
(1980) 08 GUJ CK 0017
In the Gujarat High Court
Case No : Spl. C.A. No. 2434 of 1978

Satish Plastics

APPELLANT

Vs

R.P.F. Commissioner

RESPONDENT

Date of Decision : 06-08-1980

Acts Referred:

Constitution of India, 1950 — Article 226
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 1(3),
16, 2

Citation : (1981) 22 GLR 686 : (1981) 2 LLJ 277

Hon'ble Judges : M.P. Thakkar, J;A.N. Surti, J

Bench : Division Bench

Judgement

Thakkar, J.—An employee is an employee (1) regardless of whether he has the liberty to work for the master at his own place, (2) whether he has also the liberty to work for someone else and (3) the employee agrees to style it as a contract. Feeling aggrieved by this view a partnership firm engaged in the manufacture of nylon buttons on a small scale at Jamnagar has instituted the present petition under Art. 226 of the Constitution of India in order to challenge the impugned order passed by the Regional Provident Fund Commissioner as per Annexure "C" dated September 1, 1978 holding that the petitioner-firm was liable to pay Provident Fund contributions and dues as per the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 and the scheme. The view taken by the Regional Provident Fund Commissioner by the impugned order is that the Act is applicable to the factory of the petitioner from August, 1966 onwards and that the petitioner firm is liable to pay the dues under the aforesaid Act from that date onwards as if the Act was applicable throughout the period. According to the petitioner the Act was not applicable to the aforesaid factory run by the petitioner and that the demand was not warranted by the provisions of the Act.

2. It is provided by S. 1(3)(a) of the Act that subject to the provision contained in S. 16, the Act applies to every establishment which is a factory engaged in any

industry specified in Schedule I and in which twenty or more persons are employed. There is no dispute that the factory is engaged in an industry specified in Schedule I. What is in dispute is whether twenty or more persons were employed at the material time. The statement at Annexure "A" produced along with the petition shows that nineteen workers were employed from 1966 onwards till January, 1968. Thus, the number of workers employed was less than twenty. However, in August, 1966 it was discovered that the factory had also engaged one more person, namely, Shri Natverlal Tribhobandas as an accountant. According to the department Natverlal being an employee of the factory, the number of employees employed in August, 1966 had risen to twenty and, thus, the Act became applicable from August, 1966 onwards. This discovery was made in the course of Inspection visits made by the Provident Fund Inspector in May and June, 1973. That is why the petitioner-firm was called upon to pay the dues. It is common ground that if the conclusion reached by the Regional Provident Fund Commissioner that Shri Natverlal who was employed as an Accountant was considered to be an employee of the factory is unassailable, the Act would become applicable from August, 1966 onwards for a particular period. According to the petitioner-firm the said Natverlal was not a regular employee of the petitioner-firm at all. It is the case of the petitioner that Natverlal was entrusted with the work of writing accounts on a contract basis. He had the option to take employment with some other employers as well He had also the option to work at his own residence. It is alleged that the Katcha books of account of the firm used to be sent to the residence of Natverlal who used to prepare pucca account books on the basis of the same. It is case of the petitioner-firm that he was being paid Rs. 60 per month in connection with this work entrusted to him on contract basis. The Regional Provident Fund Commissioner has relied on a decision of this High Court in *M/s. Plaza Talkies, Junagadh v. Shri R. K. Rastogi*, in Special Civil Application No. 1742 of 1976, rendered on March 18, 1976. J. B. Mehta, T. U. Mehta, JJ., have taken the view that having regard to the definition of S. 2(f) of the Act any person employed for wages for any kind of work in or in connection with the work of an establishment would fall within the definition of employee and that regardless of the place where he worked in connection with the employer's establishment, he would be an employee within the meaning of the Act. In that case also the plea urged on behalf of the employer was that he was entrusted with the work of booking pictures on commission basis and that he did business at Bombay as disclosed by the record of the case. The Division Bench has taken the view that the fact that he was working at Bombay is immaterial though there is no elaborate discussion in regard to this aspect. Thus, the question in a way has been concluded by the aforesaid decision and we are not shown any good reason to take a different view. The definition of employee contained in S. 2(f) is wide enough to take within its sweep a person permitted to work at his own residence as well. Under the statutory definition even if a person is not wholly employed, if he is principally employed in connection with the business of the shop, he would be a person employed within the meaning of the statutory language. An "employee"

has been defined to mean any person who is (i) employed for wages in any kind of work, manual or otherwise, (2) in or in connection with the work of an establishment and (3) who gets wages directly or indirectly from the employer. The inclusive part of the definition makes it clear that even if the person concerned has been employed through a contract in or in connection with the work of establishment, he would yet fall within the description of "employee" within the meaning of the Act. In order to answer the question some other questions have to be asked and answered viz :

- (1) Was he doing the work for monetary payment ?
- (2) Was the work done by him the work of the establishment or had a nexus with such work ?
- (3) Was the payment made wages, in the sense of being remuneration for the physical or mental effort in connection with such work ?
- (4) Was the work such that it had to be done as directed by the establishment or under its supervision and control to the extent that supervision and control are possible having regard to the specialized nature of the work or the skill needed for its performance ?
- (5) Was the work of such a nature and character that ordinarily a master-servant relationship could exist and but for the agreement styling it as a contract common practice and common-sense would suggest a master-servant bond ?
- (6) Was the relation indicative of master-servant status in substance having regard to the economic realities irrespective of the nomenclature devised by the parties ?
- (7) Was he required to do the work personally without the liberty to get it done through someone else ?

3. If these answers nod their heads, a master-servant relationship can be spelt out with safety and certainty. Is such relationship any the less a master-servant relationship in case the person is allowed to work, (1) at his own place and/or (2) at the hours of his own choice, and or (3) for someone else ? Certainly not. The reason is neither obscure nor fair to seek. In private employment there is no legal bar to work for someone else. Nor to doing the work elsewhere than at the master's place. Concept of flexible hours is also well-known concept since many years. The point may be illustrated. A cashier employed during day time by a chemist is no less than an employee of the master merely because after his day is over he works at another Chemist's shop as cashier at night. Thus, a master-servant relationship exists and parties cannot make a difference relationship by applying the label of contract. An employee called by any other name remains an employee for the juridical relationship does not depend on the nomenclature devised in order to defeat the law. And law will not countenance a slap in its face by its non-respectors who choose to flout it by disingenuous and circuitous devices. If entry is prohibited, it is prohibited, regardless of whether one effects

it through the front door or the back door. We are, therefore, of the opinion that the Regional Provident Fund Commissioner was perfectly justified in negating the plea that Natverlal was not an employee within the meaning of S. 2(f) of the Act. The first contention urged on behalf of the petitioner-firm must, therefore, be repelled.