(2019) 12 JH CK 0105

In the Jharkhand High Court

Case No : Letter Patents Appeal No No. 330 Of 2018

M/s Jagaran Prakashan Limited — APPELLANT

Vs

Union Of India And Ors — RESPONDENT

Date of Decision : 09-12-2019

Acts Referred:

Employees' Provident Funds And Miscellaneous Provisions Act, 1952 — Section 2(f), 5, 14
Constitution Of India, 1950 — Article 226

Citation : (2019) 12 JH CK 0105

Hon'ble Judges : Dr. Ravi Ranjan, CJ;Sujit Narayan Prasad, J

Bench : Divison Bench

Advocate : Mrinal Kanti Roy, Prashant Vidyarthi, Anil Kumar Singh, Ruby Pandey

Final Decision : Dismissed

Judgement

1. The instant intra-court appeal has been filed under clause 10 the Letters Patent against the order dated 11.05.2018 passed in W.P. (C) No. 4690 of

2016 whereby and whereunder, the writ Court has refused to interfere with the order dated 08.04.2016 passed by the respondent no. 3-the Regional

Provident Fund Commissioner, Ranchi, by which, the respondent no. 3 came to the conclusion that respondent no. 6 was continuously in service of the

writ petitioner-company even for the period April, 2006 to April, 2009, was an employee within the meaning of Section 2 (f) of the Employees'

Provident Funds and Miscellaneous Provisions Act, 1952 and declared the respondent no. 6 to be eligible for the membership of the Employees'

Provident Funds Scheme.

2. Before entering into the legality and propriety of the impugned order, it requires to refer certain factual aspects of the case which are necessary to

be enumerated here under as:-

According to the writ petitioenr, the respondent no. 6 was appointed as employee of the appellant-company on 01.02.2003 in its Ranchi Branch, but

subsequently he resigned and left the employment on 31.03.2006. During the period i.e., 01.02.2003 to 31.03.2006, he was allotted Employee Provident

Fund (in short 'EPF') A/C No. JH/11003/26 under the provisions of Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (in short the

'Act, 1952') and Employees' Provident Funds Scheme, 1952 (in short the 'Scheme, 1952').

It is the case of the appellant-company that respondent no. 6 again requested for employment and joined the appellant's establishment at Ranchi on

01.05.2009 and superannuated on 17.01.2014 on attaining the age of 60 years, during the second spell of his employment, the respondent no. 6 was

allotted EPF A/C No. JH / 11003/ 365.

It is further case of the writ petitioner-appellant that the respondent no. 6 was not in service of the appellant's company for the period April, 2006 to

April, 2009, aggrived thereof, the respondent no. 6 approached before the Regional Provident Fund Commissioner, Ranchi under the provisions of

Para 26 B of the EPF Scheme, who has passed order dated 08.04.2016 whereby and whereunder the respondent no. 6 had been held to be an

employee of the service of the writ petitioner.

Being aggrieved with the order dated 08.04.2016, the writ petitioner, by invoking writ jurisdiction of the Court under Article 226 of the Constitution of

India has filed writ petition, being W.P. (C) No. 4690 of 2016, wherein the learned Single Judge after calling upon respondent no. 6 as also other

respondents has passed order on 11.05.2018 declining to interfere with the order dated 08.04.2016 passed by respondent no. 3-the Regional Provident

Fund Commissioner, Ranchi, which is the subject matter of present intra-court appeal.

3. Mr. Mrinal Kanti Roy, learned counsel appearing for the writ petitioner-appellant has submitted that it is not a case of conducting an enquiry under

Paragraph 26B of the Scheme, 1952, rather if there was any denial of the deposit of subscription amount of respondent no. 6, the provision as

contained under Section 14 of the Act, 1952 ought to have been resorted to.

Submission has been made that respondent no. 6 initially was appointed but subsequent thereto, had been retrenched and again reinstated in service, as such during the intervening period i.e., from April, 2006 to April, 2009, he had never been an employee of the appellant-writ petitioner within the meaning as prescribed under Section 2 (f) of the Act, 1952 rather according to him, the statutory desposit during the said period, has been paid by the contractor but without taking into consideration the aforesaid aspect of the matter, the respondent no. 3-Regional Provident Fund Commissioner has passed order dated 08.04.2016, which has been declined to be interfered with by the learned Single Judge.

4. Respondent Nos. 2 to 5 have been represented by the learned counsel Mr. Amit Kumar Singh and Respondent No. 6 by Mrs. Ruby Pandey.

5. Learned counsel for the respondents have jointly submitted that the respondent no. 3-Regional Provident Fund Commissioner is having power under Paragraph 26B of the Scheme, 1952 to resolve the dispute as to whether he is entitled or required to become or continue as a member, or as regards the date from which he is so entitled or required to become a member, the decision, thereon of the Regional Commissioner shall be final. The respondent no. 3-Regional Provident Fund Commissioner, under the aforesaid power, has adjudicated the issue by resolving the dispute holding that respondent no. 6 was an employee in the service of the respondents-company for the period pertaining to April, 2006 to April, 2009 as per the definition of employee as mentioned under Section 2(f) of the Act, 1952 and the learned Single Judge, while considering the finding recorded in the order dated 08.04.2016, has declined to interfere with the order passed by Regional Provident Fund Commissioner.

So far as contention raised by learned counsel for the appellant regarding applicability of Section 14 of the Act, 1952 is concerned, submission has been made that Section 14 of the Act, 1952, pertains to imposition of penalty in case of violation of any of the provisions of Act, 1952, as such question of penalty will only come as a result of default and hence, there is no question of applicability of Section 14 of the Act, 1952 at this stage.

6. This Court, after having heard learned counsel for the parties, after going across the pleadings made in the writ petition as also on perusing the order dated 08.04.2016 passed by respondent no. 3-Regional Provident Fund Commissioner and impugned order dated 11.05.2018 passed in W.P. (C)

No. 4690 of 2016, deem it fit and proper to refer certain statutory provisions, before entering into the legality and propriety of the impugned order.

7. The foremost thing, which is to be looked into is the definition of 'employee', which has been mentioned at Section 2 (f) of the Act, 1952, which

reads as under:

2.Definitions. --

(f)â??employeeâ? means any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the

work of an 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;

It is evident from the definition of employee, which means any person who is employed for wages in any kind of work, manual or otherwise, in or in

connection with the work of an 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 Apprentice Act, 1961, or under the standing orders of the establishment.

The aforesaid definition of employee suggests that definition of employee is in exhaustive term since definition contains the word employee means and

includes any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an establishment, and

who gets, his wages directly or indirectly.

8. Section 14 of the Act, 1952 is also required to be referred, which reads as under:

14. Penalties. â?" (1) Whoever, for the purpose of avoiding any payment to be made by himself under this Act, the Scheme, the Pension

Scheme or the Insurance Scheme or of enabling any other person to avoid such payment knowingly makes or causes to be made any false

statement or false representation shall be punishable with imprisonment for a term which may extend to one year, or with fine of five

thousand rupees, or with both.

(1A)An employer who contravenes, or makes default in complying with, the provisions of section 6 or clause (a) of sub-section (3) of section

17 in so far as it relates to the payment of inspection charges, or paragraph 38 of the Scheme in so far as it relates to the payment of

administrative charges, shall be punishable with imprisonment for a term which may extend to three years, but â?

(a) which shall not be less than one year and fine of ten thousand rupees in case of default in payment of the employeesâ?? contribution

which has been deducted by the employer from the employeesâ?? wages;

(b) which shall not be less than six months and a fine of five thousand rupees, in any other case.

Provided that the court may, for any adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a

lesser term

(1B)An employer who contravenes, or makes default in complying with the provisions of section 6-C, or clause (a) of sub-section (3-A) of

section 17 in so far as it relates to the payment of inspection charges, shall be punishable with imprisonment for a term which may extend to

one year but which shall not be less than six months and shall also be liable to fine which may extend to five thousand rupees:

Provided that the court may, for any adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a

lesser term

(2) Subject to the provisions of this Act, the Scheme, the Pension Scheme or the Insurance Scheme may provide that any person who

contravenes, or makes default in complying with any of the provisions thereof shall be punishable with imprisonment for a term which may

extend to one year, or with fine which may extend to four thousand rupees, or with both.

(2A) Whoever contravenes or makes default in complying with any provision of this Act or of any condition subject to which exemption was

granted under section 17 shall, if no other penalty is elsewhere provided by or under this Act for such contravention or non-compliance, be punishable with imprisonment which may extend to six months, but which shall not be less than one month, and shall also be liable to fine

which may extend to five thousand rupees.

It is evident from the aforesaid provision that the penalty is to be imposed in a case where a person is avoiding such payment, knowingly makes or

causes to be made any false statement or false representation shall be punishable with imprisonment for a term which may extend to one year, or with

fine of five thousand rupees, or with both.

9. The Employeesâ?? Provident Funds Scheme, 1952 has been enacted under the provisions of Section 5 of the Employeesâ?? Provident Funds

Act, 1952. The Scheme, 1952 contains a provision, Paragraph 26 B, for resolution of doubts, which reads as under:

26B. Resolution of doubts. â?"If any question arises as to whether an employee is entitled to, or required to become, or continue as, a

member, or as to the date from which he is so entitled or required to become a member, the same shall be referred to the Regional Provident

Fund Commissioner who shall decide the same:

Provided that both the employer and the employee shall be heard before passing any order in the matter.

10. It is evident from the aforesaid provision that the dispute is to be resolved by Regional Provident Fund Commissioner under the Act, 1952.

Paragraph 26 B of the Scheme, 1952 further speaks if any question arises as to whether an employee is entitled or required to become or continue as

a member, or as regards the date from which he is so entitled or required to become a member shall be referred to the Regional Provident Fund

Commissioner to decide the same.

11. The fact of the present case is that the writ petitioner- appellant is not disputing the status of respondent no. 6 as employee for the period prior to

April, 2006 as also after April, 2009 till the date of superannuation.

Further, it is admitted case of the writ petitioner- appellant that for the period from 01.02.2003 to 31.03.2006, the respondent no. 6 has EPF Account

Number, being Employee Provident Fund A/C No. JH 11003/26 and again for the period 01.05.2009 to 17.01.2014 a separate EPF A/C account

number, being EPF A/C No. JH/11003/365 was allotted to respondent no. 6.

12. The dispute pertains to the period April, 2006 to April, 2009, for which, the respondent no. 6, employee, approached before the Regional Provident

Fund Commissioner.

The Regional Provident Fund Commissioner, under Paragraph 26B of the EPF Scheme, 1952, issued notice upon the writ petitioner-appellant calling

upon the writ petitioner to participate in the enquiry, pursuant thereto, the writ petitioner-appellant has appeared in the enquiry and disputed the claim

of subscription of the statutory deposit for the period 04/2006 to 04/2009 but the Regional Provident Fund Commissioner after taking into consideration

the definition of employee, as defined under Section 2(f) of the Act, 1952 as also the fact that no order of termination or re-instatement has been

placed before him, came to a conclusive finding that the employee was in service of writ petitioner-appellant for the period April, 2006 to April, 2009

also.

Aforesaid order was assailed before the writ Court invoking writ jurisdiction of the Court under Article 226 of the Constitution of India but the learned

Single Judge refused to interfere with the impugned order, against which the present appeal has been filed.

13. It is not in dispute that the object and purport of the Act, 1952 is to make provision for the future of the industrial worker after he retires or for his

dependents in case of his early death. The Act has been enacted by way of welfare legislation.

The Hon'ble Apex Court in the case of National Textile Workers' Union etc. Vs. P.R. Ramakrishnan & Ors as reported in AIR 1983 SC 75 has been

pleased to hold that beneficial provision should be considered taking into consideration the dominant purpose of the statute, intention of the legislature

and underlying policy.

14. It is in the background of aforesaid settled position of law since the very intent and purpose of the Act is to make provision for the future of the

industrial worker after he retires or for his dependents in case of his early death, this Court has examined the issue.

It is settled position of law, as has been referred herein above, the definition of employee as defined under Section 2(f) of the Act, 1952 wherein the

exhaustive meaning of the employee is that any person who is employed for wages in any kind of work, or through a contractor in or in connection with the work of the establishment will be termed as employee.

15. This Court has gathered from the order dated 08.04.2016 passed by Regional Provident Fund Commissioner that though on notice being served,

the writ petitioner-appellant has put their appearance but they have not brought on record either the copy of termination or reinstatement. Since the

initial appointment of the petitioner is admitted as also the date of superannuation is also not in dispute and further it is also admitted that during the

intervening period i.e., April, 2006 to April, 2009 the respondent no. 6 was paid through the contractor and, therefore, under the meaning of ""employee

as defined under Section 2(f) of the Act, 1952 even if the respondent no. 6 was paid through contractor during the intervening period, as per the

definition of the employee under Section 2(f) of the Act, 1952, the respondent no. 6 will be held to be employee of the writ petitioner-appellant.

16. So far as contention of the learned counsel for the writ petitioner-appellant that initiation of proceeding under Paragraph 26B of the Scheme, 1952

instead of initiating the proceeding under Section 14 of the Act, 1952, the same is having no force, it is for the reason that imposition of punishment will

only come after resolution of the disputes and when the writ petitioner/appellant would not deposit the statutory deposit for the intervening period

04/2006 to 04/2009, the question of invoking the penalty provision will arise but herein the Regional Provident Fund Commissioner by taking recourse

of Paragraph 26B of the Scheme, 1952 has resolved the dispute and even if the amount would not be deposited, the question of imposition of penalty

under Section 14 of the Act, 1952 will arise.

17. Learned Single Judge had examined this aspect of the matter and treating respondent no. 6 as employee within the meaning under Section 2(f) of

the Act, 1952 and in absence of any order of retrenchment or reinstatement has come to conclusion that Regional Provident Fund Commissioner,

while passing the order dated 08.04.2016, has not committed any illegality, which according to us, on the basis of discussion made above cannot be

said to suffer from infirmity.

18. In view of the detailed discussion made herein above, this Court is of the view that impugned order dated 11.05.2018 passed in W.P. (C) No. 4690

of 2016 requires no interference by this Court.

19. Accordingly, the intra-court appeal fails and is dismissed.

20. Resultantly, I.A. No. 5466 of 2018 stands dismissed.

