

(2005) 11 JH CK 0017
In the Jharkhand High Court
Case No : CWJC No. 3196 of 1995 (R)

Kerala Samajam Model School

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 30-11-2005

Acts Referred:

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

Citation : (2006) 108 FLR 981 : (2006) 1 JCR 178

Hon'ble Judges : Ramesh Kumar Merathia, J

Bench : Single Bench

Advocate : S.L. Agrawal and Rupesh Raj, for the Appellant; P.P.N. Roy and Praveen Kumar, to 3, for the Respondent

Judgement

Ramesh Kumar Merathia, J.—The petitioner has prayed for quashing the order dated 22.8.1995 (Annexure-10) passed by the Regional Provident Fund Commissioner, Jamshedpur (respondent No, 2) holding that eight Canteen employees will be treated to be the employees of the petitioner-school and that benefit of Provident Fund be extended to one Gate Keeper, who was re-employed, after retirement.

2. The petitioner's contention, inter alia, is that the petitioner-school and the Canteen, both are separate and independent bodies under "Kerala Samajam", which is a registered society. It has let out space to the contractor for running the Canteen. The School is in no way connected with the affairs of the canteen. The workers in the Canteen are under the direct control of the contractor who appoints and terminates them. The School does not know what records the said contractor is maintaining. There is no master-servant relationship between the Canteen employees and the School. The School is registered with the Provident Fund Department.

3. Petitioner has also alleged mala fide against respondents No, 2 and 3. It is alleged that on 20.6.1993 Miss. Kamal Kaur daughter of Shri G.D. Singh, Enforcement Officer posted in the office of the then Regional Provident Fund

Commissioner, Mango, Jamshedpur (respondent No. 3) was admitted in Std. VIII-B in the School due to pressure of respondents No. 2 and 3, though she was not qualified. When respondent No. 3 inspected the school on 30.6.1993, 5.8.1993, 14.10.1993 and 3.2.1994, he did not find that the Canteen's employees were the employees of the School. After his daughter failed on 12.3.1994 and the petitioner did not accede to the request of respondents No. 2 and 3 regarding her result, the impugned action was taken.

4. Mr. Agrawal further submitted that respondent No. 2 deliberately and wrongly recorded the submission on behalf of the School. On behalf of the School, it was never submitted that the said canteen is running in the premises of the School. It was a clear and specific case of the petitioner that the canteen is not run within the premises of the School. He referred to paragraph-27 of the writ petition and its reply filed by respondents No. 1 to 3. He further submitted that even the petition of respondent No. 4, dated 8.8.1995 (Annexure-9) supporting petitioner's stand was purposely ignored by respondent No. 2 while passing the impugned order. Thus he submitted that the respondents No. 2 and 3 have acted in a mala fide and biased manner.

5. He also referred to the income and expenditure accounts and the balance sheet of "Kerala Samajam" annexed with the writ petition in support of petitioner's stand. Relying on the judgment reported in Noor Niwas Nursery Public School Vs. Regional Provident Fund Commr. and Others, , Noor Niwas Nursery Public School v. Regional Provident Fund Commissioner and Ors. and Section 2-A of the Act, he submitted that it has to be seen how far there is functional integrity between the school and the canteen and whether one unit can exist conveniently and reasonably without the other and whether in the matters of finance and employment, the employer has actually kept the two units distinct or integrated.

6. Mr. P.P.N. Roy, learned senior counsel appearing for respondents No. 1 to 3 submitted that the allegations of mala fide and bias have been made only to circumvent the main issue. Relying on the definition of "employee" u/s 2(f) of the Act and the said decision of the Supreme Court in the case of Noor Niwas Nursery Public School (supra), he submitted that the employees of the Canteen will be treated to be the employees of the School. Canteen was running within School premises since long in the name and style of "Kerala Samajam Canteen", as a welfare measure.

He further submitted that the stand of the petitioner and respondent No. 4 are contradictory inasmuch as the petitioner contends that the school is a wing of Kerala Samajam whereas Kerala Samajam has stated in the counter affidavit that Kerala Samajam and the School is two different bodies and they have got nothing to do with each other and they have got separate management and their aim and object are also different. He lastly submitted that the proper remedy for the petitioner is to file an appeal where disputed questions of fact can be gone into.

7. In my opinion, asking the petitioner to file an appeal in this case of 1995 will not be properly this stage of hearing.

I am satisfied that the cases of the parties were not considered properly. Moreover the allegation of mala fide and bias cannot be brushed aside. It will be proper that the dispute is adjudicated fairly. Impugned order has been passed mainly on the ground that the Canteen is running in the School premises, as submitted by the School. In view of Section 2-A, the situation is not that important. It has to be seen whether the Canteen is a department or branch of the School as per the parameter indicated in the said judgment of Hon''ble Supreme Court in the case of Noor Niwas (supra).

8. In the circumstances, the order dated 22.8.1995 (Annexure-10) is quashed and the matter is remitted to the Regional Provident Fund Commissioner, Jamshedpur, who will pass a fresh order in accordance with law within three months from the date of receipt of a copy of this order, after hearing the parties and without being influenced by any observation in this order. In order to arrive at correct findings, he may order for holding enquiry by a competent officer. The petitioner and the respondent No. 4 shall cooperate in early disposal of the said proceedings.

9. This writ petition is disposed of with the observations and directions aforesaid. However, there will be no order as to costs.