courtkutchehry.com

Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 17/09/2026

(2014) 07 DEL CK 0234

In the Delhi High Court

Case No : W.P. (C) 4034 and 4035/2000

Regional P.F. Commissioner — APPELLANT

Vs

Siel Foods and Fertilizer Industries — RESPONDENT

Date of Decision : 14-07-2014

Acts Referred:
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 2(f), 6, 7A, 7-A

Citation : (2015) 214 DLT 380 : (2014) 143 FLR 309 : (2014) 4 LLJ 244 : (2014) LLR 1122

Hon'ble Judges : V. Kameswar Rao, J

Bench : Single Bench

Advocate : Rajesh Manchanda, Advocate for the Appellant; Sandeep Prabhakar, Advocate and Vikas Mehta, Advocate for the Respondent

Final Decision : Dismissed

Judgement

V. Kameswar Rao, J.—Since these two writ petitions involves challenge to a common order dated January 07, 2000 passed by the Employees'' Provident Fund Appellate Tribunal (Tribunal, in short) in two appeals i.e. ATA 4/(7) 1999 and ATA/4(10) 1998 between the parties herein, with the consent of the learned counsel for the parties, are being disposed of by this common order. The parties shall be referred as petitioner and respondent No. 1, as per their status in W.P. (C) No. 4035/2000.

2. Vide the impugned order, the aforesaid appeals filed by the respondent No. 1 herein have been allowed and the orders dated December 02/06, 1994 and July 17, 1998 have been set aside. The brief facts, as culled out from the record are, the petitioner alleged that a team of Enforcement Officers visited the respondent No. 1-establishment and found that the respondent No. 1-establishment failed to extend Provident Fund benefits to transport contractors'' workers; failed to pay Provident Fund contributions on special allowance and also failed to pay arrears of Provident Fund dues on salaries upto to the limit of Rs. 3500/- with respect to

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/regional-pf-commissioner-appellant-…

19 employees w.e.f. November 01, 1990. On October 15, 1991, summons were issued for determination of Provident Fund dues payable by the respondent No. 1-establishment. On December 02, 1994, the competent authority u/s 7A of the Employees'' Provident Fund and Miscellaneous Provisions Act, 1952 (Act, in short) held that the respondent No. 1-establishment was liable to pay dues with respect to the transport contractors'' employees for the period effective from November 01, 1990 till that date and further, was directed to produce records for determination of dues.

3. The respondent No. 1-establishment filed writ petition being W.P. (C.) No. 559/1995 before this Court, challenging the order dated December 02/06, 1994. On July 17, 1998, the Tribunal ultimately passed an order u/s 7A of the Act, determining the liability of the respondent No. 1 to be of Rs. 13,97,742/- payable to the petitioner within a period of 15 days. The Writ Petition (C) No. 559/1995 was dismissed, giving the respondent No. 1 liberty to file appropriate proceedings before the Tribunal within two weeks. It is noted that two appeals came to be filed against order dated July 17, 1998. The number being ATA/4/(7) 1999 & ATA/4(10) 1999. On completion of pleadings, the appeals against the order dated July 17, 1998 were heard together and which culminated in the impugned order.

4. It is the submission of Mr. Rajesh Manchanda, learned counsel appearing for the petitioner that the Tribunal has erred in allowing the appeals inasmuch as in terms of the definition of the ''employees'' u/s 2(f) of the Act, the liability of the contractors'' employees is on the respondent No. 1 herein. The employees through contractors were performing regular/essential work of the respondent No. 1 and the work is a recurring and regular feature. It was also his submission that any bonus paid to an employee or a worker shall be basic wages. According to him, incentive bonus being paid to its employees by the respondent No. 1, would be termed as basic wages, on which, the Provident Fund dues need to be paid. He would rely upon the following judgments in support of his case:

1. Orient Paper Mills Vs. Regional Provident Fund Commissioner and Another, .

2. M.M.T.C. Ltd., New Delhi Vs. Regional Provident Fund Commr., New Delhi, .

3. P.M. Patel and Sons and Others Vs. Union of India (UOI) and Others,

5. On the other hand, Mr. Sandeep Prabhakar, learned counsel appearing for the respondent No. 1 would support the judgment of the Tribunal and states that the transport workers are the workers of the transporters and are not employed by the respondent No. 1 directly or indirectly. According to him, the respondent No. 1 has entered into contracts with transporters for transportation of the material on assignment basis. The involvement of the transporters vis-a-vis the respondent No. 1 is only for transporting the material. He would state that such workers are engaged for transportation of goods/materials by other Establishments or transporters also. In other words, the transporters are engaged in the work of various other Establishments and they are not confined

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/regional-pf-commissioner-appellant-…

only to the respondent No. 1-establishment. The workers engaged on transport assignment come and go along with the trucks after delivery or lifting of the material as the case may be and thereafter, the same workers are engaged for transportation of goods and materials of other establishments. Such workers may or may not come back to the respondent-Establishment at all in connection with the transportation of their goods/materials. He would state that such persons are not covered within the definition of employee u/s 2(f) of the Act. He would also state that in support of their case, the respondent No. 1 had produced various transporters before the authority, who in their deposition, have categorically stated, both in their examination-in-chief as well as in their cross examination that they work for other establishments also.

6. Insofar as the second issue whether the dues should be paid on the productivity/incentive link bonus is concerned, it is his case that the respondent No. 1 was having Productivity Improvement Programme (PIP) scheme. Under the scheme, the respondent No. 1 was giving incentive bonus to its employees and never paid Provident Fund contributions on that amount. In the year 1989, the respondent No. 1 introduced a revised PIP scheme, which was relating to standard norms of efficiency and prevention of wastage etc. He would further submit that PIP scheme which provided for standard wages to each of the employees than normal standards of work beyond which the employees are entitled for incentive bonus, then, it provides for normal wastage process of manufacturing exceeding which certain amount was to be deducted from the amount payable as bonus to individual employees. There is also a provision to pay extra bonus who achieved above the normal standards. He would argue that incentive bonus is not paid to all the employees by all the establishments. That being the position, according to him, the definition of ''basic wages'' under the Act itself excludes bonus. Mr. Sandeep Prabhakar would rely upon the following judgments in support of his contentions:

1. Bridge and Roof Co. (India) Ltd. Vs. Union of India (UOI), .

2. T.I. Cycles of India, Ambattur Vs. M.K. Gurumani and Others, .

3. Springdales School & Ors. V. Regional Provident Fund Commissioner and Anr., 2006 II LLJ 321 Delhi.

4. Regional Provident Fund Commissioner V. M/S. Fruit and Vegetable Project & Anr., W.P.C. No. 5314/1999, Date of Decision September 09, 2013.

7. Having considered the rival submissions of the counsel for the parties, the first issue which arises for consideration is whether the transporters'' workers can be said to be covered within the definition of ''employees'' u/s 2(f) of the Act. There is no denial to the fact that the respondent No. 1 is covered under the provisions of the Act and is paying contributions in respect of its employees. By the impugned order, the competent authority u/s 7A has covered the transport contract workers with whom the respondent No. 1 had entered contract for transporting the material. A perusal of one of the contracts entered by the

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/regional-pf-commissioner-appellant-…

respondent No. 1 with M/s. Aggarwal Road Lines (Regd.) (at page 167) would reveal that the transporter has been entrusted the job of transportation of FO/ LDO/RFO from Indian Oil Corporation/Hindustan Petroleum, Shakur Basti/ Mathura Refinery. That apart, the clause providing the rate for transportation is as under:

RATE:

Ex. Shakur Basti to our works

Rs. 200/- (Rupees Two hundred only) per trip of 10 K.L. for quantity over 10 K.L. prop rate extra freight will be paid. The said rate is inclusive of all expenses from the time of taking delivery of oil from IOC/HPC till it is delivered in our works.

Ex. Mathura-to our works

You will be paid Rs. 130/- (Rupees one hundred thirty only) per metric tonne for RFO and Rs. 130/- per K.L. for FO/LDO. The time of taking delivery of oil from IOC/HPC Mathura Refinery till it is delivered in our works. Octroi will be paid extra at actual against submission of original receipts. No other charges on any account will be payable by us.

8. The payment was to be paid in terms of clause 7, which is reproduced hereunder and the contract also stipulated a price escalation, which is also reproduced as under:

7. PAYMENT

Payment will be made against submission of bills on fortnightly basis after safe receipt of the material in our works. No detention charges will be payable by us at either station for idling of your tankers for any reasons.

8. PRICE ESCALATION: (Only in case of RFO from Mathura)

In case, there is any increase in Diesel Oil Prices, by more than 10 paise per litre on the existing price of Rs. 5.05 per litre, the contract rate shall be increased by 75 paise per MT for every 10 paise increase or pro-rate. No cognisance will however be taken if the increase in price is less than 10 paise per litre.

9. From the above, it is revealed that the respondent No. 1 was to pay the contractor Rs. 200/- per trip of 10 K.L. For quantity over 10 K.L. proportionate extra freight was payable. The said rate was inclusive of all expenses from the time of taking delivery of oil from respective places till it is delivered in the works and the payment was to be paid against a bill on fortnightly basis after the safe receipt of the material in the works. There is a stipulation for price escalation in the eventuality, there is an increase in the Diesel oil price. It is thus clear, the payment to the respondent No. 1 was connected with per trip made by the transporters. There is no reference to any employees to be employed by the transporter. It is the outlook of the transporter to engage a third person as a Driver, Cleaner etc. In other words, it is for the transporter to provide staff in his

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/regional-pf-commissioner-appellant-…

discretion. There is also no stipulation in the agreement about the compliance of any Labour Laws by the transporter. What is important is and which has also come on record, is, the transporter was at his liberty to do the work of other establishments. It is also pleaded by the respondent No. 1 that such workers engaged on transport assignments come and go along with the Trucks after delivery or lifting material as the case may be. It may also happen, such workers may or may not come back to the respondent No. 1-Establishment at all in connection with the transportation of their goods or materials. It has also come in the affidavit filed by one of the transporter that if no fleet is available with a transporter, the transporter invariably, engages trucks from the market which are owned by the individuals and are not actively in the transport business. It is the case of the transporters that their contract with the respondent No. 1 was on assignment basis.

10. It is the case of the petitioner that the respondent No. 1 being a principal employer is also liable for contribution of Provident Fund in respect of the workers employed by the transporters in terms of Section 2(f) of the Act and Section 6 of the Act. I reproduce Section 2(f) of the Act hereunder:

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,--

(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;]

11. From the perusal of the above Section, it is clear that a person would be called as an employee only if he directly or indirectly gets wages from the employer i.e. principal employer. In the present case, there is nothing in the contract nor anything on record to suggest that the workers engaged by the transporters are directly or indirectly being paid by the principal employer. In this regard, I draw sustenance from the judgment of the Single Judge of this Court in the case of Springdales School & Ors. (supra), wherein, it was held as under:

4. Reading of the aforesaid clauses would make it clear that the petitioners were to pay the said transporter the charges for the bus hired on the basis of distance of each trip. These buses were hired for this purpose. The hire charges were to be paid by tenth of each following month on submission of bills by the transporter in this behalf on or before third of every month. It is also stipulated in the agreement that the aforesaid rates payable by the petitioners to the transporter could be considered for enhancement in case there is any increase in the diesel costs imposed by the Government from time to time. The charges were to be paid for 10 months and thus excluding two months when the school

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/regional-pf-commissioner-appellant-…

shall remain closed. It thus becomes abundantly clear that payment of charges by the petitioners to the respondent is connected with the trips made by bus. It has no causal connection that the employees which were to be employed by the transporter for running the bus, namely, driver, conductor or cleaner etc. It was for the transporter to provide any such staff at a particular post at his discretion and the petitioners had no say in the same nor any such term is provided in the agreement. There is no stipulation in the agreement about payment of wages by the transporter to his staff. Furthermore, the transporter was supposed to provide bus service in the morning and afternoon to the school for the purpose of bringing the students and teachers to the school and thereafter dropping them back at their residence. The transporter was free to make use of those buses for any other purpose for the rest of the day. It would even enter into such contract with any other establishment.

5. In the impugned order, the RPFC has observed that the employees employed by the transporter shall be deemed to be the employees of the petitioners and would be treated as employee covered within the meaning of Section 2(f) of the P.F. Act. This Section reads as under:

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,--

(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;]

Two conditions, amongst others, which are to be satisfied are as under:

(i) Employees should be working in or in connection with the work of the establishment

(ii) Their wages are to paid directly or indirectly by the employer through the contractor.

6. In view of the facts noted above, I am afraid any of these conditions are satisfied in the present case. An employee would be treated as working in or in connection with the work of the establishment if it can be ascertained that he is discharging his duties exclusively related to the work of the establishment. Furthermore, as already pointed out above, in so far as the petitioners are concerned, they were simply giving hire charges which had no casual connection of even remote connection with the payment of wages by the transporter to its employees. The difference would become apparent when compared with a contract which is in the nature of security contract and in an agreement between the employer and the contractor, contractor is to provide security personnel at

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/regional-pf-commissioner-appellant-…

the establishment of the principal employer. In such contracts, the employees would be deployed at the premises of the principal employer and the agreement generally includes payment in terms of per employee deployed signifying wages which are paid by the employer through the contractor.

12. Insofar as the reliance placed by the learned counsel for the petitioner on the judgment of the Madhya Pradesh High Court in the case of Orient Paper Mills (supra) is concerned, with utmost respect, the judgment would not be relevant in the facts of this case inasmuch as (i) the issue has not been looked from the perspective it has been looked by this Court in Springdales School''s case (supra); further, the questions which the Court had framed and answered, does not deal with the nature of contract entered by the Paper Mills with the transporters; (ii) the issue that the transporters were at liberty to work in the other establishment also at the same time, was also not considered.

13. Insofar as the judgment of the Single Judge of this Court in the case of M.M.T.C. Ltd., New Delhi (supra) is concerned, the same would not be applicable in the facts of the present case inasmuch the learned Single Judge, while referring to the Springdales School''s case (supra) has observed as under:

9. X X X

The decision in the case of Springdales School (supra) has no application to the facts of the present case wherein this Court held that in the said case it was abundantly clear that the payment of wages by the Petitioners therein to the Respondent were connected with the trips made by the bus. There was no casual connection with the employees who were employed by the transporter for running the bus i.e. driver, conductor or cleaner etc. It was for the transporter to provide staff at a particular bus at his discretion and the management has no say in the same nor has any such term provided in the agreement. There was no stipulation of wages in the agreement by the transporter with regard to his staff. Further, the transporter was supposed to provide bus services in the morning and afternoon where after he was free to make use of the bus for any other purposes during rest of the day.

14. I also note that the learned Single Judge, while deciding the case of Regional Provident Fund Commissioner V. M/S. Fruit and Vegetable Project (supra), has in para 10, observed as under:

10. In this case, no material was available before the respondent no. 2 to indicate that respondent no. 1 had hired the workers through a contractor for doing its work and that it was having primary or even secondary control over them. On the contrary, facts as disclosed indicate that respondent no. 1 had engaged various transporters to transport its goods and no material was available with the petitioner whereby it could be deduced that respondent no. 1 had any direct or for that matter indirect control over the drivers and cleaners working on the vehicles of the transporters engaged by the respondent no. 1 or that such workers were exclusively working for the respondent no. 1. There is no

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/regional-pf-commissioner-appellant-…

mention in this regard even in the order passed u/s 7-A of the Act.

15. Insofar as the other issue, whether the dues are payable on the bonus being paid by the respondent No. 1 to its employees who achieves above the normal standard is concerned, suffice to state, that it has come on record, that the said bonus is not paid to all the employees. Although, I do not find any ground on that particular aspect in the writ petition since issue has been urged before me, I deem it appropriate to consider the same. The issue is covered by the judgment of the Supreme Court in the case of Bridge & Roof Co. (India) Ltd. (supra). Before dealing with the judgment, this Court proceeds on a premise that under the scheme, bonus is paid to employee who achieves standards which are above the normal. The Supreme Court in the aforesaid case, has in, para 12 of the judgment, held as under:

12. This court had occasion to consider production bonus in Titaghur Paper Mills Co. Ltd. Vs. Its Workmen, . It was pointed out that "the payment of production bonus depends upon production and is in addition to wages. In effect, it is an incentive to higher production and is in the nature of an incentive wage". The straight piece rate plan where payment is made according to each piece produced is the simplest of incentive wage plans. In a straight piece rate plan, payment is made according to each piece produced and there is no minimum and the worker is free to produce as much or as little as he likes, his payment depending upon the number of pieces produced. But in such a case payment for all that is produced would be basic wage as defined in s. 2(b) of the Act, even though the worker is working under an incentive wage plan. The difficulty arises where the straight piece rate system cannot work as when the finished product is the result of the co-operative effort of a large number of workers each doing a small part which contributes to the result. In such a case the system of production bonus by tonnage or by any other standard is introduced. The core of such a plan is that there is a base or a standard above which extra payment is earned for extra production in addition to the basic wages which is the payment for work upto the base or standard. Such a plan typically guarantees time wage upto the time represented by standard performance and gives workers a share in a savings represented by superior performance. The scheme in force in the Company is a typical scheme of production bonus of this kind with a base or standard upto which basic wages as time wages are paid and thereafter extra payments are made for superior performance. This extra payment may be called incentive wage and is also called production bonus. In all such cases however the workers are not bound to produce anything beyond the base or standard that is set out. The performance may even fall below the base or standard but the minimum basic wages will have to be paid whether the base or standard is reached or not. When however the workers produce beyond the base or standard what they earn is not basic wages but production bonus or incentive wage. It is this production bonus which is outside the definition of "basic wages" in s. 2 (b), for reasons which we have already given above. The production bonus in the present case is a typical production bonus scheme of this kind and whatever

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/regional-pf-commissioner-appellant-…

therefore is earned as production bonus is payable beyond a base or standard and it cannot form part of the definition of "basic wages" in S. 2 (b) because of the exception of all kinds of bonus from that definition. We are therefore of opinion that production bonus of this type is excluded from the definition of "basic wages" in S. 2 (b) and therefore the decision of the Central Government, which was presumably under S. 19A of the Act, to remove the difficulty arising a out of giving effect to the provisions of the Act, by which such a bonus has been included in the definition of "basic wages" is incorrect. In view of this decision, it is unnecessary to consider the effect of Art. 14 in the present case.

16. I note, in the case of T.I. Cycles of India, Ambattur (supra), the Supreme Court, while considering the definition of ''basic wages'' in the Act as well as in Payment of Gratuity Act, has, in para 10 held as under:

10. A comparison between these two provisions will make it clear that there is no basic difference between the two expressions used in these two enactments insofar as the exclusion of bonus from the emoluments is concerned. The High Court has been carried away by the expression basic wages used in the PF Act while the term wages is used in the Act but that distinction will not be of any impact, if we closely examine the manner in which the two terms are defined in the respective Acts. The nomenclature of the two expressions will not alter the contents of the two terms. Therefore, the High Court ought to have considered this aspect of the matter. Further this Court in Straw Board Mfg. Co. Ltd. vs. Its Workmen, was concerned with the gratuity scheme formulated prior to the Act and this is how this Court interpreted this aspect of the matter:

25. Decisions have been brought to our notice some of which refer to basic wages and others to consolidated wages as the foundation for computation of gratuity. These are matters of discretion and the fee of the circumstances prevalent in the industry by the Tribunal and, unless it has gone haywire in the exercise of its discretion the award should stand. We see that in the Payment of Gratuity Act also, not basic wages but gross wages inclusive of dearness allowance; have been taken so as the basis. This, incidentally, reflects the industrial sense in the country which has been crystallised into legislation.

17. In view of the above, there is no iota of doubt that the bonus as was being paid by the respondent No. 1 cannot be included in the definition of ''basic wages'' as defined under the Act. In view of the above, I do not find any merit in the writ petitions filed by the petitioner. The same are accordingly dismissed.

18. No order as to costs.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/regional-pf-commissioner-appellant-…