

(1991) 06 KAR CK 0008
In the Karnataka High Court
Case No : W.A. No. 94 of 1990

Regional Provident Fund Commissioner
Vs
Management of Hotel Highway Ltd.

APPELLANT
RESPONDENT

Date of Decision : 20-06-1991

Acts Referred:

Employees Provident Fund and Miscellaneous Provisions Act, 1952 — Section 2 (f)

Citation : (1991) ILR (Kar) 2381

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

Bench : Division Bench

Advocate : Shylendra Kumar, Central Govt. Standing, for the Appellant; B.C. Prabhakar, for the Respondent

Final Decision : Dismissed

Judgement

Mohan, C.J.—The short question that arises for our consideration in this case is whether the trainees undergoing training with the Management of Hotel Highway Limited, Mysore, are employees within the meaning of Section 2(f) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (for short "the Act").

2. The learned single Judge held, mainly relying on the Decision in The Employees' State Insurance Corporation and Another Vs. The Tata Engineering and Locomotive Co. Ltd. and Another, that the dominant object and intent to impart on the part of the employer and to accept on the part of the other person learning under certain agreed terms, is the criterion to decide whether one is employee or not. Though his attention was drawn to an unreported Judgment of this Court in W.P. No. 4916/1974, 2. DD 1-6-1976 - Tungabhadra Sugar Works v. Regional Provident Fund Commissioner delivered by Justice K. Jagannatha Shetty, as he then was, he did not take note of the said Decision. Therefore, he allowed the Writ Petition and quashed the demand by Regional Provident Fund Commissioner, Karnataka as against 27 trainees undergoing training with the Management of Hotel Highway Limited.

3. In this Appeal, it is contended before us by Sri Shylendra Kumar, appearing for the appellant that prior to the amendment, the law was to exempt an apprentice but he must satisfy the definition of apprentice as is found in Apprenticeship Act, 1961. Where, therefore, the object of the Act itself was to restrict the employees only to such cases, it cannot be enlarged to trainees, irrespective of that requirement to satisfy the Apprenticeship Act.

4. As regards The Employees" State Insurance Corporation and Another Vs. The Tata Engineering and Locomotive Co. Ltd. and Another, that was a case which arose under Employees State Insurance Act, 1948. Therefore, that cannot have any application. Then again, the Division Bench of this Court in W.P. 971/1983, DD 11-10-1990 - Meenakshi Sundaram v. Regional Provident Fund Commissioner referred to this very Supreme Court Decision and held that the apprentice must Be given restricted meaning. Therefore, the order of the learned single Judge calls for interference.

5. In opposition to this Mr. B.C. Prabhakar, learned Counsel for the respondent - Management of Hotel Highway Limited would submit not only the Supreme Court has taken the view about the apprenticeship (in The Employees" State Insurance Corporation and Another Vs. The Tata Engineering and Locomotive Co. Ltd. and Another, being excluded from the purview of the employee, there are also other Decisions rendered by the Kerala High Court in LORD KRISHNA BANK LTD. AND ANR. v. REGIONAL PROVIDENT FUND COMMISSIONER AND ANR. 1980(40) FLR105 and by the Madras High Court in The Poly Clinic, Nagercoil Vs. Regional Commissioner, Employees Provident Fund, Tamil Nadu and Others, Those two Cases arose under the Act in Question. Therefore, to say that restricted meaning must be given to the word excluded employees so as to restrict the apprentice requiring them to satisfy the qualification set out in the Apprenticeship Act is not warranted. Further as the Supreme Court has pointed out, the object is to impart training and there are no wages paid and that should be the cardinal test. From that point of view the learned Judge while rendering decision in W.P. No. 4916/1974 did not take note of the Decision of the Supreme Court. Therefore the said Decision cannot be said to lay down the correct law. Then, again in W.P. No. 971/1983 the Division Bench noted that they were in fact apprentices but were not employees. Therefore, factually that case is distinguishable. On a careful consideration of the above, we hold that the appellant has not made out any case for interference. Admittedly, there are 27 trainees undergoing training with the Management of Hotel Highway Limited, namely, the respondent. The definition of Employee as occurring u/s 2(f) of the Act (prior to the amendment) reads as follows:

"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."

It would be clear that unless and until there was a relationship of employer and employee this definition cannot be put in motion as was pointed out by their Lordships in *The Employees' State Insurance Corporation and Another Vs. The Tata Engineering and Locomotive Co. Ltd. and Another*, . The crux of the matter is whether there is such a relationship. If there is none it matters very little whether the qualification prescribed under the Apprenticeship Act are satisfied or not. We may now usefully extract the Head-note in *The Employees' State Insurance Corporation and Another Vs. The Tata Engineering and Locomotive Co. Ltd. and Another*, . That reads as under:

"When under the terms and conditions of agreement under which apprentices are engaged by a company, they are mere trainees for a particular period for a distinct purpose and the company is not bound to employ them in their work after the training period is over, such apprentices cannot be said to be employed in the work of the company or in connection with the work of the company more so when they are not given wages within the meaning of that term as defined in Section 2(22). Thus, an apprentice is not an employee within Section 2(9) of the Act. *Employees' State Insurance Corporation and Another Vs. Tata Engineering and Locomotive Co. Ltd. and Another*, affirmed.

The heart of the matter is apprenticeship is the dominant object and intent to impart on the part of the employer and to accept on the part of the other person learning under certain agreed terms. That certain payment is made during the apprenticeship, by whatever name called, and that the apprentice has to be under certain Rules of the discipline do not convert the apprentice to a regular employee under the employer. Such a person remain a learner and is not an employee. It is inherent in the word "apprentice" that there is no element of employment as such in a trade or industry."

6. Where, therefore, only training is imparted and no wages are paid, we are unable to see as to how they could be called employees at all. As a matter of fact, the learned Judge of the Madras High Court in *The Poly Clinic, Nagercoil Vs. Regional Commissioner, Employees Provident Fund, Tamil Nadu and Others*, observed as under:

"Mr. Sanjay Mohan, Counsel for the petitioner refers to the definition of an "employee" in Section 2(f) of the Act, which is to the following effect:

"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."

He then refers to Section 2(9) of the *Employees' State Insurance Act, 1948* (38 of 1948), wherein "employees" has been defined more or less similar to the definition found in the Act, but, in any event, comprehends a wider range of persons who are engaged in factories and establishments. In dealing with the

question as to whether an apprentice would come within the scope of the definition of Section 2(9) of the Act 34 of 1948, in *The Employees' State Insurance Corporation and Another Vs. The Tata Engineering and Locomotive Co. Ltd. and Another*, the Supreme Court has pointed out that the heart of the matter in apprenticeship, is the dominant object and intent to impart on the part of the employer and to accept on the part of the other person learning", under certain agreed terms, and that a trainee, while undergoing training, cannot be treated as an employee, and, therefore, held that an apprentice would not come within the scope of the expression "employee". The Supreme Court also took note of the definition of a "workman" in Section 2(a) of the Industrial Disputes Act, 1947, which expressly included an apprentice within the expression of "workmen", and pointed out that when Act 34 of 1948 was passed, the Legislature has omitted to include apprentice as part of the definition of the word "employee" and that it has to be treated as a deliberate exclusion made on the part of the Legislature it being well aware that the concept of apprenticeship carried a different connotation, and hence, unless a specific inclusion is made, it cannot be inferred that an apprentice is also an employee or a workman.

As stated earlier, the definition of an "employee" u/s 2(9) of Act 34/1948 is of a wider ambit, but necessarily include all the ingredients which are found in the definition of an "employee" u/s 2(f) of Act 19 of 1952. This decision of the Supreme Court, by itself, is an answer to the objection taken by the Respondents that an apprentice cannot be excluded from the purview of the Act.

Not stopping by referring to the decision of the Supreme Court mentioned above, Mr. Sanjay Mohan, learned Counsel for the petitioner, proceeds further to refer to the decision of the Kerala High Court in *Lord Krishna Bank v. Regional P.P. Commissioner* (1980) FLR 105 arising under the Act wherein the provision made in the Scheme in Section 2(f) had been taken note of and held that when a scheme is framed u/s 5 of the Act, it cannot go beyond the definition of an "employee" under "the Act", and hence, the attempt to include an apprentice as an employee by relying upon Section 2(f) of the Scheme, cannot be acceded to. This reasoning in the said Judgment, cannot be effectively assailed, because any Scheme framed under "the Act" cannot go beyond the provisions and intendment of the Act".

This affords a complete answer to the argument of the appellant. Turning to W.P. No. 4916/1974, that case unfortunately does not refer to the Supreme Court Decision cited. In W.P. No. 971/1983, a Division Bench of this Court though seized of this matter, ultimately found in paragraph-9 as under:

"It should also be pointed out that apart from following the Judgment in W.P. No. 4916/1974, the Provident Fund Commissioner has recorded a finding of fact to the effect that the apprentices in question were actually employees and they were named as apprentices only for the purpose of denying their legitimate benefits under the Act. This is a finding of fact. But the learned Counsel for the petitioner submitted that the above finding of fact has been recorded without

giving opportunity to the petitioner, which is not seriously contested by the learned Counsel for the respondent. Therefore, if the order of the Provident Fund Commissioner had been passed only on the above finding of fact, there would have been no alternative than to set aside his order. But, as stated earlier, he has followed the decision of this Court in W.P. No. 4916/1974 and as we find no reason to disagree with the view taken in the said case, there is no basis to interfere with the order of the Provident Fund Commissioner."

Therefore, this does not afford any assistance to the appellant.

In the result, we find no ground for interference. Appeal is accordingly dismissed. No costs.