(2000) 03 RAJ CK 0038

In the Rajasthan High Court

Case No : .C.S.A. (W) No. 48 of 1998

Regional Provident Fund Commissioner APPELLANT

Vs

Gopal Gosala RESPONDENT

Date of Decision : 08-03-2000

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 7

Citation : (2000) 86 FLR 635 : (2000) 2 LLJ 1304 : (2000) WLC 312

Hon'ble Judges : Shivaraj V. Patil, C.J;Arun Madan, J

Bench : Division Bench

Advocate : Narendra Jain, for the Appellant; R.K. Agrawal and R.G. Chaudhary, for the Respondent

Judgement

S.V. Patil, C.J. and Arun Madan, J.—Heard the learned counsel for the parties.

2. This appeal is by the Regional Provident Fund Commissioner, Rajasthan at Jaipur directed against the order dated April 21, 1997 passed by the learned single Judge in SB Civil Writ Petition No. 4463/1994 allowing the writ petition filed by Shri Gopal Gosala (the respondent in this writ petition. In the writ petition, a detailed reply was filed by the appellant. As can be gathered from the pleadings of the parties, the Inspector of the appellant inspected the premises of the respondent on April 25, 1975 and found there were 20 employees and list of the said employees -was given in Annexure R-2. On June 23, 1975 the appellant issued Annexure R/C, a coverage letter. The respondent made a representation dated September 9, 1975 as per Annexure R-5 opposing coverage of the establishment by the provisions of the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952 (for short ''the Act''). Thereafter the order dated October 31, 1975 was passed vide Annexure R-6 rejecting the representation. The respondent complied with the order Annexure R/6 as is evident from Annexure R-7 dated October 5, 1979. Since employees of certain other categories were not covered, an inspection was made on August 5, 1992 and based on that, a notice u/s 7 of the Act was issued on April 27, 1993.

Thereafter the order dated June 23, 1995 was passed vide Annexure R/C holding that those class of employees were also covered by the provisions of the said Act. It is that order Annexure R/C which was challenged by the respondent (herein) in the writ petition. The learned single Judge allowed the writ petition by the order under appeal taking a view that the provisions of the Act were not at all applicable to the respondent as a whole and consequently quashed the order Annexure R/C. Hence the present appeal is filed.

3. The learned counsel for the appellant submitted that for the first time the establishment of the respondent was covered by the letter dated June 23, 1975 (Annexure. R/C). Thereafter the respondent even complied with the order as per Annexure R/7 dated October 5, 1979 and did not challenge the applicability of the provisions of the Act to the establishment. It is only when Annexure-C dated July 7, 1994 was passed in respect of some class of employees, a writ petition was filed; in the writ petition even the respondent did not seek any relief stating that the provisions of the Act were not applicable to its establishment. The only prayer made in the writ petition was to quash Annexure-C and consequent relief of refund. The learned counsel further submitted that having regard to the facts narrated above when the respondents complied with the order as early as on October 5, 1979 accepting the applicability of the provisions of the Act to its establishment could not turn around and say that the provisions of the Act are not applicable to the establishment. He also submitted that the learned single Judge did not go into the factual verification in regard to the determination of the contribution relating to the employees covered by Annexure-C, in the view, he held that the provisions of the Act are not applicable to the respondent-establishment.

4. The learned counsel for the respondent, per contra, argued in support of the order passed by the learned single Judge.

5. We have considered the submissions made by the learned counsel for the parties. In the light of the facts stated above referring to Annexure R/1 to R/8, it is clear that the respondent complied with the order dated October 31, 1975 covering the establishment for the purpose of contribution on October 5, 1979 as per Annexure R/7 and that in the writ petition no challenge was made as to the applicability of the provisions of the Act in as much as no specific relief was sought in that regard. This being the position with respect, in our view, the learned single Judge was not right in holding that the provisions of the Act were not at all applicable to the respondent-establishment. We find it difficult to sustain the order of the learned single Judge. However, there was no discussion and consideration as to the factual position in regard to the determination of the contribution of the employees covered by Annexure-C. In this view, we think it appropriate to remit the case to the Regional Provident Fund Commissioner, Rajasthan, Jaipur for determination as to the contribution of the employees covered by Annexure-C. As already stated above, the order of the learned single Judge so far it dealt with the provisions of the Act and held they are not

applicable to the respondent-establishment is set aside as the question did not arise for consideration in the writ petition in the absence of a specific prayer made in the writ petition.

