
(2006) 10 DEL CK 0105
In the Delhi High Court
Case No : WP (C) No. 1671 of 1998

Delux Hosiery

APPELLANT

Vs

Presiding Officer, Employees Provident Fund Commissioner
and Others

RESPONDENT

Date of Decision : 05-10-2006

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 2
Industrial Disputes Act, 1947 — Section 7A

Citation : (2006) 10 DEL CK 0105

Hon'ble Judges : S.N. Dhingra, J

Bench : Single Bench

Advocate : T.C. Gupta, for the Appellant; R.C. Chawla, for the Respondent

Final Decision : Allowed

Judgement

Shiv Narayan Dhingra, J.—By this writ petition, the petitioner has assailed the legality of order dated 22nd August, 1997 passed by E.P.F. Appellate Tribunal dismissing the appeal of the petitioner.

2. Briefly, the facts are that the petitioner's establishment was started on 4th January, 1985. On 22nd October, 1989, two inspectors of Central Inspection Squad from the provident fund department visited the petitioner's establishment and inspected records. Inspectors found that the petitioner's establishment was found employing 21 persons from September, 1989. The records showed that while prior to September, 1989, the number of employees varied between 16 and 14 but in September and October, 1989, 21 employees were working in the establishment. After the inspection was done, which was counter signed by the directors of the petitioner's company, the director made a statement as under:

As we are employing 21 workers as on 1st September, 1989 and thereafter till date, we request you to cover us under Provident Fund and code number may be allotted to us at the earliest. We have not furnished/given any information/documents to your department earlier. We have got no objection to the coverage

of factory as requested in above.

3. A list of 21 employees working in the factory along with their wages was prepared and it was counter signed by the director. After the above inspection, a report was forwarded to the Regional Provident Fund Commissioner with the following recommendation:

The establishment has 21 workers as on September, 1989 as per the list of working workers given by the employer. It is Therefore coverable provisionally with effect from 1.9.1989(September, 1989) subject to fixation of its date of coverage by the area Provident Fund Commissioner examining attendance/wages registers etc on the basis of records maintained by the establishment. The names of directors and their addresses were also noted down. The directors were all residents of Gaziabad. The date of commencement of production was noted as 4th January, 1985. The establishment was registered as a small scale unit on 12.8.1985.

4. After inspection, the petitioner's establishment was previously covered under the E.P.F. Act and a provident fund code was issued to it. A letter dated 17th October, 1990 was written to the petitioner by Regional Provident Fund Commissioner informing about the coverage of the establishment. The establishment made a representation on 13th April, 1993, alleging that no opportunity of hearing was given to it to show that it had been brought within the coverage of the Act mistakenly. This representation of the management was considered, and vide an order dated 2.5.1995 u/s 7-A of the Act, the Regional Provident Fund Commissioner held that the establishment was rightly brought under the purview of the Act with effect from 1st September, 1989. Against this order, the petitioner preferred an appeal and the same was dismissed by the impugned order. The Tribunal came to conclusion that the record produced seem to have been prepared at one go. He dismissed the appeal holding that in the record the real number of workers have been suppressed and the statutory entries regarding the workers have not been made.

5. The petitioner has challenged the order of E.P.F. Appellate Tribunal on the ground that the reliance on the report of Inspection Squad, placed by R.P.F.C and by the Appellate Tribunal was wrong. The Regional Provident Fund Commissioner, in his order, observed that the establishment was employing 14 employees generally and it employed 21 employees during September and October, 1989. In view of these observations, the establishment could not have been covered under the provisions of the Act. It is also alleged that the principles of natural justice were not followed by Regional Provident Fund Commissioner who concluded the proceedings u/s 7A of I.D. Act within three dates only. It is further pleaded that strength of 20 employees has to be considered by reading Section 2(f) and paragraph 26 of Provident Fund Scheme together. The findings and observations of RPFC and Tribunal were perverse since four of the employees, mentioned in the list, had tendered their resignation with effect from 1st September, 1989 and in fact there were only 17 employees and not 21

employees. The Inspectors refused to take notice of these resignations. The petitioner was entitled for five years infancy period w.e.f. its establishment in 1985 and could not have been covered under E.P.F. Act till 1990.

6. I have gone through the record and the inspection report prepared on 23rd October, 1989. A perusal of inspection report and the record would show that the inspectors had truly and correctly recorded number of employees working in the establishment. Up to August, 1989, the number has been shown between 16 and 14 and only in September, 1989 and October, 1989, the number of employees working were 21. The director in his own handwriting made an endorsement at the bottom of report that in view of the fact that 21 employees were working in the factory with effect from 1st September, 1989, the establishment may be covered under E.P.F. Act and provident fund code be supplied to the establishment. The inspection was done on 23rd October, 1989. The director of the establishment who made endorsement was a well-educated person. He did not lodge any report to the authorities that he was forcibly made to write the endorsement or he had not supplied the list of the workmen to the inspectors. For the first time, the representation was made in 1993 i.e. after about four years of writing the endorsement. I consider that where an admission of a fact is made and later on a plea is taken that the admission was extracted under coercion, such a plea cannot be believed except for strong reasons. The first thing to be looked into is if retraction was immediate or much later on advise of somebody. A retraction of admission later on can be made with a design and with ulterior motives.

7. The plea of the petitioner that four of the workmen had resigned and their resignations were not considered by Inspectors, is also baseless. These resignation letters are on record. It only seems that they have been obtained subsequently from the workmen merely to reduce the employees strength in the establishment.

8. The petitioner raised a strong plea that it was entitled for an infancy period of five years in view of the amendment made in the Act in 1960. The petitioner relied upon S.L. Srinivasa Jute Twine Mills P. Ltd. v. Union of India and Anr. 2006(2) Scale, wherein Supreme Court had noted the position of Section 16 at different points of time in paragraphs 6,7, 8,9 & 10 of the judgment, which read as under:

6. "The position of Section 16 at different points of time can be noticed. Section 16 as originally enacted read as follows:

16. Act not to apply to factories belonging to Government or local authority and also to infant factories.

This Act shall not apply to -

(a) any factory belonging to the government or a local authority, and

(b) any other factory established whether before or after the commencement, of

this Act unless three years have elapsed from its establishment. (para 6)

7. Section 16 was amended by the Employees' Provident Funds (Amendment) Act, 1958 and Sub-section (1) of Section 16 of the Principal Act was substituted as under:

(1) This Act shall not apply to any establishment until the expiry of three years from the date on which the establishment is, or has been set up.

Explanation : For the removal of doubts it is hereby declared that an establishment shall not be deemed to be newly set up merely by reason of a change in its location".(para 7)

8. Section 16(1) was once again amended by the Employees' Provident Funds (Amendment) Act, 1960 and Sub-section (1) of Section 16 was substituted as under:

(1) This Act shall not apply:

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

(b) to any other establishment employing fifty or more persons or twenty or more but less than fifty persons until the expiry of three years in the case of former and five years in the case of the latter, from the date on which the establishment is, or has been set up.

Explanation: For the removal of doubts, it is hereby declared that an establishment shall not be deemed to be newly set up merely by reason of a change in its location.(para 8)

9. Section 16 was further amended by the Employees' Provident Funds and Miscellaneous (Amendment) Act, 1988 with effect from 1.8.1988, and Clause(b) of Sub-section (1) of Section 16 was substituted by Clauses(b), (c) and (d) and the said amendment to Section 16 is as under:

(b) to any other establishment belonging to or under the control of the Central Government of the 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 benefit; 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; or

(d) to any other establishment newly set up, until the expiry or a period of three years from the date on which such establishment is, or has been set up.(para 9)

10. Thereafter, Section 16 was again amended by Employees' Provident Funds and Miscellaneous Provisions (Amendment) Act, 1988, omitting Clause(d) with Explanation in Sub-section(1) of Section 16 with effect from 22.9.1997. (The said omission was initially carried out by Ordinance No. 17/1997 promulgated on 22.9.1997 followed by Ordinance No. 25/1997 dated 25.12.997 and Ordinance No. 8 of 1998 dated 23.4.1998 followed by Act 10 of 1998). (para 10).

9. Since Section 16 of the Act had undergone amendment from time to time and infancy period changed from time to time, the question before the Supreme Court in the above case was whether the petitioner would be governed by unamended provisions or amended provisions of the Act regarding infancy period. Supreme court in Paragraphs 13, 14 and 18 observed:

In Jayantilal Amrathlal Vs. The Union of India (UOI), , it has been laid down as under:

In order to see whether the rights and liabilities under the repealed law have been put to an end by the new enactment, the proper approach is not to enquire if the new enactment has by its new provisions kept alive the rights and liabilities under the repealed law but whether it has taken away those rights and liabilities. The absence of a saving clause in a new enactment preserving the rights and liabilities under the repealed laws is neither material nor decisive of the question.

In Govind Das and Others Vs. The Income Tax Officer and Another, , it was laid down that:

Now it is well settled rule of interpretation hallowed by time and sanctified by judicial decisions that unless the terms of a statute expressly so provide or necessarily require it, retrospective operation should not be given to a statute so as to take away or impair an existing rights or create a new obligation or impose a new liability otherwise than as regards matters of procedure. The general-rule as stated by HALSBURY in Vol.36 of the LAWS OF ENGLAND(3rd Edn,) and reiterated in several decisions of this Court as well as English Court is that all statutes other than those which are merely declaratory or which related only to matters of procedure or of evidence are *prima facie* prospective and retrospective operation should not be given to a statute so as to affect, alter or destroy an existing right or create a new liability of obligation unless that effect cannot be avoided without doing violence to the language of the enactment. If the enactment is expressed in language which is fairly capable of either interpretation, it ought to be construed as prospective only.

It is a cardinal principle of construction that every statute is *prima facie* prospective unless it is expressly or by necessary implication made to have retrospective operation. (See Keshavan Madhava Menon Vs. The State of Bombay, But the rule in general is applicable where the object of the statute is to affect vested rights or to impose new burdens or to impair existing obligations. Unless there are words in the statute sufficient to show the intention of the Legislature to affect existing rights, it is deemed to be prospective only "nova

Constitution futuris format imponere debet non praeteritis". In the words of LORD BLANESBURG," provisions which touch a right in existence at the passing of the statute are not to be applied retrospectively in the absence of express enactment or necessary intendment."(See AIR 1927 242 (Privy Council) "Every statute, it has been said", observed LPOES, L.J., "which takes away or impairs vested rights acquired under existing laws, or creates a new obligation or imposes a new duty, or attaches a new disability in respect of transactions already past, must be presumed to be intended not to have a retrospective effect."(see Amireddi Rajagopala Rao and Others Vs. Amireddi Sitharamamma and Others, As a logical corollary of the general rule, that retrospective operation is not taken to be intended unless that intention is manifested by express words or necessary implication, there is a subordinate rule to the effect that a statute or a section in it is not to be construed so as to have larger retrospective operation than its language renders necessary.(See Reid v. Reid (1886) 31 Ch. D 402 . In other words close attention must be paid to the language of the statutory provision for determining the scope of the retrospectively intended by Parliament. (See Union of India (UOI) and Another Vs. Raghubir Singh (Dead) by Lrs. Etc., .The above position has been highlighted in "Principles of Statutory Interpretation by Justice G.P. Singh.(Tenth Edition, 2006) at PP. 474 and 475).

11. In above case, the petitioner's organization had come into existence prior to the amendment whereby the infancy period was altogether removed from the statute. The Supreme Court held that the petitioners would be entitled to protection as had accrued to them on the date when the establishment was set up. Arguing on this line, the present petitioner submitted that petitioner's establishment came into existence in 1985 i.e. prior to the amendment of the Act in 1988. By this amendment, the infancy period was reduced for a factory employing less than 50 persons from five years to three years. The petitioner would be governed by unamended provisions and would be entitled to five years infancy period.

12. It is not disputed that the petitioner's organization came into existence in 1985. At the time when the petitioner's establishment was started, the infancy period was five years for the establishment employing 20 or more persons but less than 50 persons. The petitioner shall be entitled to an infancy period of five years and the petitioner would be exempted from provision of E.P.F. Act up to 4th January, 1990 and the petitioner could be covered only after 4th January, 1990 if the petitioner had 20 or more employees.

13. In view of the above discussion, the writ petition of the petitioner is liable to be allowed. The petitioner's establishment would be exempted from the provisions of the E.P.F. Act due to statutory protection available to the petitioner of infancy period up to 4th January, 1990 and it could be covered only after 4th January, 1990 if, satisfied the conditions as required under EPF Act. The writ petition is allowed. The matter is remanded back to EPF Tribunal to determine the applicability of the Act, taking into account the number of employees etc as

employed by the petitioner from 5th January, 1990 onwards.