
(1983) 01 KL CK 0001
In the High Court Of Kerala
Case No : W.A. No. 56 of 1980

Regional Provident Fund Commissioner APPELLANT
Vs
Lord Krishna Bank Limited and Others RESPONDENT

Date of Decision : 11-01-1983

Acts Referred:

Constitution of India, 1950 — Article 134A
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 2(22)

Citation : (1983) 01 KL CK 0001

Hon'ble Judges : Subramonian Poti, Acting C.J.; Paripoornan, J

Bench : Division Bench

Advocate : M.M. Abdul Azeez, for the Appellant; V. Rama Shenoi and Raya Shenoi, for the Respondent

Judgement

Subramonian Poti, A.C.J.

1. The Regional Provident Fund Commissioner and the Union of India appealed against the decision of our learned brother George Vadakkal, J. quashing Ext. P-6 proceedings passed by the first Respondent in the Original Petition, the Regional Provident Fund Commissioner and holding that the Respondents are not entitled to proceed as stated in Ext. P-6 to prosecute the Bank or to recover the amount as stated therein. The Petitioner is a Banking Company, the Lord Krishna Bank Limited which had a scheme of selecting trainees with a view to give them training in the business of banking so that they may be equipped for livelihood. The usual period of training is six months subject to extension or curtailment at the discretion of the management. The Provident Fund Commissioner seems to have felt that coverage under the Employees' Provident Fund Act was extended to these trainees also and accordingly Ext. P-6 order was passed under para 26B of the Employees' Provident Fund Scheme, 1952 deciding that the trainees in the Petitioner Bank were entitled to become members of the Employees Provident Fund Scheme. The General Manager of the Bank was directed to enrol the said trainees in the Scheme. The Bank had disputed the claim for coverage of these

employees on the ground that they were not employees of the Bank. In fact an affidavit was filed before the Commissioner stating details as to the nature of relationship between the Bank and the trainees evidently to assist the Provident Fund Commissioner in coming to a right decision. Ext. P-5 is the copy of such affidavit. That referred to the 14 persons mentioned in the letter of the Commissioner and it explained the stand of the Bank that they were not persons employed by the Bank to do any work in or in connection with the work of the Bank. They, according to the Bank, were only trainees learning the work in the Bank for their edification and to equip them for eking out a livelihood.

It was the case of the Bank that even after the training there was no obligation on the Bank to employ those found fit for employment. There was said to be no relationship of master and servant between the Bank and the trainees. No doubt, as per Ext. P-1 the trainees were to be paid stipend. But the Commissioner was told that the stipend paid to each of them was not wages or remuneration but only in the nature of a scholarship allowance to help him to defray his living expenses during the period of his training. Though such detailed job description of the trainees was given there was no reference to it in the order, Ext. P-6. Nevertheless the first Respondent proceeded to treat the trainees as employees mentioning that the trainees are not included in the definition of apprentices and thus are not excluded employees. It is this order of the first Respondent that was challenged in Original Petition. The learned Single Judge has upheld the challenge finding that on the averments in the petition and the case of the Respondents it has not been shown that they are liable to be covered.

2. It is contended by learned Counsel Shri. Abdul Azeez that the term "employee" has to be understood in a wider sense so as to extend the coverage under the Act and that there is no justification to hold that the trainees who are employed in connection with the work of the Bank do not fall within the purview of the Employees Provident Fund. Scheme.

3. The definition of "employee" in the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (in short, the Act) reads thus:

2. Definition.--In this Act, unless the context otherwise requires:

(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 employed by or through a contractor in or in connection with the work of the establishment.

In this context we may refer to a definition in Clause 2(f) of the Employees Provident Fund Scheme, 1952. That read thus:

2. Definitions.--In this Scheme, unless the context otherwise requires:

(a) * * *

(b) * * *

(c) * * *

(d) * * *

(e) * * *

(f) "excluded employee" means:

(i) an employee who, having been a member of the Fund withdraw the full amount of his accumulations in the Fund under Clause (a) or (c) of subparagraph (1) of paragraph 69.

(ii) an employee whose pay at the time he is otherwise entitled to " become a member of the Fund, exceeds one thousand and six hundred rupees per month;

Explanation.--Pay includes basic wages with dearness allowance, retaining allowance (if any) and cash value of food concession admissible thereon.

(iii) * * *

(iv) an apprentice.

Explanation. - An apprentice means a person who, according to the certified standing orders applicable to the factory or establishment, is an apprentice, or who is declared to be an apprentice by the authority specified in this behalf by the appropriate Government.

Counsel for the Appellant points out that the significance of this definition is that apprentice has been excluded which exclusion indicates that but for such exclusion apprentices would have come within the clause of employees and therefore under the scheme of the Act it must be taken that an employee takes within its scope an apprentice. This approach is not warranted for more reasons than one, the main being that the scope of the definition cannot be enlarged or curtailed by any definition in the provisions of the scheme. The scheme cannot operate so either expressly or impliedly. Therefore based on the definition of excluded employee it is not open to the Appellant's counsel to argue that whatever may be the meaning of the term employee in the enactment that must be understood as extended to apprentices also because of the definition of "excluded employee.

4. It is true that all trainees need not be apprentices though all apprentices may be trainees. The terms "trainee" and "apprentice" need not cover the same field. According to learned Counsel for the Appellant even if an apprentice does not fall within the scope of the Act a trainee may fall within the scope of the Act. Before adverting to this contention it may be useful to deal with the contention of the learned Counsel that an apprentice must be taken to be an employee, a contention urged mainly with reference to the definition of "excluded employee". That such an approach may not be sustainable is evident from the decision of the Supreme Court in *The Employees' State Insurance Corporation and Another Vs.*

The Tata Engineering and Locomotive Co. Ltd. and Another, We make particular reference to the approvals of the passage in Halsbury's Laws of England, which passage we extract here:

By a contract of apprenticeship a person is bound to another for the purpose of learning a trade or calling, the apprentice undertaking to service the master for the purpose of being taught, and the master undertaking to teach the apprentice. Where teaching on the part of the master or learning on the part of the other person is not the primary but only an incidental object, the contract is one of service rather than of apprenticeship; but, if the right of receiving instruction exists, a contract does not become one of service because, to some extent, the person to whom it refers does the kind of work that is done by a servant, or because he receives pecuniary remuneration for his work.

Earlier the same view had been expressed by this Court in *President, K.P. Co-operative Society v. E.S.L Corporation* 1975 KLT 670 when this Court said thus:

4. "Employment" denotes a larger concept than what is denoted by the term "engagement". This Court had occasion to consider this question and to observe that in the case of a casual worker it may be said that he is engaged whereas employment connotes a master and servant relationship and the concept of a non-casual service. An apprentice is allowed to work in order that he may learn the trade. In fact he is a student and the premises are his training ground. Even if he is paid any allowance it would not be "wages" as the term is defined in Section 2(22) of the Act for such wages should be remuneration paid or payable in terms of the conditions of employment. This necessarily suggests the idea that the payment is that which the person executing the work can claim as of right as return for the work he does. In the case of an apprentice though he may also assist in the work of the factory and he may also turn out work it is not to get such out-turn that he is permitted to work but to enable him to learn the trade. He may be given some incentive such as the prospect that he may be absorbed in the establishment and his training in the establishment may stand him in good stead elsewhere. While it may be said that he is working in the factory it cannot possibly be said that he is employed for wages in the factory as in the case of a workman in the factory. It is in this context that we have to notice that the legislature which was aware of the definition of the term "workman" in the Industrial Disputes Act, 1947 did not include the term "apprentices" also in the definition in another subsequent enactment relating to labour relations. Possible this circumstance may be of assistance in considering the scope of the term "factory". We are not to be understood as stating that in every situation where the term "apprentice" is used what we have said would necessarily follow for there may be instances there a workmen or employee may be disguised as an apprentice. Should there be any controversy that though such a one is styled as apprentice he is really not one as the term is understood but is really a workman or an employee that would necessitate the examination of the relationship between such apprentice and employer in that case to determine whether the

real relationship is of master and servant or of teacher and pupil. Since there is no controversy in the case before us that the apprentice who was entertained was really not an apprentice but was "employed" as is generally understood we need not go into the question.

Reference was made to the Patna decision [1967 (II) LL.J. Pat 188] which decision went up in appeal before the Supreme Court. The decision in the appeal is *The Employees' State Insurance Corporation and Another Vs. The Tata Engineering and Locomotive Co. Ltd. and Another*, .

5. An apprentice is engaged mainly for learning work. It may or may not be that in the process he works in connection with the work of the person who had engaged him as an apprentice. He may contribute his labour during training towards the work of the person who engages him for training. That is incidental. The main or predominant objective is that he should learn his work during the period of training.

6. Learned Counsel refers to the case of a trainee who may not be an apprentice. According to him where training is not the main objective but that is only incidental it would be employment, as for instance, an Articled Clerk in an auditor's firm. We do not want to pronounce on whether that case would be a case of training or apprenticeship. But we can certainly envisage a case where though apparently a person is styled as a trainee or apparently he "is under training the predominant object of his training is that he should contribute to the work for which he is engaged. In other words there may be instances where despite the fact that a person is undergoing training he also is an employee. But such a case will have to be pleaded and more than that established.

7. In the case before us the Bank had pleaded categorically the circumstances which would justify the conclusion by the decision making authority that the predominant object with which the trainees are taken is only to equip them for their livelihood. If that be true they would not be employees but would be merely trainees. The fact that they are paid stipend would make no difference at all. In the Original Petition there is an elaborate job description of the trainee which evidently is intended to establish the case of the Petitioner Bank that the trainees cannot be employees but are only trainees pure and simple. This is stated in para 3 of the Original Petition. It is in para 4 of the counter-affidavit that there is a reference to this and we do not find any denial of the factual description of the work of the trainees nor is there any evidence which would justify the assumption that the trainees are really not taken in order to be trained for their jobs and to equip themselves as stated in the petition but are really intended to supplement the work of the regular staff so that they are in fact and in truth employees of the Bank. No attempt has been made to establish this and therefore whatever may be their case that must fail as rightly found by the learned Single Judge. We think therefore there is no scope for interference with the judgment of the learned Single Judge. The appeal is dismissed. No costs.

Learned Counsel for the Appellants makes an oral application under Article 134A of the Constitution for certificate for leave to appeal to the Supreme Court. We do not find any substantial question of law of general importance which needs to be decided by the Supreme Court arising for decision in this appeal. Leave declined.