

(1995) 12 P&H CK 0010
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 1089 of 1981

Punjab Khadi Mandal

APPELLANT

Vs

The Regional Provident Fund Commissioner and Another

RESPONDENT

Date of Decision : 11-12-1995

Acts Referred:

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

Citation : (1996) 3 LLJ 60 : (1996) 113 PLR 603

Hon'ble Judges : T.H.B. Chalapathi, J

Bench : Single Bench

Advocate : J.M. Sethi, for the Appellant;

Final Decision : Allowed

Judgement

T.H.B. Chalapathi, J.—This writ petition is filed against the orders of the Regional Provident Fund Commissioner, Punjab, dated August 24, 1977 (Ann.P.3). January 1, 1979 (Annexure P. 4), confirmed by the 3rd respondent vide order dated October 24, 1980 (Annexure P.9).

2. The petitioner namely the Punjab Khadi Mandal is an institution with the object of promoting khadi and help the down-trodden and poor people residing in the remote comers of the villages. In order to fulfill the object cotton yarn duly spun is provided to the Bunkers (weavers) as and when they come to the centre from their villages. The weavers take the raw materials and prepare the khadi cloth and return the Khadi cloth to the petitioner who pay the remuneration to the weavers on the basis of the work done by them. The Regional Provident Fund Commissioner issued a notice to the petitioner stating that the petitioner employed 381 weavers and they are employed in relation with the work of the Punjab Khadi Mandal and therefore, directed then, to enroll the weavers as members of the fund under the Employees' Provident Funds and Miscellaneous Provision Act, 1952 (for short "Act"). The Regional Commissioner held that the artisans namely the weavers employed by the Punjab Khadi Mandal are working in connection with the work of the establishment and as such they fall within the

Employees" Provident Funds and Miscellaneous Provisions Act, 1952 and directed the Mandal to file statements for the years 1971-72 to 1978-79 for determination of the provident fund dues in respect of the employees. Against the said orders, of the Regional Commissioner an appeal was preferred to the 3rd respondent who passed an order on October 24, 1980, confirming the orders of the Regional Commissioner holding that the weavers are employees of the petitioner. Aggrieved by the same, the petitioner filed this writ petition.

3. According to the learned counsel for the petitioner that Punjab Khadi Mandal is not an establishment within the definition of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 and there is no master and servant relationship between the petitioner and the weavers and therefore the weavers will not come within the definition of "employees" of the Punjab Khadi Mandal and therefore the order of the authority below is liable to be set-aside. It is therefore, to be seen whether the petitioner is an employer within the meaning of Section 2(e) and whether the weavers come within the definition of "employees" u/s 2(f) of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952.

4. There is no doubt that the petitioner Punjab Khadi Mandal supply cotton yarn to various weavers who became the members of the Mandal. The weavers take cotton yarn to their respective homes in the villages where they weave cloth and bring it to the Khadi Mandal who pays them remuneration according to the work done by them. There is no control or supervision by the petitioner Mandal about the work done by the weavers.

Under Section 2(e) "employer" means -

(i) in relation to an establishment which is a factory, the owner or occupier of the factory, including the agent of such owner or occupier, the legal representative of a deceased owner or occupier and where a person has been named as a Manager of the factory under Clause (f) of Sub-section (1) of section 7 of the Factories Act, 1948, the person, so named; and

(ii) in relation to any other establishment, the person who, or the authority which, has the ultimate control over the affairs of the establishment, and where the said affairs are entrusted to a Manager, Managing Director or Managing Agent, such Manager, Managing Director or Managing Agent.

Under Section 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 (an establishment), and who gets his wages directly or indirectly from the employer, and includes any person-

(1) 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, or under the standing orders of the establishment;

5. From a combined reading of Rule 2(e) and 2(f), it is clear that there must be relationship of master and servant between the employer and the employee. Unless the requisite control of the master over the servant is there, the relationship of master and servant cannot be said to be existing. In the present case, the Khadi Mandal is not entitled to reject the cloth woven by the members and the members are entitled only to remuneration according to the cloth woven by them. They are not compelled to take the yarn and to do the work. It is entirely the discretion of the members and the weavers to offer to work. There is no evidence to show any kind of supervision or control of the petitioner over the weavers. It is no doubt true that it has been held in *P.M. Patel and Sons and Others Vs. Union of India (UOI) and Others*, as follows:

"Now to be an employee it is necessary that the relationship of master and servant should exist with the employer. The principal question is whether such a relationship exists between the manufacturer and a home worker. Several cases were placed before us by the parties in this connection, and references may be made to them. In *Chintaman Rao and Another Vs. The State of Madhya Pradesh*, this court held that independent contractors known as Sattedars, with whom a manufacturer contracted for the supply of bidis could not be described as workers within the definition of Sub-section (1) of Section 2 of the Factories Act, nor could their coolies because the Sattedars undertook to supply the bidis by manufacturing them in their own factories or by entrusting the work to third parties. The Sattedars were not subject to a right of control by the manufacturer in respect of the manner in which the work was to be done. The Court applied the principle that the test for determining the relationship of master and servant lay in the existence of the right in the master to supervise and control the work done by the servant not only in the matter of directing what work the servant was to do but also the manner in which he should do it. In passing, the Court referred to home workers employed by the Sattedars for making bidis in their respective homes, and the Court observed that they could not be regarded as persons employed by the manufacturer directly or through any agency. Thereafter, in *Shri Birdhichand Sharma Vs. First Civil Judge Nagpur and Others*, this Court considered a case where the manufacturer had employed workmen in his beedi factory and who were at liberty to work at their homes, and Court held that the conditions in which they worked made them "workers" within the meaning of Clause (1) of Section 2 of the Factories Act, 1948. The significant feature of the judgment lies in the observation of the court that in the case of the beedi industry the right of rejection of the beedis if they did not come up to the proper standard was evidence of the supervision and control exercised by the manufacturer. Nothing that the nature and extent of supervision and control varied in different industries, the Court said.

"Taking the nature of the work in the present case, it can hardly be said that there must be supervision all the time when the bidis are being prepared and

unless there is such supervision there can be no direction as to the manner of work. In the present case, the operation being a simple one, the control of the manner in which the work is done is exercised at the end of the day, when bidis are ready, by the method of rejecting those which do not come up to the proper standard. In such a case it is the right to supervise and not so much the mode in which it is exercised which is important."

6. In the above decision the Apex Court observed that the workers take the raw material to their homes to roll the bidis at their homes subject to rejection and it has been held that for determining the relationship of master and servant lay in the existence of the right in the master to supervise and control the work done by the servant not only in the matter of directing what work the servant was to do but also the manner in which he should do it. Therefore, the relationship of master and servant was existing. But in the present case, there is no question of rejection of the cloth or supervision by the petitioner over the weavers and there is no question of compelling them to do the work. Further, the Punjab Khadi Mandal is a non-profitable organisation only to help the poor weavers to have their own cotton industries in their own villages. On a consideration of the facts and circumstances of the case; I am of the opinion that the weavers who take the cotton yarn to their homes for weaving the cloth from the Punjab Khadi Mandal. are not the employees of the Khadi Mandal within the meaning of Section 2(f) so as to attract the provisions of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952. I am therefore of the opinion that the provisions of the Act are not applicable to the case in hand. Therefore, the petitioner cannot be directed to contribute towards the provident fund.

The writ petition is therefore, allowed and the impugned orders are hereby quashed.