**(2010) 09 MAD CK 0392**

**In the Madras High Court**

**Case No :** Writ Petition (M.D.) No. 11782 of 2010 and M.P. (M.D.) No. 1 of 2010

Sree Mangayarkarasi Mills (P.) Ltd. — APPELLANT

Vs

Assistant Provident Fund Commissioner, E.P.F. Organization and Another — RESPONDENT

**Date of Decision :** 20-09-2010

**Acts Referred:**

Bonus Act, 1965 — Section 2(13)
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 7A

**Citation :** (2011) 1 CTC 851 : (2011) 129 FLR 117 : (2011) 3 LLJ 775

**Hon'ble Judges :** K. Chandru, J

**Bench :** Single Bench

**Advocate :** J.R. Satchidanandam, for the Appellant;

**Final Decision :** Dismissed

## Judgement

K. Chandru, J.—The Petitioner is the management. They have come forward to challenge the order passed by the Second Respondent Employees Provident Fund Appellate Tribunal, dated 23.7.2010 made in A.T.A. No. 764 (13) 2007.

2. By a communication, dated 2.8.2010 from the Registrar, Employees'' Provident Fund Appellate Tribunal, the Petitioner was given a copy of the order, dated 23.7.2010 passed by the Tribunal. The first Respondent initiated proceedings against the Petitioner management u/s 7A of the Employees'' Provident Funds and Miscellaneous Act, 1952 for depositing the PF dues. The Petitioner company was already covered under the Act and was making contribution only to 225 eligible employees. Apart from these employees, they have also engaged number of persons as trainees. It is claimed that the Standing Order provides for such employment and they are not eligible for the coverage. But the first Respondent claimed that it is only a camouflage to label them as trainees. They are not trainees, but regular employees. Hence notice was issued.

3. Challenging the demand for coverage, the Petitioner filed an appeal before the second Respondent Tribunal. The Tribunal, by the impugned order, rejected the

case of the Petitioner. It held that even though they are called as trainees, they are regular employees. Even persons who are engaged as drivers were labelled as trainees. The management also agreed that the persons who are not covered by the EPF Act were paid bonus. Therefore, since they were paid bonus, it held that there cannot be trainees outside the provisions of the Act.

4. A reference was made to the decision of this Court in Nepc Textiles Ltd. Vs. Assistant Provident Fund Commissioner, , wherein this Court held that though persons engaged as apprentice, but they are required to do the work of regular employees and hence they can be deemed to be the employees of the Mill.

5. In the notice u/s 7A, the authorities found that the audited report of accounts for the year 2004-05 showed that they were paid salary, wages and bonus and nowhere it was indicated that it was stipend. Likewise, in the inspection report showed as on 1.3.2006, out of 414 workers, 185 were regular employees and 229 are apprentices. Roughly 55% of workforce are called as apprentices. Therefore, the authorities refused to believe that they are apprentices excluded by the Act. On the contrary, they are workers discharging duties of regular nature.

6. Mr. J.R. Satchidanandam, learned Counsel for the Petitioner submitted that the certified standing order of the company shows that they can engage apprentice essentially in learning any skilled work for the period not exceeding three years. Therefore, they are excluded by the Act. On the other hand, the Tribunal accepted the stand of the department and gave an additional factor, i.e. workers were receiving bonus u/s 2(13) of the Bonus Act. The term "employee" is defined which included apprentice. Therefore, they should be considered as employees of the Mill. For the purpose of the Bonus Act, they cannot treat the non covered workers as employees and for the purpose of the EPF Act, they will be treated as non employees.

7. Though the learned Counsel for the Petitioner contended that in order to attract the local human resources and to face stiff competition, they are giving attractive package including bonus and that should not be put against the management, this Court is unable to agree with the said submission. There is no case made out to interfere with the findings rendered by the Tribunal in agreeing with the proceedings issued u/s 7-A of the EPF Act.

8. In the light of the above, the writ petition will stand dismissed. However, there will be no order as to costs. Consequently, connected miscellaneous petition stands closed.