(2010) 05 AHC CK 0075

In the Allahabad High Court

Case No : W.C. No. 27971 of 1995

Gorware Electronics Ltd. APPELLANT

Vs

Regional Provident Fund Commissioner and Another RESPONDENT

Date of Decision : 10-05-2010

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 2

Citation : (2010) 126 FLR 921 : (2010) 4 LLJ 282

Hon'ble Judges : Dilip Gupta, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Dilip Gupta, J.—The petitioners have sought the quashing of the order dated May 5, 1995 passed by the Regional Provident Fund Commissioner, Meerut by which he has held that the provisions of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the ''Act'') will also apply to the trainee employees of the, petitioner-Company and has directed for enrolment of the trainees under the Act.

2. On December 12, 2006, notices were issued to the respondents by registered post to engage another counsel fixing January 22, 2007, but till date no counsel has put in appearance on behalf of the respondents and nor has any counsel appeared to oppose the petition even in the revised list.

3. It is the submission of Ms. Manisha Ambwani, learned Counsel for the petitioners that ''trainee'' employees are not ''employees'' u/s 2(f) of the Act and in support of her contention she has placed reliance upon the decision of the Supreme Court in the The Regional Provident Fund Commissioner, Mangalore Vs. Central Aercanut and Coca Marketing and Processing Co-op. Ltd., Mangalore,

4. In this connection, she has pointed out that though the petitioner-Company is covered under the provisions of the Act, but the trainees are engaged for providing them facility for learning in various Sections of manufacturing'' process

and it is not necessary for the Management to provide employment on completion of training and during such period of training they are merely paid stipend.

5. Under Clause 3(F) of the Certified Standing Orders, Apprenticed rainee is a learner who has been engaged to learn a job, trade or craft, for training for a specified period whether governed under the Apprenticeship Act, 1961 or otherwise. It further provides that the stipend shall be payable to such apprentice/trainee. It is, therefore, her submission that the ''trainees'' are not; employees.

6. In The Regional Provident Fund Commissioner (supra), the Supreme Court observed as follows 2006-I-LLJ-995 at p. 997:

10. In the present case, admittedly the Standing Orders were not at the relevant point of time certified. Therefore, in terms of Section 12-A of the Standing Orders Act, the Model Standing Orders are deemed to be applicable. Section 2(f) of the Act defines an employee to include an apprentice, but at ''the same time makes an exclusion in the case of an apprentice engaged under the Apprentices Act or under the Standing Orders. Under the Model Standing Orders an apprentice is described as a learner who is paid allowance during the period of training.

11. In the case at hand, trainees were paid stipend during the period of training. They had no right to employment, nor any obligation to accept any employment, if offered by the employer. Therefore, the trainees were ''apprentices'' engaged under the ''Standing Orders'' of the establishment.

12. Above being the position, it cannot be said that the concerned 45 trainees were employee in terms of Section 2(f) of the Act. In other words, an apprentice engaged under the Apprentices Act or under the Standing Orders is excluded from the definition of an ''employee'' as per Section 2(f) of the Act.

7. In view of the aforesaid decision of the Supreme Court and in view of the definition of Trainee in the Standing Orders it has to be held that ''trainees'' in the petitioner-Company are excluded from the definition of an ''employee'' u/s 2(f) of the Act. Accordingly, the order dated May 5, 1995 passed by the Provident Fund Commissioner, Meerut cannot be sustained and is set aside.

8. The writ petition is allowed. No order as to costs.

