(2016) 09 BOM CK 0057

In the Bombay High Court

Case No : Appeal No. 523 of 2010 in Writ Petition No. 1246 of 2005

Regional Provident — APPELLANT

Vs

Tata Consultancy Services — RESPONDENT

Date of Decision : 08-09-2016

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 5, Section 7(1)

Citation : (2017) 2 ALLMR 574 : (2017) 1 CLR 419 : (2017) 152 FLR 237 : (2016) 151 FLR 865 : (2017) LabLR 341 : (2017) LabLR 180 : (2017) LabLR 15 : (2017) 1 LLJ 245 : (2016) 6 MhLJ 821

Hon'ble Judges : V.M. Kanade and Mrs. Swapna Joshi, JJ.

Bench : Division Bench

Advocate : Mr. Suresh Kumar, Advocate, for the Appellant; Mr. K.M. Naik, Senior Counsel along with Ms. Priyanka Patil, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

V.M. Kanade, J. - This appeal is directed against the Judgment and Order passed by the learned Single Judge dated 20/09/2006. By the said Judgment and Order, the learned Single Judge was pleased to allow the Writ Petition filed by the Respondent/original Petitioner and the Rule was made absolute in terms of prayer clause (a) and the impugned orders dated 02/11/1999 and 15/11/1999 passed by the Regional Provident Fund Commissioner were quashed and set aside.

2. Brief facts, in a nutshell are as under:-

3. Central Government issued a Notification dated 17/05/1971 in exercise of its powers conferred by Section 5 read with sub-section 1 of Section 7 of the said Scheme and made an amendment to the Employees'' Provident Fund and Miscellaneous Provisions Act, 1952 and also included "establishments rendering expert services" to its customers.

4. Thereafter, another Notification was issued dated 29/05/1971 clarifying that the said Act was also applicable to every establishment rendering expert services and by way of illustration, including the words "such as", mentioning three such services viz (i) establishments rendering expert services of supplying of personnel, (ii) establishments giving advice on domestic and departmental enquiries and (iii) establishments which are specialised in rectifying pilferage, thefts and pay roll irregularities. The second condition was that it was applicable to establishments rendering expert services and employing twenty or more persons.

5. Respondent - Tata Consultancy Services Ltd. was a Division of M/s Tata Sons Ltd and was providing computer oriented consultancy services in India and abroad.

6. Appellant No.1 (Original Respondent No.1) issued a letter dated 15/3/1977 addressed to the Respondent/Original Petitioner informing that the establishment of the Respondent was covered by Notification dated 17/05/1971 and therefore the provisions of the Employees'' Provident Fund and Miscellaneous Provisions Act, 1952 were applicable to the establishment of the Respondent/Original Petitioner with effect from 31/05/1971. Respondent filed its reply to the letter of Appellant No.1 and thereafter Appellant No.1 passed an order dated 18/06/1993 and held that the services rendered by the Respondent/original Petitioner fell in the category of "expert services". Respondent challenged this order by filing Writ Petition in this Court. The matter was remanded. The matter thereafter travelled back and forth from the High Court to the Commissioner and ultimately by an impugned order dated 20/09/2006, the learned Single Judge allowed the Writ Petition filed by the Respondent/original Petitioner.

7. The short question which falls for consideration in this appeal is : whether the establishment of Respondent/original Petitioner falls within the purview of the Notification dated 17/05/1971 and, secondly, whether the words "such as" and the establishments described thereafter were to be interpreted as illustrative or exhaustive?

8. We have heard Mr. Suresh Kumar the learned Counsel appearing on behalf of the Appellant and Mr. Naik the learned Counsel appearing on behalf of the Respondent.

9. The learned Counsel appearing on behalf of the Appellant has taken us through the impugned Judgment and Order passed by the learned Single Judge and also through the Notification dated 17/05/1971. He submitted that Employees Pension Scheme 1995 is a social legislation for providing economic security to the working class in their old age and also for providing financial support to the members of their family. He submitted that the learned Single Judge has erred in holding that the services rendered by the Respondent/original Petitioner did not fall under the definition of "expert services". He submitted that if the Notification is read as a whole, it would reveal that after the words "such

as" and after giving three types of establishments, Notification mentioned the following words viz. "and the establishment rendering expert services, and employing twenty or more persons". He submitted that the case of the Respondent/original Petitioner would be covered by the said clause. He submitted that the Notification should be read in its natural and ordinary course to mean that it covers all establishments rendering expert services.

10. It is not possible for us to accept the submissions made by the learned Counsel appearing on behalf of the Appellants. It would be useful to refer to the two Notifications dated 17/5/1971 and 29/05/1971. By virtue of the Notification dated 17/05/1971, the following clause was inserted viz "(ixvii) as respects establishments rendering expert services came into force on 31st day of May, 1971". Thereafter, again, a new Notification dated 29/05/1971 which came into force with effect from 17/05/1971 was issued and it reads as under:-

"(To be published in Part II, Section 3, Sub-Section (1) of the Gazette of India)

Government of India

Ministry of labour, Employment and Rehabilitation

(Department of Labour and Employment)

Dated New Delhi, the 17 May, 1971

27 Vaisakha, 1893 SE.

Notification

G.S.R. ___________________, In exercise of the powers conferred by Clause (b) of Sub-Section (3) of Section 1 of the Employees Provident Funds and Family Pension Fund Act, 1952 (10 of 1952), the Central Government hereby specifies that with effect from the 31st May 1971, the said Act, shall apply to every establishment rendering expert services such as supplying of personnel, advice on domestic or departmental enquiries, special services in rectifying pilferage, thefts, and pay roll irregularities to factories and establishments on certain terms and conditions as may be agreed upon between the establishment and the establishment rendering expert services, and employing twenty or more persons.

(No.4/7/I/66-PF-II)

Sd/-

(Daligit Singh)

(Under Secretary to the Govt. of India)"

11. The entire controversy has arisen on account of the second Notification which was issued on 29/5/1971 mentioning that the amendment would apply to every establishment rendering expert services and thereafter mentioning the following words "such as supplying of personnel, advice on domestic or departmental

enquiries, special services in rectifying pilferage, thefts, and pay roll irregularities to factories and establishments" and followed by the words "and the establishment rendering expert services, and employing twenty or more persons".

12. In our view, the learned Single Judge has rightly held that the establishments mentioned in the second Notification after the words "such as" are merely illustrative and not exhaustive. If the intention of the Central Government was to include all establishments rendering expert services, it would not be necessary to issue the second Notification which was issued on 29/05/1971. Secondly, the words "and the establishment rendering expert services, and employing twenty or more persons" clearly means that it applies only to those establishments in which twenty or more persons are employed. The activities of Respondent/ original Petitioner do not fall within the ambit of "the establishment rendering expert services". We agree with the view taken by the learned Single Judge. We do not find any substance in the submissions made by the learned Counsel appearing on behalf of the Appellants. Appeal is therefore dismissed.

