IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

231 **CWP-7988-2014 (O&M)**
Date of Decision : May 04, 2026

EMPLOYEES PROVIDENT FUND ORGANIZATION

-PETITIONER

V/S

M/S VICTOR INSTITUTE OF NURSING & PARAMEDICAL SCIENCES AND ANOTHER

-RESPONDENTS

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

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

Mr. Gurcharan Dass, Advocate
for the respondent No.1.

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KULDEEP TIWARI, J. (ORAL)

1. The instant writ petition has been filed by the Assistant Provident Fund Commissioner (Legal) impugning the order dated 11.10.2013 passed by the respondent No.2- Employees' Provident Fund Appellate Tribunal (hereinafter referred to as the "Appellate Tribunal"), whereby the entire liability of the respondent No.1 (hereinafter referred to as the "Establishment") amounting to ₹22,53,972/-, assessed for the period from 01.04.2005 to 30.06.2011 under Section 7-A of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the "EPF Act"), has been set aside.

2. Assailing the impugned order, learned counsel for the petitioner contends that the Appellate Tribunal has set aside the assessment order primarily on two grounds:- (i) the EPF authorities did not undertake

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identification of beneficiary employees before making assessment of statutory dues; and (ii) the methodology adopted for calculation of provident fund dues was unsustainable. It is submitted that both grounds are legally untenable.

3. Learned counsel for the petitioner submits that the issue regarding the stage at which identification of beneficiary employees is to be undertaken stands examined by this Court in ***CWP-17545-2012***, titled "***Assistant Provident Fund Commissioner vs. M/s Chandigarh Colonisers Pvt. Ltd. and another"***, wherein it has been categorically held that the primary obligation of the EPF authorities is to assess and recover statutory dues, and identification of beneficiaries is a subsequent exercise. It is further submitted that, although Paragraph 2(f) of the Employees' Provident Funds Scheme, 1952 excludes employees drawing wages exceeding ₹6,500/-, the Scheme permits the Provident Fund Commissioner to restrict wages up to ₹6,500/- for the purpose of assessment, as the employer's liability to contribute is confined to that limit.

4. *Per contra*, learned counsel appearing on behalf of the Establishment assails the manner in which the assessment was carried out, contending that the criteria adopted by the Provident Fund Commissioner was erroneous. It is thus submitted that the Appellate Tribunal rightly interfered with the assessment order.

5. This Court has heard learned counsel for the parties and perused the record.

6. At the outset, it is apposite to record that the issue as to whether identification of beneficiaries constitutes a preliminary or subsequent step in

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the process of assessment and recovery of statutory dues has already been examined and answered by this Court in ***M/s Chandigarh Colonisers' case (supra)***. The relevant observations are reproduced hereinbelow:

> *"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?"***
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> *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:-*
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>> *"**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.*
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>> *(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."*
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>> *"**78. Muster Roll, Wages Registers, Deduction Register and Overtime Register.**—*
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>> *XX XX XX*
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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*

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the authorised representative of the principal employer in the manner provided in rule 73.

XX XX XX

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 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

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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.""

7. In view of the aforesaid legal position that the primary obligation of the EPF authorities is to assess and recover statutory dues, with identification of beneficiaries being a subsequent step, the first ground taken by the Appellate Tribunal cannot be sustained in law.

8. Insofar as the second ground relating to the method of calculation is concerned, although the Appellate Tribunal has observed that the methodology adopted for computation of provident fund contributions was unsustainable, a perusal of the impugned order reveals that no specific discrepancy or infirmity has been pointed out so as to justify interference with the assessment order. The relevant observations of the Appellate Tribunal are extracted hereinbelow:

"4. Heard and gone through the record. It is noted that the respondent commissioner had determined the PF dues by taking into account the figures of the budget for the year 2005-06 and the details of salaries have been obtained as per the budget for

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the said period in respect of the 17 employees whose salary is less than Rs.5,600/- p.m. and in respect of 8 employees who are drawing more than Rs.6,500/- p.m. and the determination of dues has been restricted for such 8 employees to Rs.6,500/- p.m. only. The criteria adopted by the respondent commissioner is not well found out to ascertain the determination of dues. It is the duty of the respondent commissioner to first of all ascertain the beneficiaries for whom the demand is being raised and subsequently to determine the exact salary drawn by them. It is specifically provided under Section 2(f) of the Act that the employees drawing more than Rs.6,500/- or above are excluded employees and no PF contribution is warranted in respect of such employees. In the instant case the PF Commissioner had assessed the PF dues in respect of such excluded employees subject to restricting the condition of salary to Rs.6,500/- p.m. The method adopted by the PF Commissioner for calculation of PF dues is not sustainable. It is also noted that the beneficiaries who are eligible for social security have not been identified. The respondent commissioner had taken the beneficiaries on the basis of salaries given by the registrar of Punjab Nursing Registration Counsel, Chandigarh as per the budget for the year 2005-06 in respect of 17 employee. Further, the Enforcement Officer, the Prosecuting Officer of the department has been exercising the powers of Commissioner under the Act to visit the appellant establishment and to ascertain the exact number of employees working therein. It was also incumbent upon the Inquiry Officer as well as the respondent commissioner to ascertain the number of beneficiaries eligible for the social security benefits under the Act. Since, in the present matter the discrepancies mentioned above are noted, the impugned order is not considered to be legal and sustainable. Accordingly, the impugned order is hereby set aside. The appeal is allowed. Copy of order be sent to the parties and the file be consigned to record room."

9. In light of the above, the **impugned order does not withstand judicial scrutiny and is accordingly set aside.** The matter is remanded to

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the Appellate Tribunal for fresh adjudication in accordance with law, after affording due opportunity of hearing to all concerned parties.

10. The instant writ petition stands **disposed of** accordingly.

11. Pending application also stands disposed of accordingly.

(KULDEEP TIWARI)
JUDGE

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

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