

(1989) 09 KAR CK 0017
In the Karnataka High Court
Case No : Writ Petition No. 4553 of 1981

Harihar Polyfibres

APPELLANT

Vs

Regional P.F. Commissioner, Bangalore

RESPONDENT

Date of Decision : 25-09-1989

Acts Referred:

Constitution of India, 1950 — Article 226
Employees Provident Fund and Miscellaneous Provisions Act, 1952 — Section 12, 17, 7
A

Citation : (1989) 3 KarLJ 39 : (1991) 2 LLJ 477

Hon'ble Judges : Rajendra S. Babu, J

Bench : Single Bench

Judgement

1. This petition under Article 226 of the Constitution of India is directed against an order made u/s 7A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as "the Act"). The subject-matter in dispute is in relation to 33 employees. The petitioner-establishment is covered by the provisions of the Act with effect from January 1, 1975, when it voluntarily made an application to the respondent that the provisions of the Act be made applicable to it although it was covered by Section 16(1)(b) of the Act, and notification in that regard had also been issued u/s 1(4) of the Act. Subsequently, the petitioner sought for exemption u/s 17(1) of the Act in respect of certain class of employees. The respondent, by his letter dated November 12/19, 1975, stated that such an exemption cannot be granted in respect of a class of employees u/s 17 of the Act and that they were to make their contributions at the rate of 10% in respect of such employees if the employer and the employee desire. However, it is the case of the petitioner that the employees in respect of whom such an exemption was sought for were all excluded employees as provide in the scheme inasmuch as their salary was below Rs. 1,000 during the relevant period. Inasmuch as they were not exempted under the Act and the petitioner having opted to be governed by the Act agreeing to pay at 8% of the salary in respect of each of the employees and

as there was failure by the petitioner to pay at the rate of 10% the respondent initiated action u/s 7A of the Act stating that the petitioner is bound to pay at the old rate which it was paying, namely, at 10 per cent, as it was not entitled to reduce the percentage of the contribution in view of Section 12 of the Act. To that, a detailed reply was filed by the petitioner pursuant to which an enquiry was also conducted by the respondent. Not being satisfied with the objections filed by the petitioner the respondent made an order directing the petitioner to make contributions totalling to Rs. 1,40,483 being the difference of provident fund contribution calculated at the rate of 10 per cent. Being aggrieved by this order the petitioner has approached this Court.

2. Learned Counsel for the petitioner contended that the respondent is not justified in demanding more than 8 per cent which is the statutory requirement under the Act, and that Section 12 of the Act is not at all applicable in this case. It was also contended that inasmuch as employees' rights would also be affected by reason of this approach of the respondent they ought to have been afforded an opportunity in view of the decision of this Court in *S. P. Kamath v. Regional Provident Fund Commissioner* (1985) 1. Kar. LJ. 27.

3. Countering these contentions learned Counsel for the respondent submitted that once having come under the coverage of the Act voluntarily or otherwise, the parties cannot opt out of the same and contribution ought to be paid at the same rate at which it was paying earlier and in view of Section 12 of the Act such a course of action is perfectly justified. He strongly relied upon the provision of Section 12 of the Act as well as a decision of Bombay High Court in *Consolidated Crop Protection Pvt. Ltd. Vs. V. Hema Chandra Rao*,

4. In view of the nature of contentions advanced on either side what falls for consideration is the scope of Section 12 of the Act. Section 12 reads as follows :

"12. Employer not to reduce wages, etc. - No employer in relation to an establishment to which any Scheme or the Insurance Scheme applies shall, by reason only of his liability for the payment of any contribution to the Fund or the Insurance Fund or any charges under this Act or the Scheme or the Insurance Scheme, reduce, whether directly or indirectly, the wages of any employee to whom the Scheme or the Insurance Scheme applies or the total quantum of benefits in the nature of old-age pension, gratuity, provident fund or life insurance to which the employee is entitled under the terms of his employment, express or implied."

Even a bare reading of this provision will disclose that what is forbidden under this section is reduction of wages or the total quantum of benefits in the nature of old age pension, gratuity, or provident fund to which under the contract an employee was entitled, by reason of the liability of the employer to the fund. What is prohibited is the reduction by reason of employer's liability for payment of contribution to the Fund. The syntax and the phraseology will unambiguously disclose that the only construction possible of this section is as stated earlier.

Therefore, with great respect to the learned Judge of the Bombay High Court I must say that Section 12 in the present context has no application at all unless it is established that the reduction in items mentioned in the section is by reason of the liability arising under the Act. That is not the contention at all in the present case. In this case, there is no reduction in benefits by reason of the liability arising under the Act but, on the other hand, both the employer and the employees had voluntarily offered to pay at 8% and not at 10%. This is evident from the statement of 17 employees filed before the respondent. When the parties voluntarily wanted to be covered by the Act it is no doubt true that they are completely and fully governed by the Act after the notification u/s 1(4) is made. But their liability to make contributions is controlled by Section 6 of the Act which fixes the statutory limit by which they can make the contributions and in such circumstance if they agree to pay in figures above that amount but less than what had already been agreed to, Section 12 has no relevance at all. Section 12 has relevance only in a case where the amount is reduced in benefits or items by reason of the liability arising under the Act. But that is not the situation here at all. Above all, all these 33 employees come under the category of excluded employees under the scheme. If they are excluded employees then to insist upon them to make payment at a particular rate is not at all justified. In that view, the order made by the respondent is wholly illegal.

5. In addition, when 17 employees had in fact made their statement before the respondent that they were willing to contribute to the fund only at 8% the matter should have been put an end to. But the respondent went ahead and passed the impugned order without hearing all the employees which is opposed to the decision of the Court referred to earlier. That is an additional ground why the order of the respondent is not at all correct. The learned Counsel for the respondent in order to meet his conclusion submitted under paragraph 32 of the Scheme a member's share of contribution will not be recovered by means of deduction from wages of that member other than that which is paid in respect of the period for which his wages are paid and, therefore, submitted that the employee's interest in any way is not affected inasmuch as the employer alone is saddled with the liability under the Scheme. This argument has not impressed me at all. Even assuming for a moment that that is so, what would happen for the future period ? This order will govern the future period as well. The parties will have to go on making contributions in the same manner as they have been directed to make for the period in question. Therefore, that would affect the interests of the employees also. In that view of the matter, I find no substance in the contentions raised by the learned counsel for the respondent. Accordingly, this petition is allowed and the order impugned is quashed. Rule made absolute.