(1990) 11 BOM CK 0007

In the Bombay High Court

Case No : Writ Petition No. 2435 of 1985

Bombay Printers Ltd. and others APPELLANT

Vs

Union of India and others RESPONDENT

Date of Decision : 29-11-1990

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 5

Citation : (1991) 63 FLR 106 : (1992) 1 LLJ 816

Hon'ble Judges : M.L. Dudhat, J

Bench : Single Bench

Judgement

1. This writ petition is filed against the notice dated 1st of August 1985, issued to the Chairman of petitioner No. 1 by the Assistant Provident Fund Commissioner for Maharashtra and Goa calling upon petitioner No. 1 to remit the provident fund dues in respect of 11 employers who had already retired. Petitioner No. 1 is a public limited company engaged in publishing Sindhi Daily and Weekly Newspaper under the name of Hindustan and Hinduvasi. Petitioner No. 1 company is a service-oriented company established with the object to serve national, social, educational and cultural aspects particularly in respect of Sindhi community. The present petitioner Nos. 2 to 8 were employed by petitioner No. 1 company and they retired from service on attaining the age of 55 years. The amounts due towards their provident fund were also paid to them. However, after retirement these persons were allowed to work as per their convenience, subject to their health conditions in furtherance of the object of the company for which it was established. It appears that when the Inspector from respondent No. 2''s office visited petitioner No. 1 company he found that though the aforesaid petitioners were working with petitioner No. 1 company after their retirement, petitioner No. 1 company has not remitted their provident fund dues and therefore, vide notice dated 1st of August, 1985, respondent No. 2 called upon petitioner No. 1 to remit the said dues in respect of the said employees from the dated of their reappointment.

2. Mr. Advani, the learned counsel, appearing on behalf of the petitioners submitted that the present petition is filed by petitioner No. 1 company along with its employees in respect of whom respondent No. 2 has issued the impugned notice. He contended that though all these employees had retired long back they were allowed to work on temporary basis subject to their health conditions and they used to work out of devotion towards the object of petitioner No. 1 company as per their convenience. He further contended that these petitioners have taken away their provident fund dues at the time of their retirement and, therefore there was no question of payment of any further provident fund dues to them for the work which they were doing out of devotion.

3. Admittedly Clause-8 of the Employees Provident Fund Scheme framed u/s 5 of the Employees'' Provident Fund and Miscellaneous Provisions Act 1952, is specially meant in the cases of employees of newspapers. As per para 2(f) of the said Clause-8 ''Excluded Employee'' means an employee who, having been a member of the fund, has withdrawn the full amount of his accumulation in the fund, under Clause (a) or (b) of sub-paragraph (1) of paragraph 69. Clause (a) of sub-paragraph (1) of paragraph 69 of the scheme runs thus :

69. Circumstances in which accumulations in the Fund are payable to a member -

(1) A member may withdraw the full amount standing to his credit in the Fund -

(a) on retirement from service after attaining the age of 55 years."

The aforesaid provisions made it amply clear that as all the employees who are the present petitioner Nos. 2 to 8 have already withdrawn their full amount of accumulation in the provident fund, there is no question of payment of any provident fund dues in respect of these employees. In view of this clear legal position, respondent No. 2 has no right to call upon petitioner No. 1 to remit provident fund dues in respect of these employees from the date of their re-appointment. It could be that re-appointment of these employees was just with a view to accommodate dedicated ex-employees who were doing some job as per their convenience and subject to their health. In my opinion, therefore, the impugned notice dated 1st of August 1985, as well as the proceedings instituted by respondent No. 2 pursuant to this notice are liable to be quashed as the same are beyond the scope of the statute.

4. In the result, this writ petition is allowed and rule is made absolute in terms of prayer (a) with no order as to costs.