(2000) 12 CAL CK 0013

In the Calcutta High Court

Case No : Writ Petition No. 8722 (W) of 1999

Harisons Malayalam Limited and Another APPELLANT

Vs

Regional Provident Fund Commissioner and Others RESPONDENT

Date of Decision : 21-12-2000

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

Citation : (2001) 89 FLR 990 : (2001) 1 LLJ 1160

Hon'ble Judges : Bhaskar Bhattacharya, J

Bench : Single Bench

Advocate : Amit Chakraborty, for the Appellant;Sanjay Mukhopadhyaya and Anil Gupta, for the Respondent

Final Decision : Dismissed

Judgement

Bhaskar Bhattacharya, J.—In this writ application, an employer has challenged an order dated January 27, 1999 and a Memo dated March 25, 1999 communicating the order rejecting an application for review of the order dated January 27, 1999 passed by the Assistant Provident Fund Commissioner.

2. By the order dated January 27, 1999, the employer was asked to deposit a sum of Rs. 46,205/- towards due of provident fund contribution payable by the petitioner for respondent No. 3, a reappointed employee.

3. The respondent No. 3 was an employee of the petitioner No. 1 and having taken voluntary retirement at the age of 54 years 11 months was reappointed as a retainer on payment of Rs. 3,500/- a month initially for a period of one year from March 1, 1993 but such appointment was extended upto February 28, 1998.

4. A notice u/s 7-A of the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952 (''Act'') was served upon the petitioner No. 1 alleging non-payment of dues for the said re-employed employee. Ultimately, at the time of hearing, the representative of the petitioner No. 1 conceded that amount of Rs. 46,205/- was due and payable for non-deposit of provident fund in respect of

respondent No. 3, as a result, order dated January 27, 1999 was passed by the Assistant Provident Fund Commissioner.

5. Subsequently, the petitioner No. 1 applied for review of the aforesaid order by placing reliance upon a decision of the Bombay High Court in the case of Bombay Printers Ltd. and Ors. v. Union of India and Ors., reported in 1992-I-LLJ-816 (Bom). By the order dated March 25, 1999 the prayer of review has been turned down.

6. Being dissatisfied with the original order passed u/s 7-A of the Act as well as the order of review u/s 7-B of the Act, the employer has come up with the instant writ application.

7. Mr. Chakraborty, the learned advocate appearing on behalf of the petitioner has forcefully contended before this Court that once an employee has retired and withdrawn all the provident fund dues, he should be deemed to be an ''excluded employee'' within the meaning of Employees'' Provident Fund Scheme, 1952 (''Scheme'') and as such the Act does not apply to such an employee even if he is re-employed. In support of such contention Mr. Chakraborty has relied upon the decision of Bombay High Court mentioned above. Therefore, the only question that falls for determination in this writ application is whether the benefit of the Act is available to a re-employed person after retirement.

8. For the purpose of appreciating the aforesaid point, the definition of ''employee'' as mentioned in Section 2(f) of the Act of ''exempted employee'' appearing in Section 2(ff) of the Act and of ''excluded employees'' appearing in Section 2(f) of the Scheme are quoted hereunder:

"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 and 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;

2(ff) ''exempted employee'' means an employee to whom a Scheme or the Insurance Scheme, as the case may be, would, but for the exemption granted u/s 17, have applied;

2(f) ''excluded employee'' means

i) an employee who, having been a member of the Fund, withdrew the full amount of his accumulations in the Fund under Clause (a) or (c) of sub-paragraph (1) of paragraph 69;

ii) an employee whose pay at the time he is otherwise entitled to become a member of the Fund, exceeds five thousand rupees per month;

iii) Omitted;

iv) an apprentice;"

9. There is no dispute that the establishment in which the respondent No. 3 was reemployed is not an exempted establishment within the meaning of the Act and the Act applies to such establishment.

10. As the petitioner No. 1 is not exempted u/s 17 of the Act, the provision of the Act will be held applicable if it is established that the respondent No. 3 is an employee, unless of course, he is not an exempted employee as defined in the Act. The definition of ''employee'' appearing in Section 2(f) of the Act as quoted above makes it abundantly clear that even if a person is re-employed at the age of 55 for wages in any kind of work or in connection with the work of an establishment and gets his wages directly or indirectly from the employer, such person will be an employee within the meaning of the Act. I have already pointed out that Section 17 of the Act has no application to the fact of the present case and the respondent No. 3 cannot be otherwise said to be an exempted employee as defined in the Act.

11. The word ''excluded employee'' appearing in para 2(f) of the Scheme is irrelevant for the purpose of determination of the point involved herein. ''Excluded employee'' means a person who was at one point of time a member of the fund but has ceased to be such member under the conditions mentioned therein. Once the respondent No. 3 at the time of voluntary retirement withdrew all the provident fund dues, he became an excluded employee. But the moment he was re-employed, he again became an employee within the meaning of the Act and the provisions of the Act will apply afresh to such an employee. I therefore cannot accept the contention of Mr. Chakraborty that the Act has no application to a person if such a person is employed after attaining the age of 55 or if he is re-employed after withdrawal of all provident fund dues. I have already indicated that the definition of ''excluded employee'' appearing in the Scheme has nothing to do with an employee who is exempted under the Act. A person appointed afresh after voluntary retirement should be deemed to be an employee and as such unless he is exempted, the provisions of the Act will again be applicable to such an employee. With great respect to the learned Judge of the Bombay High Court, I am unable to subscribe to the view taken in the aforementioned decision.

12. Thus, the respondent authority rightly demanded the amount mentioned in the order u/s 7-A of the Act for respondent No. 3, a re-employed employee. Similarly, although I do not approve the reasons assigned in the order passed u/s 7-B of the Act, the ultimate conclusion of rejection of the review application was correct and as such I refuse to interfere with the order passed u/s 7-A or 7-B of the Act on the grounds stated above.

13. The writ application is thus devoid of any substance and is dismissed.

14. No order as to costs.

