

(2012) 06 KL CK 0039

In the High Court Of Kerala

Case No : Writ Petition (C) . No. 12585 of 2012 (W)

E.J. Varkeychen

APPELLANT

Vs

Employees' Provident Fund Appellate Tribunal, Scope Minar,
Core II, 4th Floor, Laxmi Nagar, New Delhi-110092 and
Employees' Provident Fund Organization, Sub Regional
Office, Chalakuzhy Building, CMS College Road, P.B. No. 36,
Kottayam-686001

RESPONDENT

Date of Decision : 01-06-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2012) 06 KL CK 0039

Hon'ble Judges : K. Surendra Mohan, J

Bench : Single Bench

**Advocate : B. Ashok Shenoy and Smt. Lakshmi B. Shenoy, for the Appellant;
Joy Thattil Itoop, S.C. Advocate, for the Respondent**

Final Decision : Dismissed

Judgement

Justice K. Surendra Mohan

1. The petitioner has filed this writ petition aggrieved by Ext. P3 Order of the Employees Provident Fund Appellate Tribunal. The issue is regarding coverage of the petitioners establishment for the period from 1.04.1999 to 1.11.2009. The petitioner's establishment has been covered by the provisions of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (the Act for short) with effect from 1.11.2009. Prior to the coverage of the petitioner's establishment, the 2nd respondent had initiated proceedings u/s 7(A) of the Act seeking to cover the establishment with effect from 1.4.1999. The petitioner disputed the applicability of the Act contending that the number of employees in this establishment was below the statutory minimum. However, the said contention was rejected by the 2nd respondent and a determination order was passed, which is Ext. P2. The petitioner had challenged the same before the Appellate

Tribunal. Ext. P3 is the order thereof. According to M/s. Ashok B. Shenoy who appears for the petitioner, the Appellate Authority has found categorically that the number of employees in the petitioner's establishment was eighteen, which included a Plumber, Electrician and Gardener. In view of the fact that the records produced reveal that the number of employees in the petitioner's establishment was less than twenty, it has been held in Ext. P3 that there is no material on record to hold that the staff strength of the petitioner's establishment was twenty. For the above reason it has been held that the provisions of the Act are not applicable to the petitioner's establishment. However, the Tribunal has directed the 2nd respondent to determine the strength of the employees of the petitioner's establishment afresh. The petitioner is aggrieved by the said direction in Ext. P3.

2. According to the counsel for the petitioner, having found that the petitioner's establishment had not employed the statutorily stipulated number of employees, there is no justification for a remand of the matter for fresh consideration. It is the further case of the petitioner that all the records had been produced before the 2nd respondent and therefore, the further enquiry ordered is only a futile exercise that would put the petitioner to needless trouble and hardships. Pursuant to Ext. P3, Ext. P4 notice has been issued by the 2nd respondent directing the petitioner to produce the records listed therein. The petitioner therefore contends that Ext. P3 to the extent it directs the issue to be inquired into afresh is liable to be set aside.

3. Adv. Joy Thattil Ittoop appears for the 2nd respondent.

4. It is no doubt true that the Appellate Authority has found in Ext. P3 that the number of employees in the petitioner's establishment was below the statutorily stipulated minimum. After considering the issue, the Appellate Tribunal has concluded the issue in the following words.

In this case, the appellant has relied upon the muster roll which reveals that the staff strength of the appellant establishment is 18 and the muster roll also includes the Plumber, Electrician and the Gardner who were included in the list supplied by the respondent. So, as the record reveals that the staff strength of the appellant establishment even after including the Plumber, Electrician and the Gardener does not reach 20. So, there is no material on record to hold that the staff strength of the appellant establishment was 20 and the EPF Act applies to the establishment.

It is clear from the above that the Appellate authority has found the petitioner's establishment to have employed only less than twenty persons at the relevant time. However, the finding is on the basis of the records produced. The petitioner can certainly take advantage of the above findings in any enquiry that is subsequently conducted by the 2nd respondent. Since the authority in spite of the above, wanted the issue to be determined afresh, the authority has directed the 2nd respondent to conduct a fresh enquiry. It cannot be said that the

direction of the Appellate Tribunal is without any justification. The Tribunal apparently wanted the 2nd respondent to inquire whether any other material or evidence was available. I am not satisfied that the said direction requires to be interfered with, in exercise of my jurisdiction under Article 226 of the Constitution.

For above reasons, I do not find any grounds to entertain this writ petition. The same is accordingly dismissed.