

(2024) 01 GAU CK 0034

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 4432 Of 2015

Assam Khadi And Village Industries Board

APPELLANT

Vs

Employees Provident Fund Organization And 2 Ors

RESPONDENT

Date of Decision : 30-01-2024

Acts Referred:

Assam Khadi and V.I. Board Contributory Provident Fund Rules, 1962 — Rule 4(3)(ii), 4(3)(iii)
Employees' Provident Fund and Miscellaneous Provisions Act, 1952 — Section 2(f), 16(1), 16(1)(c)

Citation : (2024) 01 GAU CK 0034

Hon'ble Judges : Devashis Baruah, J

Bench : Single Bench

Advocate : I Kalita

Final Decision : Disposed Of

Judgement

1. The instant writ petition has been filed by the petitioner challenging the order dated 29.05.2015 whereby the petitioner was directed to pay an amount of Rs. 9,46,13,316.00. The petitioner has also challenged the order dated 28.07.2015, issued by the Assistant P.F. Commissioner (Compliance) whereby the bankers of the petitioner were directed to credit the amount of Rs. 9, 46, 13,316.00 within 3 (three) days in favour of the Regional Provident Fund Commissioner (NER), Guwahati.

2. This Court heard the learned counsel appearing on behalf of the petitioner, Mr. PK Munir as well as Mr. PK Roy, learned Senior Counsel for the respondent authorities. The challenge in the instant proceedings is on the ground that the said impugned order was passed without taking into consideration of Section 16 (1)(c) of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (for short, "the Act of 1952") in the proper prospective in as much as the petitioner had framed a set of Rules, known as the Assam Khadi and V.I. Board Contributory Provident Fund Rules, 1962 (for short, "the Rules of 1962") and the

said Rules provide for contributory provident fund in favour of its employees for which the Act of 1952 could not be applied.

3. Mr. P.K. Roy, the learned senior counsel for the respondent authorities per contra had submitted that though the Rules of 1962 provide for a contributory provident fund but the said Rules are not applicable to various categories of staff of the petitioner as it would be apparent from a perusal of Rule 4(3)(ii) & (iii) which stipulates that the daily wage employees of the Board as well employees whose terms of employment are governed by special contracts cannot subscribe to the fund. The learned counsel for the Respondents further drew the attention of this Court to Section 2(f) of the Act of 1952 wherein the term "employee" has been defined and submitted that within the ambit of the said definition employees who are employed by or through a contractor with the works of the establishment would come and therefore the exclusion made by the Rules of 1962 in respect to those contractual employees as well for daily wage employee brings the petitioner within the ambit of the Act of 1952. The learned senior counsel draw the attention of this Court to the judgment of the Supreme Court in the case of Pawan Hans Limited and others versus Aviation Karmachari Sanghanata and others, reported in (2020) 13 SCC 506 and specifically referred to paragraph Nos. 10.2, 10.3, 10.3.1, 10.3.2 as well as 10.5. Taking into account the relevance of those paragraphs so cited, the same are reproduced herein under:

"10.2. Sub-section (1) of Section 16 reads as:

"16. Act not to apply to certain establishments.-(1) This Act shall not apply-

(a) to any establishment registered under the Cooperative Societies Act, 1912 (2 of 1912), or under any other law for the time being in force in any State relating to cooperative societies employing less than fifty persons and working without aid of power; or

(b) to any other establishment belonging to or under the control of the Central Government or a State Government and whose employees are entitled to the benefit of contributory provident fund or old age pension in accordance with any scheme or rule framed by the Central Government or the State Government governing such benefits; or

(c) to any other establishment set up under any Central, Provincial or State Act and whose employees are entitled to the benefits of contributory provident fund or old age pension in accordance with any scheme or rule framed under that Act governing such benefits;

(2) If the Central Government is of opinion that having regard to the financial position of any class of establishments or other circumstances of the cases, it is necessary or expedient so to do, it may, by notification in the Official Gazette, and subject to such conditions as may be specified in the notification, exempt whether prospectively or retrospectively, that class of establishments from the

operation of this Act for such period as may be specified in the notification.”

10.3. This Court in *Provident Fund Commr. V. Sanatan Dharma Girls Secondary School* laid down twin-test for an establishment to seek exemption from the provisions of the EPF Act, 1952. The twin conditions are:

10.3.1. First, the establishment must be either “belonging to” or “under the control of” the Central or the State Government. The phrase “belonging to” would signify “ownership” of the Government, whereas the phrase “under the control of” would imply superintendence, management or authority to direct, restrict or regulate.

10.3.2. Second, the employees of such an establishment should be entitled to the benefit of contributory provident fund or old age pension in accordance with any scheme or rule framed by the Central Government or the State Government governing such benefits.

10.5. With respect to the second test, it is relevant to note that the Company had its own Scheme viz. The Pawan Hans Employees Provident Fund Trust Regulations in force. The Company however restricted the application of the PF Trust Regulations to only the “regular” employees. The PF Trust Regulations of the Company were not framed by the Central or the State Government, nor were they applicable to all the employees of the Company, so as to satisfy the second test.”

4. In the backdrop of the above, this Court have also perused the impugned order dated 29.05.2015. A perusal of the said impugned order categorically shows that the contention of the petitioner was duly noted to the effect that in view of the Rules of 1962, the petitioner would not come within the ambit of the Act of 1962. However, the findings which have been arrived at is that the PF Scheme of the petitioner have not been found to extend social security benefits to the employees and such benefits as a whole are neither at part, nor more beneficial than the benefit provided under the Act of 1952. The impugned order, however does not, in any manner, deal as to whether in view of the Rule 4(3) (ii) & (iii) of the Rules of 1962, Section 16(1)(c) of the Act of 1952 would not be applicable in so far as the petitioner is concerned. Rather, the findings arrived at by the impugned order are on the comparison of the benefits. The said findings upon a reading of Section 16(1)(c) of the Act of 1952, in the opinion of this Court, is not in consonance of the Act of 1952. The rationale behind this opinion of this Court is that a reading of Section 16(1)(c) of the Act of 1952 mandates that the provision of the Act of 1952 shall not be applicable to any other establishment set up under the Central, Provincial or State Act and whose employees are entitled to the benefits of contributory provident fund or old age pension in accordance with any scheme or rules framed under such Act governing such benefits. The said provision does not deal with the question of comparative benefits in terms with the Act of 1952 vis-a vis the benefits so accrued upon the employees of an establishment set up by any Central,

Provincial or State Act in scheme or Rule framed. Therefore, this Court set aside the impugned order dated 29.05.2015 for the reason above mentioned.

5. This Court had duly taken note of the submissions of Mr. PK Roy, the learned senior counsel to the effect that the Rules of 1962 do not provide benefits of the contributory provident fund to daily wage employees as well as the contractual appointees as such employees cannot subscribe to the fund. This Court had also take a note of the judgment of the Supreme Court in the case of Pawan Hans Limited and others (supra) and particularly to paragraph 10.5 as quoted above. However, these aspect which has been argued by the learned counsel appearing on behalf of the respondents though seems to be attractive but are not the basis on which the impugned order was passed. In this regard, this Court finds it relevant to refer to the judgment of the Supreme Court in a case of Gordhandas Bhanji Vs. Commissioner of Police, Bombay reported in AIR 1952 SC 16 wherein it was duly observed that the public orders made publicly has construed objectively with reference to language used in the order itself and not in the explanation queue subsequently. The said principles have also been reiterated in the judgment of the Constitution Bench of the Supreme Court in the case of Mohinder Sing Gill and another Vs. The Chief Election Commissioner New Delhi and others, reported in (1978) 1 SCC 405 more particularly in paragraph No. 8, which is reproduced herein under:

"8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. In Gordhandas Banji (AIR 1952 SC 16) at P. 18) :

"Public orders publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public Orders made by the public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."

6. Taking account the above, this Court therefore set aside the impugned order dated 29.05.2015 as well the consequential order dated 28.07.2015 for the reasons above mentioned. Before parting with the record, this Court however, makes it clear that the above observations and the instant decision of setting aside the impugned order dated 29.05.2015 as well as the consequential order would not preclude the respondent authorities to initiate de novo proceedings against the petitioner in respect to the period for which the impugned order was passed. It is however, observed that if such proceedings are initiated the same should be done so in accordance with prescription of law.

7. With above directions and observations, the instant writ petition therefore stands disposed of.