

(2007) 05 AHC CK 0157
In the Allahabad High Court

Delhi Public School

APPELLANT

Vs

Enforcement Officer, U.P. (Employee's) Provident Fund and
Regional Provident Fund

RESPONDENT

Date of Decision : 09-05-2007

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 2, 7A, 8F
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 2, 7A, 8F
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 2, 7A, 8F

Citation : (2007) 6 AWC 5826 : (2007) 114 FLR 404

Hon'ble Judges : V.K. Shukla, J

Bench : Single Bench

Judgement

V.K. Shukla, J.—Delhi Public School, Meerut Road, Ghaziabad, is a covered establishment under the provision of the Employees Provident Fund and Miscellaneous Provisions Act, 1952.

2. During the course of the various inspection carried out in the institution, the Area Enforcement Officer noticed that contractors employees including canteen contractor, transport contractor, doctor and cycle stand contractor have not been covered by the Management for the purpose of extending Provident Fund benefits. The Management of the institution was asked to remedy the said situation by computing quantum of arrears dues to be paid in respect of said category of employees on 22.11.1996, No action was taken and thereafter notice for initiating proceeding u/s 7A(3) of the Act was issued on 22.01.1997. Petitioners submit that immediately, thereafter reply was filed on 1.3.1997 mentioning therein that they are employees of Contractors and there does not exist master and servant relationship in between the Driver and petitioner's institution. Thereafter proceedings u/s 7A(3) of the Act has been finalized on 7.4.1997 and said amount has been worked out and has been realized from the establishment by attaching the account of institution u/s 8(F) of the Act. At this

juncture petitioner has approached this Court contending therein that entire proceedings are void and without jurisdiction.

3. Counter affidavit has been filed and therein it has been sought to be contended that rightful proceedings have been initiated against the petitioner and contractors, driver are fully covered under the definition of employee of the establishment as per definition u/s 2(f) of the Employees Provident Fund and Miscellaneous Provisions Act, 1952, consequently, there is no shortcoming in the proceeding taken.

4. After pleadings mentioned above, have been exchanged, present writ petition is being taken up for final hearing and disposal with the consent of the parties.

5. Sri Shakti Swaroop Nigam, learned Counsel for the petitioners contended with vehemence that in the present case none of the condition of the Section 2(f) of Employees Provident Fund and Miscellaneous Provisions Act, 1952 was attracted for the simple reason that contractors and driver were not discharging their duty exclusively relating to the work of the establishment and the Buses were simply hired and as such petitioner's institution cannot be forced to pay Provident Fund contribution qua the employee, whose identity is unknown, as such writ petition deserves to be allowed. He has relied upon the Judgment in the case of Spring Dales School and Ors. v. Regional, Provident Fund Commissioner and Anr. 2006 (108) FLR 908, for the said preposition.

6. Learned Standing Counsel on the other hand contended that definition of Section 2(f) of Employees Provident Fund and Miscellaneous Provisions Act, 1952 is very vide and in the fact and circumstances of the present case, driver of contractors were fully covered within the definition of the employees, as such no interference is warranted.

7. After respective arguments have been advanced, undisputed factual position, which is emerging is that for carrying school children institution in question has engaged various bus operators on contract basis. Definition provided for u/s 2(f) of Employees Provident Fund and Miscellaneous Provisions Act, 1952. reads as follows:

2(F) employee means any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an establishment), and who gets his wages directly or indirectly from the employer, and includes any person-

(i) employed by or through a contractor in or in connection with the work of the establishment;

(ii) engaged as an apprentice, not being an apprentice engaged under the Apprentices Act, 1961 (52 of 1961), or under the standing orders of the establishment.

8. Perusal of the definition would go to show that employee means any person

who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an establishment, and who gets his wages directly or indirectly from the employer, and includes any person employed by or through a contractor in or in connection with the work of the establishment. Condition precedent for accepting some one as employee is that he/she should be working in or in connection with the work of the establishment, and wages are paid directly or indirectly through the employer. Same is inclusive of any person, who are employed by or through a Contractor, in or in connection with the affair of the institution. Thus before fixing liability, finding will have to be returned by competent authority that work is being performed by incumbent in or in connection with the work of establishment, and wages are paid directly or indirectly through the employer. The incumbent who is working in or in connection with the affairs of the establishment, and is paid wages directly or indirectly, certainly his identity will have to be got disclosed, on the basis of available evidence or on the basis of enquiry/survey so that necessary contribution, qua the said employee is deposited, after assessment. In the order dated 7.4.1997, passed by Assistant Provident Fund Commissioner, definition of employee has been noted, in half, by mentioning that, persons employed by or through contractor in connection with the work of establishment are the employees of the establishment for the purposes of provident fund. The second requirement has been totally ignored, i.e. employed for wages, and same is paid directly or indirectly by the employer through the Contractor. In the impugned order also, qua the first condition, finding has been returned, that M/s Delhi Public School has entered into contract with transporter to engage buses for carrying students, from their house to school and return and thus the buses engaged and driver/conductors deployed are working in connection with the work of establishment. On the basis of this finding, it has been mentioned, that establishment, is liable to pay Provident Fund dues, in respect of transporter/contractor employee who are engaged in or in connection with the work of establishment, as such dues are determined. On the second pre-requisite condition, that their wages are paid directly or indirectly by the employer through the contractor, there is complete silence maintained in the order, whereas before proceeding to determine the dues, finding on the said aspect of the matter ought to have been returned. Non recording of finding on the second aspect of the matter clearly vitiated the order, as finding on this score, would have disclosed, the identity of employee for whose benefit order was being passed. After passing of the order dated 7.4.1997, on 23.4,1997 Principal of the institution asked Commissioner Provident Fund to disclose the identification of the persons in whose favour, assessment has been made so that amount in question is deposited. To this request, reply has been submitted on 7.5.1997, that identification of persons employed directly or through or by contractor is responsibility of principal employer under E.P.F. Act, 1952 and scheme formed thereunder, as such amount be deposited. To this letter reply was submitted on 19.6.1997 reiterating therein, that drivers/conductors are neither direct/indirect employee, owners of the bus are operating, and petitioners are there esteemed

customers, whom they are serving. Drivers/Conductors have never been employed by petitioners, and even their identity is not known. The issue raised by petitioners, in fact has not at all been adverted too, and thereafter, amount in question has been recovered from Canara Bank, Ghaziabad. This is a glaring case, where without there being any adjudication, as to who is the employee for whose benefit order is being passed straight way, liability has been fastened. Consequently, order dated 7.4.1997, is unsustainable on the face of it, and is liable to be quashed, and same is accordingly set aside, and the consequential order dated 29.7.1997 is also set aside. The matter is remitted back to be decided afresh, by Regional Provident Fund Commissioner, Meerut within next two months, from the date of receipt of certified copy of the order.

9. Counsel for the petitioner, at last requested that matter be not remitted back and same be decided by this Court, as has been done in the case of Spring Dales School v. Regional, Provident Fund Commissioner and Anr. 2006 (108) FLR 908, wherein in similar set of circumstances, proceedings were dropped.

10. Here in the present case copy of the contract has not at all been appended by the petitioner and in the counter affidavit reference has been given but copy of the same has not been appended. In the counter affidavit categorical reference has been given that school authority were paying charges to meet transportation charges and salary of bus driver and conductor was paid directly by school authority and School authority has control over the contractor. Said statement of fact has not been disputed, as such in this fact and in this circumstances, it would be appropriate that the matter be decided by the authority concerned, and not by this Court, as same would require factual adjudication. Consequently, said judgment will not come to the rescue of petitioner.

11. Consequently, writ petition is allowed.

12. No order as to cost.