
(1962) 07 MP CK 0007

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 12 of 1962

Solanki Workshop

APPELLANT

Vs

Regional Provident Fund Commissioner and Another

RESPONDENT

Date of Decision : 10-07-1962

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 5, 6, 6(1), 6(2)

Citation : AIR 1963 MP 7 : (1962) 5 FLR 398 : (1963) ILR (MP) 1014 : (1963) 1 LLJ 613 : (1962) 7 MPLJ 1003 : (1962) MPLJ 1003

Hon'ble Judges : P.V. Dixit, C.J.;K.L. Pandey, J

Bench : Division Bench

Advocate : J.V. Jakatdar, for the Appellant; H.L. Khaskalam and Rama Gupta, for the Respondent

Final Decision : Dismissed

Judgement

Dixit, C. J.

In this case the petitioner, who is the managing partner of a registered firm engaged in lathe and foundry works and repairs of machinery, challenges the validity of an order of the Regional Provident Fund Commissioner, Indore, asking the firm to implement the provisions of the Employees Provident Funds Act, 1952, and the Employees' Provident Funds Scheme, 1952, on the pain of penalties prescribed by the Act and the scheme, and of a direction to the petitioner to deposit the firm's contribution and that of the employees for the period, from 1st January 1961 to 30th November 1961. The petitioner prays that a writ of certiorari be issued for quashing these orders and a direction restraining the respondents from taking any action against the petitioner under the Act or the Scheme be made.

When the employees' Provident Funds Act, 1952 (hereinafter referred to as the Act) was amended by the Employees' Provident Funds (Amendment) Act, 1960, and the Act became applicable to the petitioner's workshop from 31st December

1960, the Regional Provident Fund Commissioner asked the petitioner to supply certain information concerning the number of employees, their emoluments etc. This information was supplied by the petitioner in due course. On 23rd September, 1961 the respondent No. 1 drew the attention of the petitioner to the provisions of the Act and to the necessity on the part of the petitioner of implementing the provisions of the Act and the Scheme. In reply, the petitioner forwarded a representation of the employees in the concern with regard to their inability to make contributions to the provident funds scheme. The respondent No. 1 again informed the petitioner on 2nd November, 1961 that the provisions of the Act and the Scheme were mandatory and that no employee could be allowed to go out of the ambit of the Act and the Scheme; and that the responsibility for the enforcement of the Act and the Scheme as well as for the payment of the contributions of the employer and the employees lay on the petitioner. Even after this intimation the petitioner took no steps for implementing the provisions of the Act and the Scheme. Thereupon the respondent No. 1 deputed an Inspector for an inspection of the petitioner's workshop. The Inspector submitted a report and also called upon the applicant to deposit immediately the firm's contribution and that of the employees for the period from 1st January, 1961 to 30th November, 1961.

Shri Jakatdar, learned counsel appearing for the petitioner, contended that the Act nowhere made the employer liable for the payment of the employees' contribution; that Section 6(1) of the Act only related to the liability of the employer for the payment of his own contribution; and that the provision in paragraph 30 of the Scheme laying down that the employer shall, in the first instance, pay the contribution payable by himself and also on behalf of the employees was ultra vires the provisions of the Act and particularly Sections 5 and 6 thereof.

It was further argued that even under paragraph 30 of the Scheme the liability of the petitioner for the payment of contribution was limited to the "first instance" that is to say, for the payment of the contribution only for the month of January, 1961. Learned counsel for the petitioner suggested that item 2 of Schedule II to the Act read with paragraph 30 of the Scheme made an employer liable for the payment of the employees' contribution only if the employees so desired; and that as in the present case the employees were not willing to contribute to the fund, no liability for the payment of their contribution could be fastened upon the petitioner.

In our judgment there is no substance in any of these contentions. Section 5 of the Act empowers the Central Government to frame a provident fund scheme in accordance with the Act for any employees or any class of employees in specified establishments or class of establishments. Section 6(1) runs as follows:

"6. Contributions and matters which may be provided for in Schemes.

(1) The contribution which shall be paid by the employer to the fund shall be six

and a quarter per cent, of the basic wages and the dearness allowance for the time being payable to each of the employees, and the employees' contribution shall be equal to the contribution payable by the employer in respect of him and may, if any employee so desires and if the Scheme makes provision therefor, be an amount not exceeding eight and one-third per cent. of his basic wages and dearness allowance:

* * * * * It will be seen that this provision fixes the contribution payable by the employer to the fund as also the contribution payable by the employees. It also makes the employer and the employee liable for the payment of that contribution when it says that the contribution which shall be paid by the employer shall be at the rate of 6 1/4 per cent of the basic wages and dearness allowance and the contribution payable by the employee shall be equal to the contribution payable by the employer in respect of him. The option that has been given to the employee by this provision is only with regard to the payment of an amount higher than the prescribed 6 1/4 per cent but not exceeding 8 1/3 per cent of his basic wages and dearness allowance. Paragraph 29 of the Scheme is also in similar terms. Neither Section 6 of the Act nor paragraph 29 of the scheme gives any option to the employees to opt out of the Scheme. Both these provisions make it obligatory on the employees to pay their minimum prescribed contribution which is equal to the employer's contribution of 6 1/4 per cent of the basic wages and dearness allowance.

Now Sub-section (2) of Section 6 says that subject to the provisions contained in Sub-section (1), any scheme may provide for all or any of the matters specified in Schedule II. This schedule specifies as item 2 the following matters for which provision may be made in the Scheme:

"The time and manner in which contributions shall be made to the Fund by employers and by, or on behalf of, employees, the contributions which an employee may, if he so desires, make under Sub-section (1) of Section 6, and the manner in which such contributions may be recovered."

Paragraphs 30, 31 and. 32 are as follows:

"30. Payment of contributions.-- The employer shall, in the first instance, pay both the contribution payable by himself (in this Scheme referred to as the employer's contribution) and also, on behalf of the member employed by him, the contribution payable by the member (in this Scheme referred to as the member's contribution).

(31) Employer's share not to be deducted from the members. -- Notwithstanding any contract to the contrary the employer shall not be entitled to deduct the employer's contribution from the wage of a member or otherwise to recover it from him.

Recovery of a member's share of contribution.

(1) The amount of a member's contribution paid by the employer shall,

notwithstanding the provisions in this Scheme or any law for the time being in force of any contract to the contrary be recoverable by means of deduction from the wages of the member and not otherwise.

* * * *

Paragraph 30 clearly enjoins that the employer shall in the first instance pay both the contribution payable by himself and also on behalf of the employees. This provision is in no way inconsistent with Section 6(2) and item 2 of Schedule II. Item 2 specifically speaks of the time and manner in which contributions shall be made by employers and by, or on behalf of, employees. The words "on behalf of employees" are very significant, and they give Government the power to frame a scheme containing a provision for the payment of the employees contribution by some other person on their behalf.

Learned counsel for the applicant said that the expression "time and manner in which contributions shall be made to the Fund" referred only to the time and form of payment and did not empower the Government to make the employer liable for the payment of the employees' contribution. We do not agree. Item 2, as it is worded, is sufficiently wide to enable the insertion of a provision in the scheme asking the employer to pay in the first instance the employees' contribution as well. It must be noted that paragraph 30 in no way alters the employee's legal liability for the payment of his contribution u/s 6(1) of the Act. The liability continues to remain on the employee and what paragraph 30 does is only to make the employer responsible in the first instance for the payment of the employee's contribution. This is made further clear by paragraph 32 of the Scheme which enables the employer to deduct from the wages of an employee the amount of his contribution with the condition that the deduction must be from the wage of that period in respect of which the contribution is payable. The employer cannot recover in any other manner the contribution paid by him on behalf of an employee. Thus the employer is fully reimbursed for the payments made by him on behalf of the employees. The ultimate liability of the employee to make the contribution remains intact.

The argument that the expression "in the first instance" appearing in paragraph 30 would imply that the employer is liable to pay his contribution and that of the employees only once is altogether unsubstantial. The expression only denotes the order of recovery. It does not mean "only once". The applicability of paragraph 30 is also not limited to only those cases where the employees have signified their willingness to join the fund. The words "if he so desires" occurring in item 2 refer to the time and manner of the payment of those contributions which an employee may choose to make over and above the statutory 6 1/4 per cent fixed by Section 6(1) of the Act. In our opinion, Section 6 and paragraphs 29, 30 and 32 are plain enough to leave no doubt that on the application of the Act to the petitioner's concern the petitioner and the employees of the Solanki Workshop became liable to pay the contributions prescribed by Section 6(1) of the Act; and that the responsibility for making the payment of the contributions

of the employer as well as of the employees lay on the petitioner. This view is supported by the decision in Aluminium Corporation of India Ltd. Vs. Regional Provident Fund Commissioner and Others, and N.K. Industries (Private) Ltd., Kanpur Vs. Regional Provident Fund Commissioner, U.P., . In the Calcutta case it was held that neither Section 6 nor paragraph 29 of the Scheme gives an option to the employees to Day or not to pay their contribution. The Allahabad case lays down that paragraph 30 of the Scheme imposes a duty on the employer to contribute Both the shares, namely, his own as also that of the employee.

For all these reasons our conclusion is that the opponents rightly asked the petitioner to implement the provisions of the Act and the Scheme and called upon him to pay the employer's as well as the employees' contribution for the period from 1st January, 1961 to 30th November, 1961. This petition is, therefore, dismissed with costs. Counsel's fee is fixed at Rs. 100/- The outstanding amount of the security deposit after deduction of costs shall be refunded to the petitioner.