
(2014) 03 KL CK 0034

In the High Court Of Kerala

Case No : Writ Petition (Civil) No. 9419/2011(B) alongwith W.P. (C) No. 9753/2011 and W.P. (C) No. 19479/2011

Malabar Business Centre (P) Limned

APPELLANT

Vs

Employees" Provident Fund Appellate Tribunal

RESPONDENT

Date of Decision : 10-03-2014

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 2, 7A
Payment of Wages Act, 1936 — Section 2

Citation : (2014) 143 FLR 907 : (2014) 3 LLN 417 : (2014) LLR 807

Hon'ble Judges : K. Vinod Chandran, J

Bench : Single Bench

Advocate : E.K. Nandakumar, K. John Mathai, P. Benny Thomas and P. Gopinath, Advocate for the Appellant; Thomas Mathew Nellimoottil, SC, P.F, Advocate for the Respondent

Judgement

K. Vinod Chandran, J.—The issue raised in all these writ petitions is whether the trainees appointed under a certified standing orders so certified under the Industrial Employees (Standing Orders) Act, 1946, (for short "Standing Orders Act") can be covered under the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (for short "EPF Act"). The employers, in all the above writ petitions, are Private Limited Companies engaged in the business of manufacture and sale of jewellery. The determination orders under Section 7A of the EPF Act determining contributions to be payable on behalf of the trainees also were challenged in appeal before the Tribunal. In W.P. (C) 19479/2011, the EPF W.P. (C) 9419, 9753 & 19479 of 2011 Organization assails the Tribunal's orders which set aside the determination order of the authorized Officer of the Organization, in the other two writ petitions, the determination orders were upheld by the Tribunal and the employers are before this Court, challenging such orders of the Tribunal confirming the order of the Organization.

2. In fact, the determination order in W.P. (C) 19479/2011 has extracted the definition of "Industrial Establishment" under the Standing Orders Act and the

Payment of Wages Act, 1946 to find that the petitioners who are the employers herein, would not be covered under the definition in either of the enactments. Admittedly, the employers herein have submitted standing Orders under the Standing Orders Act, before the Certifying Officer and obtained certification under the Act. The employers had W.P. (C) 9419, 9753 & 19479 of 2011 also engaged trainees as permissible under the certified Standing Orders; who are now sought to be covered under the EPF Act. The definition of "Employee" under the EPF Act, being clause (f) of Section 2, clearly exempts apprentice who has been appointed under the Apprentices Act, 1961 or under the Standing Orders of the Establishment. A trainee appointed under the certified Standing Orders, hence, would be exempted from the purview of the EPF Act.

3. A contention is raised by the Provident Fund Organization with respect to the employers/assessee herein being termed "Industrial Establishment" as per the Standing Orders Act or Payment of Wages Act. Section 2(e) of the Standing Orders Act defines "Industrial Establishment" inter alia as an Industrial Establishment as defined in clause (ii) of Section 2 of the Payment of Wages Act. Sub-W.P. (C) 9419, 9753 & 19479 of 2011 clause (f) of clause (II) of Section 2 of the Payment of Wages Act, includes "workshop or other Establishment in which articles are produced, adapted or manufactured, with a view to their use, transport or sale". Hence the Private Limited Companies herein, who manufacture jewellery and have a workshop for such manufacture wherein ornaments are manufactured for the purpose of sale, definitely would be an Industrial or other Establishments as defined under the Payment of Wages Act and hence, would fall within the ambit of the Standing Orders Act. In the circumstances of the petitioners having certified Standing Orders it has to be held that the trainees appointed by the employers are not covered under the EPF Act. On the teeth of such finding, the order of the Tribunal in W.P. (C) 19479/2011 is upheld and the W.P. (C) 9419, 9753 & 19479 of 2011 writ petition stands dismissed. The determination orders of the Tribunal, confirming the determination orders of the authorized Officer of the Organization in W.P. (C) s.9419/2011 and 9753/2011 stand set aside and the writ petitions would hence, stand allowed. Parties are left to suffer their respective costs.