

(1996) 01 MAD CK 0094

In the Madras High Court

Case No : Writ Petition Nos.11539 to 11543 and 11713 to 11717 of 1994

S.P. Abdul Rahim and Son

APPELLANT

Vs

Regional Provident Fund Commissioner and Another

RESPONDENT

Date of Decision : 19-01-1996

Acts Referred:

Beedi and Cigar Workers (Conditions of Employment) Act, 1966 — Section 2

Constitution of India, 1950 — Article 14, 19(1)

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 2

Citation : (1996) 1 LLJ 1134

Hon'ble Judges : AR. Lakshmanan, J

Bench : Single Bench

Advocate : Habibulla Basha for E.S. Govindan, for the Appellant; P. Narasimhan, for the Respondent

Final Decision : Dismissed

Judgement

Ar. Lakshmanan, J.—The prayer in all these Writ Petitions is common. The prayer runs thus:

"to issue a writ of Certiorarified Mandamus, calling for the records pertaining to the impugned letter/communication No. TN/8208/ Bidi/Spl/Squad/VLR/94 dated February 11, 1994 addressed to the petitioners quashing the above letter/communication and^ directing the respondents not to implement the Employees Provident Fund and Miscellaneous Provisions Act, 1952 in respect of Ring Labellers...."

2. The short facts are: All these writ Petitioners are engaged in the sale of beedis. They employ accountants, clerks, Maistries and packers in their premises. According to them, they obtain beedis by contract system. The finished beedis are tendered by independent contractor at the premises of the Petitioners and receive the contractual amount mutually agreed. The beedis received from the contractors are entered in the concerned registers prescribed under Central Excise and Salt Act, 1944 and scheme thereunder and issued for pasting of ring

labels. One lady takes the finished beedis in bulk and printed ring labels from Trade mark owners for pasting of ring labels and distributes the beedis among other ladies who paste the ring labels participated by the Members of their family during their leisure time and the above lady collects" beedis by giving wages to them reckoned on per unit of 1000 beedis and tender the ringed bidies at the premises of Trade Mark Owners and receive the amount fixed between the Trade Mark Holder and the person covered. The lady collects the beedis for pasting of ring labels from more than one Trade mark Owner. The ladies who take the beedis in bulk and distribute it to Ors. do not keep any account such as name of ladies who paste rings, the numerical quantum of beedis pasted with ring labels and the amount paid to those ladies. The lady who takes beedis from the Trade Mark Owner gets an entry in the Pass Book prescribed under the Central Excise and Salt Act and Rules. No control whatsoever is exercised, beedis being excisable commodity are to be transported along with Pass Book. The ring labellers are not regular and punctual. They absent without leave or permission. These ladies who paste rings are not static and permanent. There is no privity of contract and the relationship of master and servant which requires privity of contract and contract of service both of which are absent in the cases of ring labellers.

The 2nd respondent viz., The Regional Provident Fund Commissioner, Madras - 14 issued a letter in No. TN/3208/Bidi/Spl/Squad /VLR/94 dated February 11, 1994 to the petitioners requesting them to enrol the "Ring label coolies/mazdoors" as Provident Fund subscribers from the date of their entitlement and report the compliance through monthly Return in Form 5. It is stated in the notice that during the course of inspection, it is found that the ring label coolies/mazdoors of the petitioners" establishments are deprived of the benefits of the Employees Provident Fund membership. It is also stated that the ring label coolies/mazdoors are very well coming within the meaning of the definition of "employee" as provided in Section 2(f) of the E.P.F. & M. P. Act, 1952. Similar notices were issued to all the other Writ Petitioners. According to Mr. Habibulla Basha, learned Senior counsel appearing for the petitioners, the respondents have misconstrued the entire issue and erroneously presumed ring labelleres as employees u/s 2(f) of the Employees Provident Fund and Miscellaneous Provisions Act, 1952, which is not applicable to ring labellers. It is submitted that pasting of ring labels is not a manufacturing process and further not a process incidental to manufacturing process. According to Mr. Habibulla Basha, the following salient features emerge and they are relevant for the purpose of deciding the case whether the ring labellers/mazdoors are coming within the meaning of "employee" as defined u/s 2(f) of the Act and whether the petitioners to enrol these ring label coolies as Provident Fund subscribers from the date of their entitlement.

(A). No control of any sort is exercised over the ring labellers by anybody and in this case no question of rejection of beedis arise by the Trade Mark Owners or any body else and no discipli nary action is taken against ring labellers.

(B). The ring labellers work at their leisure time and the children and the other members of family also participate in the pasting of ring labels.

(c) The ring labellers are not made to work for any specified number of hours in any specified premises. They paste ring labels to beedis of more than one Trade Mark Holder. They are not workers. Multiplicity of Employers is common feature.

(D) The ring labellers are not required to paste ring labels to any specified numerical, quantum of beedis. They are paid amounts on piece rate basis per unit of 1000 beedis.

(E) The time of ring labellers is not at the disposal of the Trade Mark Holder/Petitioner. The Petitioner does not dictate the manner in which the work has to be done.

(F) No log books and identity Cards are issued to ring labellers, since no labour statute contemplates such an issue in respect of ring label mazdoors.

(G) No Labour statute including Beedi and Cigar workers (Conditions of Employment) Act, 1966 and Employees Provident Fund and Miscellaneous Provisions Act, 1952 defined the Ring Labellers. This category is actually outside the purview of the statutes.

It is further contended that the ring labellers are not employed by anybody and that the definition of ring labellers is not contained in any statutes, The comprehensive code governing the conditions of employees in Beedi Industry viz., Beedi and Cigar Workers (Conditions of Employment) Act, 1966, Section 2(f) (i) of the above act defines "home workers" as "any labour who is given raw materials by an Employer or Contractor for being made into beedi or cigar or both at home hereinafter referred to in this Act as "Home Worker". According to the learned senior counsel, the ring labellers do not fit in the above definition because what is issued to them is not raw material but finished beedis. Nothing is given to ring labellers to be made into beedis. They are only asked to paste ring labels to finished beedis.

3. The word "employee" is defined u/s 2(0) of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 as "Employee" means, any person who is employed for wages in any kind of work, manual, otherwise, in or in connection with the work of Establishment who gets his wages directly, or indirectly from the Employer and includes any person employed or through a contractor in or in connection with the work of the Establishment. According to the learned Senior Counsel, the word "employee" in the above definition connotes relationship of Master and servant which requires privity of contract and contract of service both of which are absent in the case of Ring Labellers. The test to determine relationship of Master and Servant is dealt with in detail in the decisions rendered by various High Courts and Supreme Court. Therefore, he contends that the ring labellers are not workers and the disobeying the order is not established and therefore, the petitioners need not enrol the ring labellers to the

benefit of the Act as required by the respondents.

4. Separate counter affidavits have been filed by the first respondent Assistant Provident Fund Commissioner, in all these Writ Petitions. The maintainability of the Writ petitions under Article 226 of the Constitution of India, without exhausting the provisions of Section 7A(I)(a) of the Act has also been raised by the respondents. According to the respondents, the petitioners have an effective alternative remedy available for them under the Act. Section 7A contemplates to determine the applicability of the provisions of the Act. The reference u/s 19A is also available to refer the matter and issue to the Central Govt. In any event, the petitioners are bound by the decision rendered by the Supreme Court in *P.M. Patel & Sons and Others v. Union of India* reported in . It is also* contended that the modus operandi stated in paragraph 3 and 4 of the affidavit are subject to proof and they in no way affect the implementation of the provisions of the Employees Provident Fund & Miscellaneous Provisions Act, 1952. According to Mr. Narasimhan, learned counsel for the -respondents, Section 2(f) of the Act postulates employee, as 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 gets wages directly or indirectly-from the employer includes any person.

5. I have carefully considered the rival submissions made by the counsel for the parties. I am of the view that any person employed for^ wages in any kind of work in or in connection with the work of an establishment, regardless of the place where they work in connection with the employer's establishment, would be an employee within the meaning of the Act. The definition of employee u/s 2(f) of the Act, in my view, is wide enough to take within its scope any person permitted to work at his own residence as well. Under the statutory definition even if a person is not wholly employed, and 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. The terms of the definition are wide and they include not only persons employed directly by the employer, but also persons employed through a contractor. Moreover, they include not only persons employed in the factory, and also persons employed in connection with "the work of factory. I am unable to countenance the argument of the learned Senior Counsel for the petitioners to state that the proceedings of the respondents impugned in these writ petitions are illegal, void and without jurisdiction, since the notice issued by the authority is, in my view, in accordance with the principles of law and the provisions of the Employees Provident Fund Act. The reference in the argument of the learned senior counsel for the petitioners to the modus operandi is not acceptable. The same will in no way affect the implementation of the provisions of the Act as rightly pointed out by Mr. Narasimhan, learned counsel for the respondents as the Act is intended to consider the welfare of the employees, especially the poor employees and to provide them all benefits which they are entitled to under the provisions of the Act. While so, the contentions that the employers do not have control over the workers is totally wrong and baseless. In so far as the Act and its provisions are

concerned, it is the establishment as such is to be considered. I am also unable to accept the contention of Mr. Habibulla Basha, learned Senior counsel appearing for the petitioners that the petitioners have no control over the ring labellers. Without the control of the employer or in any form of the supervision of the employer no work can be completed or done successfully. Therefore I reject the contention of the petitioners that the employers have no control over the workers, as not correct.

It is also not correct on the part of the petitioners to contend that the ring labellers are not workers / employees. The Apex Court of the land has held in *P.M. Patel & Sons and Ors. v. Union of India* (supra) mentioned above, that the Home Workers are employees u/s 2(f) of the Act. On the basis of the said decision, the Writ Petitions themselves are to be dismissed in limine and therefore, the averments in the affidavit are not relevant to the issue in question. The respondent has only followed the decision of the Supreme Court and following the principles enunciated thereunder and initiated action to bring Home the workers under the ambit of the provisions of the Act. Hence, the notices issued to the petitioners herein is perfectly in order. There is also no violation of Articles 14 and 19(1)(g) of the Constitution of India as alleged. The notices issued by the respondent is in accordance with the provisions of the Employees Provident Fund Act. This Social Welfare Act has been enacted for the betterment of poor subscribers for upgrading the social status and security of the poor people. As pointed out by Mr. P. Narasimhan, learned counsel for the respondents, the above said Supreme Court judgment (*P.M. Patel v. Union of India* (supra)) is directly on point.

6. In the above said Supreme Court case, an important question - whether the workers employed at their homes in the manufacturing of beedis are entitled to the benefits of Employees Provident Fund and Miscellaneous Provisions. Act, 1952 and the schemes made thereunder. The petitioners in the above case are engaged in the manufacturing and sale of beedis. The labourers employed in the manufacturing of beedis are consisting of different categories. The work of rolling the beedis is done by one or the other of different categories of workers. The work is also entrusted by the manufacturers directly to the workers who prepare the beedis at home after obtaining supply of raw materials consisting -of tobacco, bidi leaves and thread from the manufacturers. Another category consists of workers employed by the manufacturers through contractors and the manufacturers pass on the raw materials to such workers for rolling the beedis in their dwelling houses. The third category of the home workers are those to whom the work is entrusted by independent contractors who treat the workers as their own employees and get the works done by them either at their own premises or in the dwelling homes of the workers in order to fulfil and complete contracts entered into with the manufacturers for the supply of the finished product from the raw materials supplied by the manufacturers to the, contractors. According to the manufacturers, the home workers attend at the factories within the specified hours every day and collect the raw material taking to their homes for rolling

beedis. In the case of home workers who hold direct relationship with the manufacturers, the rolled beedis are brought by the home workers to the factory and the beedis which conform to the standards envisaged by the manufacturers are accepted while those which do not are rejected. The acceptance or rejection is effected in the presence of home worker to whom the work was entrusted. The staff at the factory maintains registers in which regular entries are made of the raw material supplied to home workers, and of the rolled beedis which are delivered by them at the factory. The payment of wages to such home workers may be made directly or distributed through the contractors engaged by the manufacturers for engaging them. The petitioners filed Writ Petitions challenging the constitutional validity of the notifications and the proceedings taken by the respondents against them for the purpose of enforcing the Employees Provident Fund Act and the Scheme so far it relates to the Home Workers.

7. Similar grounds as raised in the present writ petitions were also raised in the above writ Petitions viz., that the Act cannot be extended to the Home Workers because there is no relationship of employer employee between the manufacturer and the home workers and that the workers in the industry are subject to no retirement age etc., and the extension of the Act under the Scheme to the Beedi industry constitutes an unreasonable restriction on the Fundamental Rights of the Petitioners guaranteed by Sub-Clause (g) of Clause 1 of Article 19 of the Constitution and also violates Articles 14 and 31 of the Constitution. The Supreme Court on consideration of the materials on record, held as follows:

"There is no dispute that pursuant to the impugned Notification dated May 17, 1977 the beedi industry has been brought within the scope of the Employees' Provident Funds Act and that the impugned Notification dated May 23, 1977 has made the Scheme applicable to the beedi industry. Clause (a) of sub-s(3) of S. 1 of the Employees Provident Funds Act applies that Act to every establishment which is a factory engaged in any industry specified in Schedule I and in which twenty -or more persons are employed. Admittedly, the factory belonging to the manufacturers is, therefore, drawn within the compass of the Employees' Provident funds Act and the Scheme. It is also admitted by the petitioners that the workers employed within the factory premises would be covered by the Act and the Scheme. The real question is-whether the home workers are entitled to that benefit. Clause (f) of S. 2 of that Act defines an "employee" to mean "any person who is employed for wages in any kind of work, manual or otherwise, in or connection with the work of an establishment, and who gets his wages directly or indirectly from the employer, and includes any persons employed by or through a contractor in or in connection with the work of the establishment." It will be noticed that the terms of the definition are" wide. They include not only persons employed directly by the employer but also persons employed through a contractor. Moreover, they include not only persons employed in the factory but also persons employed in connection with the work of the factory. It seems to us that a home worker, by virtue of the fact that he rolls beedis, is involved in an activity connected with the work of the factory. We are unable to accept the

narrow construction sought by the petitioners that the words "in connection with" in the definition of "employee" must be confined to work performed in the factory itself as a part of the total process of the manufacture."

To the question raised as to whether such a relationship of master and servant exist between the manufacturer and the home worker, the Supreme Court after considering several cases placed before them, particularly *Chintaman Rao and Another Vs. The State of Madhya Pradesh*, , held that the right of rejection can constitute in itself an effective degree of supervision and control. It was also pointed out that there is evidence to show that the rejection takes place in the presence of the home worker. That factor, however, plays a merely, supportive role in determining the existence of the relationship of the master and servant, and | that the Supreme Court has also observed that there is no element of personal service in beedi rolling and that it is open to a home worker to get the work done by one or the other member of his family at home and that the element of personal service is of little significance when the test of control and supervision lies in the right of rejection. It was also held that the home workers are "employees" within the definition contained in Clause (f) of Section 2 of the Employees' Provident Funds Act. It is useful to reproduce the following paras in the present context.

"12. The next question is whether having regard to the peculiar features of the home workers' system of employment the provisions of the Employees Provident Funds Act and Scheme can be applied on their terms to home workers. The principal contention in this connection is that no retirement age is fixed in the case of home workers and therefore, the Scheme cannot be implemented in respect of them. CI(a) of Sub-para (1) of para 69 of the Employees Provident Funds Scheme provides that "a member may withdraw the full amount standing to his credit in the Fund on retirement from service after attaining the age of 55 years." It seems to us that the law does not envisage the fixation of a retirement age before that provision can apply. A worker is entitled to withdraw the amount standing to his credit in the Fund if he retires at any time after attaining the age of 55 years. There is no reference to any pre-determined age of superannuation. The expression "retirement" does not, in the absence of anything more, necessarily imply a fixed age for leaving service. It has a wide connotation. In a context where no age of superannuation has been fixed, the expression must take on its ordinary meaning of the normal cessation of service by an act of the employer or of the worker. That a person may "retire" even before reaching any specified age is exemplified by clause (b) of sub-para (1) of Para 69 which speaks of "retirement on account of permanent and total incapacity for work due to bodily or mental infirmity." We may point out that in *Delhi Cloth and General Mills Co., Ltd. Vs. Workmen and Others etc.*, , this Court has held that a gratuity scheme could be effective even if no age of superannuation was fixed. Learned counsel for the petitioners has referred us to) where this Court observed in respect of the Employees' Provident Funds Act at pages 418, 419.

"The act was brought on the statute book for providing for the institution of a Provident Fund for the employees in factories and other establishments. The basic purpose of providing for provident funds appears to be to make provision for the future of the industrial worker after his retirement or for his dependents in case of his early death. To achieve this ultimate object the act is designed to cultivate among the workers a spirit of saving some thing regularly, and also to encourage stabilization of steady Labour force in the industrial centres."

and it is pointed out that the Court rejected the plea that the Act could apply to short term employees also. The case, in our opinion, is distinguishable because the workers there were taken in employment on account of an emergency and for a very short period necessitated by abnormal contingency. That is not the position here. In the present case, the employment was entered into in the regular course of business. We hold that there is no substance in the contention of the petitioners that the provisions of the Employees Provident Funds Act and the Scheme cannot be applied at all to home workers. There is no reason why the provisions of the Act and the Scheme should not apply where their, terms permit such application.

13.....

14. Accordingly, we reject the contention that the provisions of the Employees Provident Funds Act and the Schemes cannot be implemented at all in respect of the beedi industry."

In my opinion, the above judgment squarely applies to the facts and circumstances of the case on hand. There is a home worker by virtue of the fact that the nature of the work entrusted to him in the present case is involved in an activity connected with the work of the factory and that there is a relationship of master and servant exists in this case. Since the right of rejection of the work if they do not come up to the proper standard was based on the supervision and control exercised by the manufacturer.

8. Therefore, the workers of the petitioners, in my opinion, are employees within the definition contained in clause (f) of Section 2 of the Employees Provident Funds Act and therefore, , those workers have to be enrolled as Provident Fund subscribers from the date of their entitlement, and all these Writ Petitions fail and they are liable to be dismissed. Accordingly all these Writ Petitions are dismissed and there will be no order as to costs.