

(2011) 04 MAD CK 0320

In the Madras High Court

Case No : Writ Petition No's. 24504 and 24505 of 2006 and M.P. No. 1 of 2006

S. Kothandaraman

APPELLANT

Vs

Union of India (UOI) and Tamilnadu Small Industries
Development Corporation

RESPONDENT

Date of Decision : 09-04-2011

Acts Referred:

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

Citation : (2011) 04 MAD CK 0320

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : S. Doraisamy, for the Appellant; M. Nirmala Devi, for Respondent 1,
for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—The Petitioner in these two Writ Petitions are building Contractors. It is claimed that they construct building for various Government Organizations including the 5th Respondent Tamil Nadu Small Industries Development Corporation. The relief claimed by the Petitioner in these two Writ Petitions is for an order of restraint to the Respondents from enforcing the provisions of amended Para 26(2) of the Employees Provident Fund Scheme (EPF Code) in so far as it applies to temporary and casual and site workers employed by the Petitioners in their business.

2. Reliance was placed upon the orders obtained by the Builders' Association of India filed before Madurai Bench of this Court in WPMP (MD) No. 171 of 2005 in WP (MD) No. 169 of 2005. It is on that premise, the Writ Petition was admitted on 2.8.2006. Pending the Writ Petition, this Court granted interim injunction. However, it now transpires that the two Writ Petitions filed by the Builders Association came to be dismissed by the Madurai Bench of this Court on the basis of the order passed by the Supreme Court in SLP. Even otherwise, the contention that the temporary workers will not get the benefit of the funds

cannot be accepted so long as the Government has power to amend the scheme and it covers all except the excluded employees working in the factory. When the definition of the employee includes even an employee who is employed through agency, the Petitioner cannot get over the obligation or liability made under the Scheme. u/s 7 of the Employees Provident Fund and Miscellaneous Provisions Act, the Central Government has power to amend the scheme.

3. A similar issue came up for consideration before Bombay High Court in *Kay Iron Works Pvt. Ltd, Satara v. Union of India, Ministry of Labour*, through its Secretary and Anr. reported in (2007) 1 LLJ 603. The Bombay High Court in paragraph Nos. 6 and 7 had observed as follows:

6. The modification of the Scheme is a statutory power which the Central Government initially exercises and then the notification is placed before each of the House of the Parliament for its ratifications. Thus, the notification, though initially indicates in executing intentions in amending the Scheme, it subsequently reflects the people's will through both the Houses of Parliament.

7. ... The P.F. Act is an Act to provide for the institution of provident funds, pension fund and deposit-linked insurance fund for employees in factories and other establishments. It is basically a welfare legislation so as to provide for the future of the employee in the factories and other establishments. The impugned amendments guarantee that such employees would not be required to wait for three months and they would get the benefits of the scheme right from the first day of the employment. The apprehensions expressed by the Petitioner may be applicable in a very negligent number of cases but when the Government effects new modifications to the P.F. Scheme, their larger impact on the welfare of the working class and more particularly in the private sector is required to be seen. In any case there is no guarantee that such dropouts within the period of initial three months would not join another establishment which is covered under the Act and, therefore, there will be continuity in employment and his account will be just transferred with the new establishment. There is no question of refund to such dropouts joining another establishment which is amenable to the Act and the Scheme. Hence the grounds of challenge raised by the Petitioner do not make out a case to hold that the impugned notification is erroneous or without authority in law or in any way anti-labour. As noted earlier, the Government of India has the power u/s 7(1) of the P.F. Act to modify the Employees' Provident Fund Scheme, 1952 from time to time.

4. In the light of the same, both the Writ Petitions stand dismissed. No costs. The connected Miscellaneous Petitions are closed.