(2019) 07 DEL CK 0503

In the Delhi High Court

Case No : Civil Writ Petition No. 11075 Of 2016, Civil Miscellaneous Application No. 43300 Of 2016

M/S Naveen Vidya Bharti Public Higher Secondary School Thr Its Director — APPELLANT

Vs

Assistant Provident Fund Commissioner, Bhopal — RESPONDENT

Date of Decision : 22-07-2019

Acts Referred:
Employees Provident Funds And Miscellaneous Provisions Act, 1952 — Section 2(f)

Citation : (2019) 07 DEL CK 0503

Hon'ble Judges : J.R. Midha, J

Bench : Single Bench

Advocate : Ramesh Kumar Mishra, Mithilesh Kumar Jaiswal, Keshav Mohan, Rishi K. Awasthi, Piyush Vatsa

Final Decision : Dismissed

Judgement

J.R. Midha, J

1. The petitioner has challenged the order dated 22nd November, 2013 passed by the Employees' Provident Fund Appellate Tribunal whereby the petitioner's appeal was dismissed.

2. The petitioner School was covered under the ambit of Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (EPF Act) with effect from January, 2010.

3. The Enforcement Officer of the respondent inspected the records of the petitioner for the period 2008-2009 and 2009-2010 and recommended the petitioner School to be covered from April, 2008 instead of January, 2010. According to the report, 18 persons were found working in April, 2008. As per the balance sheet, the School had a bus since April, 2008 and after adding the driver and conductor of the school bus, the total number of school employees were 20.

4. On 28th September, 2011, the respondent passed an order and determined the liability of Rs.3,32,474/- as due and payable by the petitioner for the inquiry period.

5. The petitioner preferred an appeal before the Appellate Tribunal which was dismissed on 22nd November, 2013. The petitioner filed an application for review before the learned Tribunal which was dismissed on 7 th October, 2016.

6. Learned counsel for the petitioner urged at the time of the hearing that the bus of the school was operated by an independent contractor who employed a driver and a conductor. Learned counsel for the petitioner submits that the school has not made any payment to the contractor for the driver and conductor. The driver and conductor were not the employees of the school and have been wrongly included by the department as the school employees. Reliance is placed on Springdales School and Ors. v. Regional Provident Fund Commissioner & Anr., 2005 SCC OnLine Del 1457, International Airport Authority of India v. International Air Cargo Workers Union, (2009) 13 SCC 374 and Katari Coloring Factory v. Regional Provident Fund Commissioner, 1999 SCC OnLine Del 537. It is further submitted that the Chairman of the School has been included as an employee of the school on the ground that he was drawing a salary. It is submitted that the Chairman of the school cannot be treated as an employee. Reliance is placed on Regional Director, E.S.I. Corporation v. Sarathi Lines (P) Ltd., 1997 SCC OnLine Ker 21, Employees' State Insurance Corporation v. Ashok Plastics (P) Ltd., 1987 SCC OnLine Cal 333 and Summer Fields School v. Regional Provident Fund Commissioner, 2016 SCC OnLine Del 1709.

7. Learned counsel for the respondent urged at the time of the hearing that EPF Act is applicable to every establishment in which 20 or more persons are employed. It is submitted that the payment register of the petitioner for the month of April, 2008 records the name of 18 employees including the Chairman and the Principal of the School. The balance sheet of the school for the year 2008-2009 reflected payment of Rs.36,960/- towards bus maintenance and Rs.1,26,095/- towards fuel expenses. The petitioner claims to have an agreement with a contractor who employed the driver and the conductor. Section 2(f) of the EPF Act is wide enough to cover the persons employed through the contractor. It is submitted that Section 2(f) of the EPF Act "includes any person employed by or through a contractor, in or in connection with the work of an establishment." Reliance is placed on BASF India Limited & Anr. v. M. Gurusamy & Anr., (2004) 101 FLR 724, M/s P.M. Patel and Sons v. UOI, (1986) 1 SCC 32 and Royal Talkies v. ESI Corporation, (1978) 4 SCC 204. With respect to the petitioner's submissions that the Chairman of the School cannot be treated as an employee, it is submitted that Section 2(f) of the EPF Act is wide enough to include any person who is getting wages from the employer. It is submitted that the Chairman was admittedly receiving wages and was shown in the payment register of the employees of the school. Reliance is placed on Employee State Insurance Corporation v. Apex Engineering Pvt. Ltd., (1998) 1 SCC 86, Saheli

Marbles Private Limited v. APFC, 2015 SCC OnLine Del 11797 and State of Maharashtra v. Ramdas Shrinivas Nayak, AIR 1982 SC 1249.

8. Vide order dated 29th November, 2016, the petitioner was directed to produce the record relating to the contractor alleged to have been employed by the school and the payment made to the contractor. This Court also directed the petitioner to produce the contractor along with the records with respect to the driver and conductor.

9. The petitioner filed the copy of the agreement dated 12th October, 2008 as Annexure P-6, according to which the contractor agreed to operate the bus on expenditure of maintenance and fuel and to pay the wages of the driver and conductor. On 09th January, 2017, the petitioner filed the copy of the agreement dated 12th October, 2008 which contains the financial terms.

10. In the present case, the petitioner had a bus since April, 2008. However, the petitioner did not produce any document relating to the driver and conductor of the school bus for the period April to October, 2008 and therefore, it is presumed that the driver and conductor were employed by the school during the said period. With respect to the petitioner's contention that the driver and conductor were employed by the contractor by document dated 12th October, 2008, Section 2(f) of the EPF Act is wide enough to cover the persons employed through the contractor. That apart, the document dated 12th October, 2008 appears to be a sham document created with the dishonest intention of avoiding the liability. There is no merit in the plaintiff contention that the Chairman of the school is not an employee. Section 2(f) of the EPF Act includes all persons drawing wages from the employer.

11. The writ petition is dismissed with cost of Rs.50,000/- to be paid by the petitioner to the respondent.

12. The amount deposited by the petitioner along with interest accrued thereon be released to the respondent.

13. Pending application is disposed of.