

(1983) 07 DEL CK 0014

In the Delhi High Court

Case No : Letter Patent Appeal No. 32 of 1976

Regional Provident Fund Commission

APPELLANT

Vs

Amar Nath and Others

RESPONDENT

Date of Decision : 21-07-1983

Acts Referred:

Citation : (1983) 24 DLT 371 : (1984) LabIC 1333

Hon'ble Judges : Prakash Narain, C.J;S.S. Chadha, J

Bench : Division Bench

Advocate : Rekha Sharma, for the Appellant;

Judgement

Prahash Narain, C.J.

(1) This is an appeal under Clause X of the Letters Patent, as applicable to this court, against the judgment of a learned Single Judge who accepting the petition of the respondents, moved under Article 226 of the Constitution of India, made the rule absolute. The decision of the appellant dated April 21, 1971, communicated to the respondents by appellant's letter of June 1 1, 1971 was quashed and the appellant was also directed to refund the employer's contribution deposited with the appellant by the respondents for the period July 1965 to December, 1966.

(2) As noticed by our learned brother) H.L. Anand,J. the short question arising in the case was the interpretation of Sub--section (5) of Section 1 of the Employees' Provident Funds Act, 1,952. The circumstances leading to the filing of the petition may briefly be noted.

(3) The respondents' establishment was, admittedly, covered by the provisions of the aforesaid Act and the Scheme framed there under with effect from July 31, 1962. It seems that the number of employees in the respondents' establishment fell below 20, indeed below 15 in May/June, 1964. The respondents also admit, as noticed by our learned brother, that the respondents' establishment had employees less than 15 between June, 1964 and December, 1966. However, we

find from a note recorded on September 10, 1965 by M.K. Bhatnagar, an official of the appellant, that the strength of employees in the respondents' establishment was less than 15 from August, 1964 to July, 1965. No challenge has been made before us to what has been noticed by the learned Single Judge that the strength of employees was less than 15 from June, 1964 to December, 1966. On July 26, 1965 the respondents wrote to the appellant that inasmuch as the number of employees in their establishment had fallen below 15, the provisions of the Act have ceased to apply to them. They enquired as to what formalities were required to be done in this connection. It is after this letter that an inspection was made by M.K. Bhatnagar on September, 10, 1965 to which we have already adverted earlier. By a communication dated 12/13th October, 1965 the appellant informed the respondents that there were arrears of Rs. 537-52 in one account and Rs. 32-25 in another account which the respondents had not cleared and should clear forthwith. It was further pointed out from the monthly returns filed, the figures really were Rs. 578-04 and Rs. 34--53. The respondents were asked to pay the balance amount of Rs. 40-52 and Rs. 2-28 forthwith, being the difference of the earlier demands and the dues worked out on the basis of the returns. It was further stated by the appellant in the said letter that action on respondents' letter of July 26, 1965 for exemption u/s 1(5) of the Act will be taken on compliance of the demand for deposit of money. On February 16, 1966 the respondents wrote to the appellant that the amount of Rs. 40-52 and Rs. 2-28 had also been deposited and action may now be taken immediately on their letter of July 26, 1965. There was no response from the appellant. On December 13, 1967 a registered notice with regard to the earlier submission made in the letter of July 26, 1965 was given by the respondents to the appellant. No action was taken even on this. A reminder was sent on April 27, 1970 with no result. Some more reminders were sent and finally a registered notice was given through counsel on September 5, 1970. On receipt of this a note was prepared in the office of the appellant on November 27, 1970 but that need not be discussed. By the impugned communication dated April 21, 1971 the respondents were informed that it cannot be allowed to opt out of the Act and the Scheme there under. This led the respondents to file a petition in this court challenging the action of the appellant. The relevant portion of Section 1 reads as under :-

"1.(1) ... (2) ... (3) Subject to the provisions contained in Section 16, it applies :- (a) to every establishment which is a factory engaged in any industry specified in Schedule I and in which twenty or more persons are employed, and (b) to any other establishment employing twenty or more persons or class of such establishments which the Central Government may, be notification in the Official Gazette, specify in this behalf; Provided that the Central Government may, after giving not less than two months' notice of its intention so to do, by notification in the Official Gazette, apply the provisions of this Act to any establishment employing such number of persons less than twenty as may be specified in the notification. (4) Notwithstanding anything contained in Sub-section (3) of this Section or Sub-section (1) of Section 16, where it appears to

the Central Government, whether on an application made to it in this behalf or otherwise, that the employer and the majority of employees in relation to any establishment have agreed that the provisions of this Act should be made applicable to the establishment, it may, by notification in the Official Gazette, apply the provisions of this Act to that establishment. (5) An establishment to which this Act applies shall continue to be governed by this Act notwithstanding that the number of persons employed therein at any time falls below twenty : Provided that where for a continuous period of not less than one year the number of persons employed therein has been less than fifteen, the employer in relation to such establishment may cease to give effect to the provisions of this Act and any Scheme framed there under, with effect from the beginning of the month following the expiry of the laid period of one year, but he shall, within one month of the date of such cessation, intimate by registered post, the fact thereof to such authority as may be specified by the appropriate Government in this behalf."

(4) On a reading of the above provisions the learned Single Judge came to the conclusion that the scheme of the provisions is that once the establishment has more than a certain number of employees it must register itself, file returns and pay contributions. If the number falls below the requisite number, then two options were available to the establishment. Generally, agreeing with the observations of the learned Single Judge we, however, view the matter in a slightly different manner.

(5) Mr a reading of Sub section (5) of Section 1 shows that all that was required to be done by the respondents was to inform the appellant that the number has fallen below the requisite number. This information had to be given within one month of the expiry of one year from the date when the number fell below the requisite number. No permission was required from the appellant to opt out. A mere intimation had to be given. In the facts of this case we find that intimation was given and given in time. Thereafter if the respondents continued to pay, it may be under a mistaken impression of the law that they had to take the permission of the appellant before they could opt out or because the respondents were so advised and led to so believe by the advice. Indeed, the letter of 12/13th October, 1965 clearly shows that the appellants view was that he had to give permission to the respondents to opt out. This permission he was prepared to give or take up the matter for consideration only after the respondents had deposited the arrears due from them as per demand made in the letter of 12/13th October, 1965. Surprisingly enough even if that was the view taken by the appellant, no action was taken on the communication of the respondents dated July 26, 1965, despite inspection note dated September 10, 1965, till a notice through a counsel was given on September 5, 1970. In such circumstances it hardly lies in the mouth of the appellant to contend that because the respondents kept on paying in the meanwhile they cannot invoke the provisions of Sub-section (5) of Section 1 of the Act.

(6) Mrwe, Therefore, find no force in the appeal and dismiss the same. Inasmuch as the respondents are not represented, there will be no order as to costs.