(2006) 09 RAJ CK 0006

In the Rajasthan High Court

Alwar Central Cooperative Bank Ltd. APPELLANT

Vs

The Regional Provident Funds Commissioner and Others RESPONDENT

Date of Decision : 22-09-2006

Acts Referred:
Constitution of India, 1950 — Article 227

Citation : (2007) 113 FLR 310 : (2007) 2 LLJ 347 : (2007) 1 RLW 110

Hon'ble Judges : Shiv Kumar Sharma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Shiv Kumar Sharma, J.—Since questions of fact and law involved in these petitions are identical, I proceed to decide them by a common order.

2. Almost in all the writ petitions the orders issued by the Regional Provident Fund Commissioner and the appellate authority are under challenge. The facts raised in the writ petition No. 4718 of 2002 are taken into consideration. In this case Alwar Central Cooperative Bank Ltd. (in short the petitioner Bank) has challenged the orders of the Regional Provident Funds Commissioner, and the Employees Provident Funds Appellate Tribunal dated September 20, 1999 and July 14, 2000. A prayer has also been made to refund the amount of Rs. 10,58,145/- deducted from the account of the petitioner Bank with the SBBJ, Alwar by way of attachment.

3. The petitioner Bank is covered under the provisions of the Employees Funds and Misc. Provisions , 1952 (in short PF Act) and are paying regular contributions both employees as well as of the employers'' share from the date of coverage. In order to develop cooperative movement in the State of Rajasthan, three tier system was developed. Firstly, at the State Level known as Apex Society. Secondly at the District Level and thirdly at the village level. The societies at village level are popularly known as Primary Agricultural Cooperative Societies (in short PACs.) The functions of the PACs. were to provide loan and agricultural

input to the agriculturists who are members of these PACs. These societies were registered under the provisions of the Cooperative Societies Act. For proper functioning of the PACs. a Chief Executive Officer known as Manager/ Vyavasthapak is appointed who is paid employee of such society and who act under the control and supervision of the Managing Committee/ Sanchalak Mandal of the society. The Registrar Cooperative Societies by exercising powers under Rule 41 of the Rajasthan Cooperative Societies Rules, 1966 (in short ''Rules of 1966'') framed the service rules for the Managers/Vyavasthapaks of the PACs. Thereafter further set of rules ware framed replaced by new Rules framed in the year 1977 known as Recruitment and Service Conditions of the managers of Agriculture Credit Cooperative Societies Rules 1977 (in short the ''Rules of 1977''). Under these Rules Cooperative Credit Institution Cadre Authority was created and the managers of the PACs were considered to be employees of the Cadre Authority. The petitioner Bank submitted that after coming into force of the Rules of 1977 the control and supervision of the managers of the PACs were not under the Central Cooperative Bank. The petitioner Bank given out that the Cadre Authority under whom the Managers of the PACs were working agreed for covering the managers under the provisions of the PF Act. Code number was also allotted provisionally to the Cadre Authority w.e.f. March 7, 1984. The petitioner Bank contends that none of these PACs were covered under the provisions of the PF Act as per the provisions of Section 1(4) and 1(5) of the Act number of employees of these societies had never exceeded to 19. It is submitted that in these circumstances no contribution is payable either of the employers or of the employees. The Cadre Authority ceased to exist as per the directions of this Court given in D.B. Civil Writ Petition No. 1018/1979 decided on May 9, 1991. The PF Commissioner determined the amount vide order dated September 27, 1994 amounting to Rs. 9,52,441/- for the period from June, 1991 to February, 1993 and sent the same to the Rajasthan Cooperative Credit Institution Credit Authority, Alwar by making endorsement C/o the Managing Director Alwar Central Cooperative Bank. As per the directions given by this Court in the case filed by Central Cooperative Bank Ajmer the payment with regard to the employees of PACs were ordered to be deposited with the PF department even if managers of the PACs may not be the employees of the Central Cooperative Banks. The Registrar/Cooperative Societies without entering into the controversy directed all the Central Cooperative Bank of the State of Rajasthan numbering 26, that whatever the amount lying in PF account created earlier may be transferred to the respective code numbers allotted by the PF Commissioner to the branch of the Cadre Authority. The respondent No. 1 issued notice to the petitioner Bank for initiating enquiry u/s 7-A of the PF Act for not depositing PF for the period 3/93 till June, 1997. The Managing Director of the petitioner Bank filed detailed objection that the provisions of the PF Act are not applicable to the Gram Seva Sahakari Samiti Ltd. in which there is only one employee. The Assistant PF Commissioner vide order dated November 2, 1999 directed the petitioner Bank to deposit amount of Rs. 44,96,591/- in various heads within fifteen days and in case it is not deposited to be recoverable u/s 8 of the act. The appeal filed by the petitioner Bank was dismissed by the Appellate Tribunal on July 14, 2000 as indicated above.

4. The respondents Nos. 1, 2 and 4 filed separate replies to the writ petition. The respondent No. 1 submitted that they have rightly covered the cadre authority through the petitioner Bank under the provisions of the PF Act and allotted provisional code number to them and there was no unconstitutionality or illegality in coverage of the cadre authority through the petitioner Bank. The respondent No. 1 stated that they have initiated action to assess the dues for the period from 6/91 to 2/93 after following the procedure and the petitioner Bank has deposited these dues on October 10, 1994 amounting to Rs. 9,52,441/-. This amount was deposited by the petitioner Bank and not by the Cadre Authority. The notices were issued to the cadre authority but it was sent to the Managing Director of the petitioner Bank and the representative of the petitioner Bank attended the proceedings u/s 7-A of the PF Act and there was no illegality in issuing the order by them. Since the amount was deposited by the petitioner Bank this shows that the petitioner Bank and the cadre authority were one and the same. Further notice for the period 3/93 to 7/97 was issued and reply to that notice was sent by the Managing Director of the petitioner Bank which also proved that the cadre authority and the petitioner Bank were one and the same authority. The Appellate Authority rightly passed the order dated July 14, 2000 in deciding the issue.

5. The respondent No. 4 Karmchari Sangh filed reply to the writ petition and defended the orders passed by the PF Commissioner and the Appellate Authority and they have prayed for dismissal of the writ petitions. The respondent No. 2 Registrar Cooperative Societies in the reply admitted the deposit of Rs. 9,52,441/0 by the petitioner Bank on 10.10.94 and 22.10.1994 as per the directions of the respondent No. 1 under protest. Most of the contents of the writ petition were admitted in the reply filed by them. It was pointed out that the Managers of the PACs are treated employees of the respective Primary Agriculture Cooperative Societies and as the registration of the cadre Authority has been quashed there is no similar authority for giving fund and on the employees of the Primary Agriculture Cooperative Societies the PF Act is not applicable and will not be possible to deposit amount in PF.

6. Sum and substance of the contentions advanced on behalf of the petitioners is that the managers are the employees of particular ram Seva Sahakari Samiti and they are not employees of the particular Bank.

7. The Division Bench of Gujarat High Court had occasion to consider the definition of word "employee" u/s 2(f) of PF Act. It was indicted as under:

An employee has been defined to mean any person who is (1) employed for wages in any kind of work, manual or otherwise, (2) in or in connection with the work of an establishment and (3) who gets his wages directly or indirectly from the employer. The inclusive part of the definition makes it clear that even if the person concerned has been employed through a contract in or in connection with the work of establishment, he would yet fall within the description of "employee" within the meaning of the act. In order to answer the question some other questions have to be asked and answered viz.:

(1) Was he doing the work of monetary payment?

(2) Was the work done by him the work of the establishment or had a nexus with such work?

(3) Was the payment made wages, in the sense of being remuneration for the physical or mental effort in connection with such work?

(4) Was the work such that it had to be done as directed by the establishment or under its supervision and control to the extent that supervision and control are possible having regard to the specialized nature of the work or the skill needed for its performance?

(5) Was the work of such a nature and character that ordinarily a maser-servant relationship could exist and but for the agreement styling it as a contract common practice and common sense would suggest a master-servant bound?

(6) Was the relation indicative of master-servant status in substance having regard to the economic realities irrespective of the nomenclature devised by the parties?

(7) Was he required to do the work personally without the liberty to get it done through someone else?

if these answer nod their heads, a master-servant relationship can be spelled out with safety and certainty.

8. Single Bench of this Court in Ajmer Central Co-operative Bank Ltd. Ajmer v. The Authorised Officer S.B. Civil Writ Petition No. 5113/1989, decided on November 24, 1992, observed as under:

The term ''employee'' as defined in Section 2(5) of 1958 Act means a person wholly or principally employed in or in connection with any establishment and includes an apprentice-. As pr Section 2(6) of 1958 Act, ''employer'' means a person having charge of or owning or having ultimate control over the affairs of an establishment and includes the Manager, Agent or other person acting in the general management or control of an establishment. In the light of these clear definitions and having regard to the fact that the respondent No. 3 was appointed and was working under the control of the petitioner Bank, it has to be held there existed relationship of employer and employee between the petitioner and the respondent No. 3.

9. Having closely scanned the material on record and the case law placed for my perusal, I do not find any illegality in the impugned judgments. In my opinion, in the facts and circumstances of the case, no interference is called for in these

matters. In Sadhana Lodh Vs. National Insurance Company Ltd. and Another, their Lordships of Supreme Court explained the scope of supervisory jurisdiction under Article 227 of the Constitution of India thus:

The supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is confined only to see whether an inferior court or tribunal has proceeded within its parameters and not to correct an error apparent on the face of the record, much less of an error of law. In exercising the supervisory power under Article 227 of the Constitution, the High Court does not act as an appellate Court or the Tribunal. It is also not permissible to a High Court on a petition filed under Article 227 of the Constitution to review or reweigh the evidence upon which the inferior court or tribunal purports to have passed the order or to correct errors of law in the decision.

10. For these reasons, the writ petitions being devoid of merits stand dismissed without any order as to costs.