

(1991) 07 KAR CK 0015
In the Karnataka High Court
Case No : W.A. No. 266 of 1990

Regional P.F. Commissioner, Bangalore

APPELLANT

Vs

Harihar Polyfibres

RESPONDENT

Date of Decision : 30-07-1991

Acts Referred:

Employees Provident Fund and Miscellaneous Provisions Act, 1952 — Section 12, 14, 7 A

Citation : (1991) ILR (Kar) 2895 : (1992) 1 KarLJ 85 : (1992) 2 LLJ 761

Hon'ble Judges : S. Mohan, C.J.;N.Y. Hanumanthappa, J

Bench : Division Bench

Judgement

S. Mohan, C.J.—The short facts are as follows : 33 employees working in Harihar Polyfibres, Kumarapatnam, were contributing to Birla Brothers Provident Fund. This contribution was prior to January 1, 1975. It was at that period the unit came under the provisions of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as "the Act"). The schemes framed earlier required contribution at the rate of 10 per cent. After the establishment was notified under the Act by order dated January 1, 1975, all the employees who were earlier contributing to Birla Brothers Provident Fund were taken to the statutory provident fund. Accordingly, their contributions which were required at the rate of 10 per cent. to Birla Brothers Provident Fund come to be reduced to the statutory minimum of 8 per cent. from January 1, 1975, unilaterally. Therefore, the question arose whether the employers viz., Harihar Polyfibres, were within their powers to reduce the existing higher rate of contribution applicable to the statutory minimum of 8 per cent unilaterally ? If that is so, whether such a deduction in the existing benefits in the nature of higher rate of contribution would not offend Section 12 of the Act. This matter came up for consideration before the Regional Provident Fund Commissioner, Karnataka, who is deciding the matter u/s 7-4 of the Act, posed 2 questions for determination :-

"1. Whether the management have infringed the provisions in contained Section 12 of the Act by reducing the rate of contribution from 10 per cent to 8 per cent.

Soon after the establishment was brought under the Act and the scheme ?

2. Whether the liability could be waived if the employees choose to forgo the benefits by written declaration ?"

2. In interpreting Section 12 of the Act reference was made to the ruling of the Bombay High Court in Consolidated Crop Protection Pvt. Ltd. Vs. V. Hema Chandra Rao,

The Commissioner held that the views expressed by the Bombay High Court would be apposite and the reduction from 10 per cent. to 8 per cent. was impermissible in law.

On the second aspect of the matter, he was of the view that it was not open to the employees" to give up the statutory benefits. In the result, he raised a demand from the year 1975-76 to 1981-82, for a sum of Rs. 1,40,483. Aggrieved by this order the employer took up the matter in W.P. No. 4553 of 1984.

3. The learned single Judge by this judgment dated September 25, 1989 came to the conclusion that on the interpretation of Section 12, that even a bare reading of this provision would disclose what was forbidden under this section was reduction of wages or the total quantum of benefits in the nature of old age pension, gratuity or provident fund. What is prohibited was the reduction by reason of the employer"s liability for payment of contribution to the fund. This question did not arise before the Bombay High Court. Further, 17 employees prayed that they could be covered by the Act; besides all the 33 employees came under the excluded employees scheme. In such an event to insist upon particular rate is not at all justified. Thus he concluded that the demand made was wholly legal. On this line of reasoning he set aside the order and allowed the writ petition. It is under these circumstances that the Regional Provident Fund Commissioner has preferred this appeal.

4. Mr. Shylendrakumar, learned Central Government Standing Counsel, submitted that the interpretation placed by the learned Judge on Section 12 is not correct. The section throws an obligation on the employer to pay the contribution as per the original terms and the same cannot be avoided merely because the unit comes under the Act. The words "by reason of" are very relevant to this issue. Therefore, the original liability continued unabated notwithstanding the unit being covered by the Act in question. It was this aspect of the matter which came to be considered in the ruling of the Bombay High Court in Consolidated Crop Protection P. Ltd. v. Hemachandra Rao, (supra) which could be substantiated with reference to the observation contained in para 67 of Som Prakash Rekhi v. Union of India, (1981 I LLJ 102). Therefore, the judgment of the learned single Judge requires interference.

5. In opposition to this, Mr. Gururajan, learned counsel appearing for the respondent, would submit that Section 12, if at all applicable, could be applied

only to a case where originally the unit was covered by the Act and for some reason or the other it ceases to be covered and not to a case of this character where for the first time it comes to be covered by the Act. Secondly, as was pointed out by the learned single Judge, 33 employees belong to the excluded category and 17 of them have given in writing their willingness to be covered by the Act. The Commissioner again super imposed himself and insisted on the observance of the benefits under the old scheme. As was rightly held by the learned Judge, the Bombay High Court decision is of no help like *Soma Prakash Rekhi v. Union of India*, (supra)

6. In order to appreciate the respective contentions it is necessary on our part to extract Section 12 of the Act :

"12. Employer not to reduce wages, etc-No employer in relation to an establishment to which any scheme or the Insurance Scheme applies, shall, by reason only of his liability for the payment of any contribution to the Fund or the Insurance Fund or any charges under this Act or the Scheme or the Insurance Scheme, reduce, whether directly or indirectly, the wages of any employee to whom the Scheme or the Insurance Scheme applies, or the total quantum of benefits in the nature of old age pension, gratuity, provident fund or life insurance to which the employee is entitled under the terms of his employment, express or implied".

A careful reading of the above early shows that the employer is not to reduce wages etc. In other words, no employer by reason of his liability for payment of contribution can reduce the various benefits such as old age pension, gratuity, provident fund or life insurance to which the employee would have been entitled under the terms of his employment. In the instant case, under the original scheme, what was provided for the employees was 10% contribution. Merely because the Act says the contribution will be at 8% such a reduction is not warranted. If the contention of the respondent is accepted it would render the benefit conferred u/s 12 of the Act illusory. Merely because 17 employees have given in writing that they would like to be covered by the Act, that does not mean the employer's statutory obligation u/s 12 in any way ceases nor again the 33 employees belonging to the excluded category would not obliterate the statutory liability of the employer. In *Consolidated Crop Protection Private Ltd. v. Hemachandra Rao*, (supra) under more or less similar circumstances, it was held : (p. 120)

"The only effect of annulling or cancelling the exemption is that the statutory scheme now became available in all respects except the old rates of contribution of the employer or employee. It is already made clear that the employee can get his contribution reduced by a proper application, but so far as contribution of the employer is concerned, there is a strict fiat contained in Section 12 that the benefit which the employee was getting shall not be permitted to be reduced. In other words, after the exemption is withdrawn and the employees of the establishment fell under the statutory scheme, there is a possibility of the higher

contribution of the employees being reduced if the Commissioner agrees, but not below the statutory minimum. However, not only there is no provision for permitting reduction by the employer, but there is a strict direction u/s 12 that the employer shall not be allowed to do so. If this is the real intent and meaning of Section 12, it is obvious that the petitioner cannot claim to reduce his contribution below 10% which was his former contribution under the voluntary scheme. It would also follow that until a reduction by an appropriate order has been granted by the commissioner, the employees also cannot contribute less than what they were contributing voluntarily."

7. Therefore, there is a strict direction that the employer shall not be allowed to reduce his contribution to statutory level. Hence the employer cannot escape his liability. In *Som Prakash Rekhi v. Union of India*, at p. 102 (para 67) it was held as follows :

"We must realise that the pension scheme came into existence prior to the two beneficial statutes and Parliament when enacting these legislations must have clearly intended extra benefits being conferred on employees. Such a consequence will follow only if over and above the normal pension, the benefits of provident fund and gratuity are enjoyed. On the other hand, if consequent on the receipt of these benefits there is proportionate reduction in the pension there is no real benefit to the employee because the Management takes away by the left hand what it seems to confer by the right, making the legislation itself lefthanded. To hold that on receipt of gratuity and provident fund and pension of the employee may be reduced pro tanto is to frustrate the supplementary character of the benefits. Indeed, that is why by Section 12 and 14 overriding effect is imparted and reduction in the retrial benefits on account of provident fund and gratuity derived by the employee is frowned upon. We, accordingly, hold that it is not open to the second respondent to deduct from the full pension any sum based upon Regulation 16 read with Regulation 13. If Regulation 16 which now has acquired statutory flavour, having been adapted and continued by statutory rules, operates contrary to the provisions of the Provident Funds Act and the Gratuity Act, it must fail as invalid. We uphold the contention of the petitioner."

8. The observations contained here support the appellant to a great extent.

9. We are unable to accept the argument of Mr. Gururajan that Section 12 would apply only to a case where originally that provision applied and for some reason or the other it ceases to apply. Section 12 in our considered view does not give room for such an argument. On the contrary it is absolute in its terms. Therefore, we set aside the judgment of the learned single Judge. Before final quantification of the liability of the employer, the Provident Fund Commissioner shall give an opportunity to the employer u/s 7-A and shall decide the matter in the light of the law laid down as above. Writ appeal is allowed. No costs.