09.2011 passed by the petitioner is upheld.

23. Pending application, if any, stands disposed of accordingly.

April 29, 2026
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(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No