(1964) 06 MAD CK 0002

In the Madras High Court

Case No : Writ Petitioner No. 205 of 1962

Sri Andal and Co. APPELLANT

Vs

The Regional Provident Fund Commissioner and Another RESPONDENT

Date of Decision : 26-06-1964

Acts Referred:

Constitution of India, 1950 — Article 13(2), 19(1), 226
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 1(3), 16, 19A, 2, 5

Citation : (1965) ILR (Mad) 302

Hon'ble Judges : Srinivasan, J

Bench : Single Bench

Advocate : S.V. Subramaniam, for the Appellant; S. Mohan, for V. Ramaswami, Additional Government Pleader, for the Respondent

Judgement

Srinivasan, J.—The Petitioner is a firm carrying on business of manufacture of art silk ribbons by the use of power looms. The manner of

doing business is said to be that the Petitioner firm supplies art silk yarn to weavers and the weavers who work in the Petitioner''s premises are

paid not on the time basis but on the yardage woven by each individual weaver. It is claimed that they are employed on a contract basis having no

fixed hours of work. They engage themselves in work at any time convenient to them. The result is that no weaver is permanently attached to the

firm. The number of persons working would depend upon the availability of the work. The persons who come to work are accordingly only casual

workers. That is said to be the mode of carrying on the business. In June 1960, the Regional Provident Fund Commissioner issued a notice to the

Petitioner factory that the factory came within the purview of the Employees'' Provident Fund Act, 1952, and the scheme framed thereunder with effect from 1st August 1958. The necessary returns were called for from the Petitioner. The Petitioner firm set out the features attendant upon the

mode of carrying on the business and explained that the persons engaged were not paid employees of the firm, that there was no contract of

service, that the Petitioner firm had no control over the weavers regarding the manner in which they do the work and such other features and

contended that the provisions of the Act were not applicable. The Regional Provident Fund Commissioner, however, did not accept these

contentions and he purported to be satisfied after an investigation that the workers were employees falling within the terms of Section 2(f) of the

Act. He threatened to resort to the penal provisions of the Act if the returns and the remittances of provident fund contribution were not made

within fifteen days.

2. The Petitioner thereupon applied u/s 19A of the Act, but the Central Government refused to give any direction with regard to the matter.

3. The claim that was made upon the Petitioner under the provisions of the scheme came to over Rs. 4,200. The Petitioner claimed that there was

only one paid employee regularly employed. The Petitioner also asked that the contributions in respect of persons who had already left the employ

of the Petitioner firm should be waived. This the Regional Provident Fund Commissioner refused to accede to and demanded the payment of all

the arrears of contributions and administration charges from August 1958 onwards.

4. On the facts briefly set out, the Petitioner claims that the Act will have no application to the present case and that the Commissioner''s action in

compelling the Petitioner to comply with the provisions of the Act is ex facie illegal. It is also pointed out that the weavers themselves had submitted

a written memorandum to the management admitting that they are not paid employees of the firm getting fixed monthly salary and that there was

never any relationship of master and servant between the establishment and themselves. They also appear to have stated in that memorandum that

they are not willing to agree to any deduction from out of their emoluments for any purpose whatsoever. In the light of this attitude of the weavers,

it was not possible for the Petitioner to make any deductions from then salary towards the provident fund contribution. In these circumstances, the

Petitioner has approached this Court for a writ of mandamus to forbear the Respondent, the Regional Provident Fund Commissioner, from

enforcing the provisions of the Employees'' Provident Fund Act.

5. According to the counter-affidavit filed on behalf of the Respondents, the Regional Provident Fund Commissioner and the Provident Fund

Inspector, more than fifty employees work in the Petitioner factory on a piece rate system. It is stated that the workers are paid weekly on the

basis of ribbons manufactured by them every week. As this is a textile industry, the Regional Provident Fund Commissioner held that the firm came

within the scope of the Act. Originally, the Petitioner contended that the manufacture of art silk ribbons would not come under the definition of

textiles. This contention was repelled. According to investigations conducted by the Commissioner it transpired that these weavers are employees

under the Act. The Petitioner sought to obtain a ruling from the Central Government u/s 19-A of the Act, and the Government made an order that

the Act applied to the Petitioner factory. It is stated also that the Petitioner accepted the ruling and agreed to implement the scheme, but only

protested in so far as the arrears of contributions which were claimed with regard to employees who had left the service. It is claimed that in these

circumstances the Respondents have jurisdiction to make the impugned orders and that the contentions of the Petitioner are without substance. It is

pointed out that the factory maintains a muster roll for the workers employed and though remuneration is paid on a piece rate basis, a wage register

is maintained indicating the amounts paid. The Factories Act has been applied to the Petitioner factory. The provisions of that Act have been

observed. The workers work during specified hours during which the factory is kept open. The working hours of the employees are accordingly,

controlled by the employer. The work of the weavers is supervised and they are instructed in the manner of working. There is certainly, so it is

contended, a necessary element of control which establishes the relationship of master and servant. It is denied that the workers come and go as

and when they please. It is pointed out that when the Petitioner firm has installed costly machines for the purpose of carrying on the industry, it is

difficult to conceive of the position that the workers would be allowed to come and go as they please and work in whatever manner they desire.

6. A reply affidavit has been filed by the Petitioner which does not carry the matter further. It is only pointed out that in making the order u/s 19-A,

the Central Government did not give careful consideration to the facts and circumstances and that the Petitioner did not accept the ruling of the

Central Government. In order to avoid unnecessary litigation, the Petitioner was prepared to pay the contribution in respect of the single employee

under it, but insisted that no contribution should be recoverable from the firm in respect of persons who were no longer connected with the

Petitioner firm. The Commissioner, however, refused to waive the arrears. It is not denied in this reply affidavit that a muster roll and a wage

register are maintained, but that, it is claimed, was due to the insistence of the Inspector of Factories and without knowing the implications of the

maintenance of such registers. It is again pointed out that the weavers are entitled to absent themselves whenever they please without any intimation

and without obtaining any previous permission of the Petitioner firm.

7. It is not disputed that the manufacture of art silk ribbons is a textile industry. The factory appears to have come into existence in 1955.

According to the counter-affidavit, it was registered under the Factories Act in 1955. u/s 16 of the Act, an establishment is entitled to infancy

protection for a period of three years where it employs fifty or more persons. Allowing for the exemption for this period of three years, the

Commissioner claimed that the Act had to be applied with effect from 1st August 1958. u/s 19-A, power to remove difficulties is given to the

Central Government, and the section further states that the order of the Central Government in such cases shall be final. In the present case, the

Petitioner firm contended that there was no relationship of employer and employee between the firm on the one band and the weavers on the other

and the Government purported to make An order u/s 19-A, the relevant part of which reads thus:

...The Government of India do not see any force in your contention that there is no relationship of master and servant between the workers and the

management in your powerloom factory. The Government of India do not also see any dispute or difficulty which requires removal by a direction

u/s 19-A of the Employees'' Provident Funds Act. In the circumstances, no direction u/s 19-A of the said Act is necessary. You are requested to comply with the directions of the Regional Provident Fund Commissioner, Madras.

8. It is not the contention of the learned Additional Government Pleader that the statutory finality given to this order of the Central Government

places it beyond the power of judicial review by this Court. I am also some what doubtful as to whether a dispute other than one about a factual

position is one which is contemplated as being resolvable by an order of the Central Government u/s 19-A. It is true that this section says that if

any difficulty arises in giving effect to the provisions of the Act, and in particular, if any doubt arises as to (i) whether the establishment is engaged in

any industries specified in Schedule I; (ii) whether it is an establishment to which the Act applies by virtue of a notification issued u/s 1(3)(b); (iii)

the number of persons employed in an establishment; (iv) the number of years which have elapsed from the date on which it was set up; or (v)

whether the total quantum of benefits to which an employee is entitled has been reduced by the employer, the Central Government may make such

provision or give such direction as appear to it to be necessary or expedient for the removal of the doubt or difficulty. I am, however, unable to

understand this as extending to the position that the Central Government may by an executive fiat purport to adjudicate upon a question of law,

such as the nature of the relationship between the employer and the employee in any instant case. The difficulty which arises in giving effect to the

provisions of the Act does not, to my mind, take in the adjudication of a dispute between the establishment, on the one hand, and the department,

on the other, with regard to the interpretation of any provision of the Act. As I said, whatever the position may be with regard to the order u/s 19-

A it is not contended by the learned Additional Government Pleader that this Court is deprived of its power to examine it and that the finality given

to that order by Section 19-A can stand in the way of this Court examining the order in the exercise of its writ jurisdiction.

9. The provisions of the Act and the extent to which an employer stands affected thereby have been the subject-matter of several decisions and

these decisions have not spoken with one voice. I may now refer to some of these decisions. In one of the early decisions of this Court in

Annamalai Mudr. and Bros. v. R.P.F. Commr.(1955) 2 M.L.J. 271 it was held that the Employees'' Provident Funds Act does not vest any power in the Commissioner to adjudicate a dispute whether a factory is one to which the Act applied, that is, whether the factory comes within the

scope of Section 1(3) of the Act. Section 19-A specifically provides the machinery for the determination of such a dispute and if that machinery is

not resorted to, the High Court would not interfere under Article 226 of the Constitution and go into a disputed question of fact and give a decision

thereon. This decision, it will be noticed, deals with one of the points specifically referred to in Section 19-A of the Act. In coining to this decision,

the learned Judge appears to have noticed that nowhere in the Act any specific functions assigned to the Regional Provident Fund Commissioner

and the specific function contained in Section 19-A was accordingly understood to provide for a machinery for the determination of such doubts as

they arise. The normal principle of law that a Court exercising writ jurisdiction would not enter into disputed question of fact when there is a

machinery provided in the Act for the adjudication of such disputes was the principle relied upon by the learned Judge in laying down the above

proposition. This decision, of course, does not deal with a question which the Central Government may purport to decide, the question which is

not one of the heads which are set down in Section 19-A. As I have already stated, the jurisdiction to resolve any difficulty which arises in giving

effect to the provisions of the Act cannot possibly cover a dispute with regard to a fact upon which alone the applicability of the Act can follow.

The above decision was taken up on appeal; but the learned appellate Judges did not consider it necessary to decide the question whether Section

19-A of the Act makes it obligatory to refer to the Central Government for decision the dispute whether more than fifty persons are employed in

the factory. I shall refer to this decision in another context as to the nature of the relationship between the factory and the workmen.

10. Another single Judge of this Court decided in K.R. Subbaier Vs. The Regional Provident Fund Commissioner, that the provisions with regard

to the payment of contribution are only prospective in character and can be enforced only from the date on which the demand is made by the

department. In that case, the demand for the employer''s share of the contribution was made from 1st November 1952, to 30th April 1957, on the

28th April 1957. The question which the learned Judge had to consider was whether it is lawful on the part of the Regional Provident Fund

Commissioner to call upon the Petitioner to fulfill the obligations under the Act for a period of five years prior to the issue of the notice. He referred

to certain provisions of the Act and the scheme and finally observed at page 115 :

The gist of these provisions is such as to make them operative only on and from the point of time when the authorities hold that a particular unit is

within the ambit of the Act and made the consequential demand in terms of the Act and the scheme. Any demand for a back period appears to be

not merely illogical and oppressive, but plainly inconsistent with the terms of the enactment, which are manifestly prospective in their operation.

He emphasised that conclusion by referring to ex-employees and observed:

So far as these ex-employees are concerned, there can, of course, be no question of their being compelled to pay any contribution to the fund.

But, should the Petitioner be under an obligation to provide and contribute towards the Fund in respect of those workmen also? The answer must

clearly be in the negative. The result of applying the statute and the scheme from a point of time prior to the date of the demand by the authorities

would lead to a clear situation not likely to have been contemplated by the legislature even in a beneficent enactment for the welfare of the

employees. The claim for managerial expenses for the back period is indeed strange, as it is obvious that there was nothing to manage and there

was not, in fact, any management during that period....

11. In holding that the Act is prospective in character and a demand for contribution should be made only from the date on which the authorities

issued the notice to the employer, the learned Judge found support in Aluminium Corporation of India Ltd. Vs. Regional Provident Fund

Commissioner and Others, The head note of that case, which has been extracted by the learned Judge in this judgment, however, refers only to

applying the Act retrospectively for a period within which time some of the employees have already left and presumably left after taking their

provident fund contribution.

12. In another decision T.R. Raghava Iyengar and Co. Vs. The Regional Provident Fund Commissioner, the same learned Judge referred to the

unsatisfactory nature of the machinery provided u/s 19-A to settle disputed questions of fact. He accepted the contention that even according to

this provision, it is only after a decision has been rendered u/s 19-A of the Act that the Act can legitimately be put into operation.

13. The view expressed in The Nagpur Glass Works Ltd. Vs. The Regional Provident Fund Commissioner and Others, with regard to the scope

of Section 19-A of the Act is somewhat different from that of this Court in Annamalai Mudr. and Bros. v. R.P.F. Commr. (1955) 2 M.L.J. 271. It

will be recalled that this Court said that since an adjudication of a question of fact in relation to matters set out in Section 19-A could be had by

resort to the machinery therein, a party could not approach this Court for the issue of a writ until he had exhausted that remedy. Inferentially,

therefore, it indicated in this decision that an application u/s 19-A could be made by a party objecting to his being brought under the Act. In the

Bombay decision, however the learned Judges thought that since the section provided for the resolving of any difficulty arising in the matter of

giving effect to the provisions of the Act, it meant a difficulty experienced by the authorities charged with the administration of the Act and,

therefore, it is only the Regional Commissioner or other appropriate authority that could move the Central Government under the provision and it is

not open to the factory or the establishment or anyone connected therewith to approach the Central Government. With respect I am unable to

follow this point of view. A difficulty may arise in giving effect to the provisions of the Act. It may be a difficulty felt by the appropriate authorities.

But such a difficulty, in so far as it raises any question of dispute as to the applicability of the Act or its provisions to any particular case is as much

a difficulty that is felt by the authorities as by the party affected. Indeed, the further part of Section 19-A which refers to any doubt on certain

heads envisages a possibility that a factory or an establishment may object to being brought under the Act for the reason that certain of the

requirements of the provisions are not complied with. Why such an objection should not be capable of resolution u/s 19-A on the application of the

party I am unable to see. Indeed, in this very case, the Central Government have accepted the application made by the Petitioner as a valid

application and purported to pass orders thereon. It is unnecessary to elaborate this point any further.

14. A view similar to that expressed by Jagadisan J. in T.R. Raghava Iyengar and Co. Vs. The Regional Provident Fund Commissioner, was taken

by Vaidialingam J. in Dhanalakshmi Weaving Works, Kakkat, Cannanore and Others Vs. The Regional Provident Fund Commissioner,

Trivandrum, In this case, the learned Judge observed at page 232:

In my view the decision of Mr. Justice Rajagopalan that in the absence of a decision u/s 19-A of the Act in question by the Central Government,

especially when there is a doubt which relates to particular matters referred to in the clauses of Section 19-A the authorities g concerned cannot

enforce the provisions of the statute, will have to be respectfully adopted and followed.

15. As I read the judgment referred to which is reported in Annamalai Mudaliar and Bros. v. R.P.F. Commr. (1955) 2 M.L.J. 271 it does not

appear to have been decided by the learned Judge that the Act could be given effect to only on and after a decision u/s 19-A had been rendered

by the Central Government. What Rajagopalan J., specifically dealt with was whether a party should be enabled to resort to the writ jurisdiction of

this Court for decision on a question in respect of which the statute had provided a machinery for adjudication. In a sense it may be correct to say

that the authorities cannot enforce the Act if the application u/s 19-A is pending adjudication. But, if the decision purports to go further and say that

it is only from the date of such a decision that the Act can be applied that is prospectively from that date onwards. I find myself unable to agree. In

fact, the decision of Jagadisan J., referred to is of similar import for there too the learned Judge purports to hold that the Act can be applied

prospectively only from the date on which the demand is made by the department.

16. I may refer next to a decision of the Calcutta High Court where Section 19-A itself has been struck down as violative of the fundamental rights

guaranteed by Article 19(1)(g) Bharat Board Mills Ltd. Vs. The Regional Provident Fund Commissioner and Others, . This decision does not

appear to have been noticed in any of the later decisions on the subject. The learned Judge was of the opinion that Section 19-A, which makes the

order of the Government final, provides for no appeal or representation by the party aggrieved by such an order. The section does not require the

Government to record or disclose any reasons for making the order. A matter so left to the subjective satisfaction of the Government is not capable of being reviewed to discover whether the order is arbitrary or mala fide. A party is, therefore, left to the mercy of the Government. It was

accordingly held by the learned Judge that this provision lacks the element of reasonableness and abridges and violates the fundamental right

guaranteed by Article 19(1)(g) of the Constitution and as such is void under Article 13(2).

17. Even accepting the position that Section 19-A stands so affected, the only result that would follow would be that this Court, when the matter is

brought before it in the exercise of its writ jurisdiction, can enter into the examination of the question whether the Act is applicable to the particular

factory of establishment and resolve any matters of doubt that may exist even upon the five heads mentioned in Section 19-A of the Act.

20. A view approaching what I have stated above was taken by a Bench of the Punjab High Court in Metro Motors Private Ltd. Vs. Regional

Provident Fund Commissioner, Punjab Ambala Cantt. and Others, There the learned Judges say that even if the Central Government has not had

the opportunity of considering the matter, it does not debar the Petitioners from seeking a remedy under Article 226 of the Constitution. This part

of the head note would be sufficient:

Further if the dispute between the parties is not as to facts but only as to the interpretation of a statute governing the entire matter, the ends of

justice would not be furthered by postponing the decision in the hope of seeking a direction by the Central Government. Even if the view of the

Central Government were against the Petitioners'' contentions, the Petitioners would still be entitled to have that decision examined in the High

Court if the decision is to turn on the interpretation of the Act itself.

21. I may mention that there is really no dispute with regard to the facts in the present case. Both the parties are agreed with regard to the manner

in which the business is conducted. They only differ with regard to the inference that has to be drawn from these facts whether the relationship of

employer and employee is present or not. To that I shall refer in due course.

22. Turning to the provisions of the Act, Section 5 provides that the Central Government may frame a scheme to be called the Employees''

Provident Fund Scheme for the establishment of provident funds under this Act for employees and specify the establishment to which the said scheme shall apply. Sub-section (2) specifically provides that a scheme so framed shall take-effect either prospectively or retrospectively on such

date as may be specified in this behalf in the scheme. Section 6 lays down the quantum of contribution to be made both by the employer and

employee. The intendment of this section is clearly that the scheme framed will take effect according to the provision contained therein from such

date as may be specified. It is common ground that in the present case, the Employees'' Provident Fund Scheme, 1952 applies and it is not the

contention of either party that the scheme itself has fixed any specific date from which it should operate in respect of this industry. Reading the Act

and the scheme as a whole, it is clear that the scheme comes into force at once and affects every industry at least from the date on which the

scheme was framed. Paragraph 26 of the scheme provides that every employee other than an excluded employee shall be entitled and required to

become a member of the fund from the beginning of the month following that in which this paragraph comes into force in such factory or other

establishment. The further requirement is that by that date the employee should have completed one year''s continuous service. The statute,

therefore, makes it compulsory upon the employee to become a member of the fund, and read along with the other provisions which lay an

obligation upon the employer to make the relevant contribution, the underlying intent is that the scheme comes into force immediately. In the

present case, the factory itself was established in 1955, and excluding the period of three years of infancy protection provided by Section 16 of the

Act, the scheme would take effect in relation to the Petitioner factory from 1958, 1st August 1958, to be precise. I am unable to agree that there

exists any provision which postpones the application of the Act and the scheme to the stage of demand being made by the authorities concerned.

There are thousands of establishments of this kind and if the effect of the legislation is to depend upon the action taken by the authorities in this

regard, there should be a specific provision to that effect in the body of the Act or in the scheme. In my view, the Act takes effect at once and the

provisions of the Act become enforceable against the employer of a factory or an establishment with effect from the date on which the relevant

paragraph of the scheme comes into force. It does not depend upon the discovery made by the authorities of the department and the issue of notice calling upon the employer to make the contributions according the Act. With respect, I am unable to agree with the view expressed by

Jagadisan J., that the Act cannot be brought into operation except on a demand issued from the department and from the date of such demand.

23. Some argument was advanced on the ground that there is no employer employee relationship in the absence of which the provisions of the Act

cannot be applied. This question was extensively examined by Rajagopalan J., in Annamalai Mudr. and Bros. v. R.P.F. Commr (1955) 2 M.L.J.

271. The learned Judge observed at page 273 :

Before a person can be held to be an employee as defined by Section 2(f) of the Act, there must be proof (1) that he is an employee, (2) that he is

employed for wages, (3) that he is employed in work, manual or otherwise, (4) the work is in or in connection with the work of the factory and (5)

he gets wages directly or indirectly from the employer.

24. In that case, the contention was advanced that the relationship between the Petitioner firm and those who worked in the factory in the

manufacture of bed-sheets and towels was not that of master and servant and that each piece work contract between the individual worker and the

firm was a contract for service. The learned Judge had accordingly to consider whether it was a case of contract of service or contract for service.

He observed at page 274:

The owner of the factory had really no control over the time taken by the worker to complete the work the latter had undertaken to do for the

remuneration specified. The worker was under no obligation to attend on any particular day or at any particular hour. It is no doubt true that the

worker had to do his work within the precincts of the factory and I presume the hours of the factory would be regulated under the Factories Act.

But even during these hours, no compulsion could be brought to bear upon the worker to do the work...These features would appear to militate

against the existence of jural relationship of master and servant.

Approaching the matter from another angle, he observed:

The mere fact, that the terms of the contract provided that the work should be done within the precincts of the factory, gave the owner no more

control over the time of the worker; the worker still continues to control the time factor; that is the time spent on the work was not at the disposal or under the orders of the owner of the factory. Judged by that test it would be difficult to hold that the relationship between the worker and the

owner of the factory was that of servant and master; the worker could only be an independent contractor with reference to each contract of work.

On these facts, the learned Judge reached the conclusion that the relationship was not that of master and servant.

25. There are some features in the present case which, however, take the matter out of the principle of that decision. Though the contentions on

behalf of the Petitioner have been formulated more or less on the lines of that decision, in the present case, it has been stated by the learned

Additional Government Pleader, and that fact has not been denied, that there was an industrial dispute between the employer and the employees in

this establishment in 1961. The dispute did not, however, reach the stage of a decision but was settled. But the fact remains that the employees put

forward the contention that they were workers entitled to the benefits of the Industrial Disputes Act. It is admitted again that the employer

maintains a muster roll for the workers employed, pays weekly wages though on the piece rate basis and maintains a wage register. The provisions

of the Factories Act have been implemented and the workers admittedly work in the Factory during the hours during which according to that Act

the factory is kept open. I have already indicated that costly machinery has been installed by the Petitioner factory and it is idle to pretend that the

worker would be permitted to do the work according to his whims and fancies, coming for work at irregular hours just as he pleased. Though it

was alleged that the employees were not bound to stick to the factory and could move from one factory to another, it is not suggested that there

have been any instances of that kind. Upon these facts, there seems to be no doubt that the relationship of master and servant does really obtain. It

is also difficult to attach any weight to statements furnished by the workers denying the existence of such a status, for that really runs counter to the

earlier industrial dispute which they themselves raised.

26. Though on a consideration of these cases, I am of opinion that the provisions of the Employees Provident Funds Act are applicable to this

factory with effect from 1st August 1958, the question still remains to be considered whether it is open to the department to demand back arrears in respect of persons who are no longer in the employ of the Petitioner factory and even whose whereabouts appear to be unknown. In this regard,

I may refer to the decision of the Calcutta High Court in Aluminium Corporation of India Ltd. Vs. Regional Provident Fund Commissioner and

Others, Section 6 of the Act provides that the employer shall make a contribution of 6ï¿½ per cent of the basic wages of the employees and the

employees'' contribution shall be equal to the contribution payable by the employer. The employer is obliged under paragraph 30 of the scheme to

pay both the contribution payable by himself and by the employee in the first instance. Under paragraph 32, the amount of the member''s

contribution paid by the employer shall be recoverable by means of deduction from the wages of the member. The intention of the Act and the

scheme is that the sum of contribution so recovered shall be credited to the member and shall be accounted for by the Board constituted under the

Act. It is payable to the employee in certain circumstances. The difficulty of enforcing these provisions in the case of an employee who has ceased

to be in the employ of the employer at the time when the demand is made is easy to perceive. If the employer''s contribution is to go to the benefit

of the employee, unless the employee is available to take advantage of this contribution, I am unable to see how any sum recovered from the

employer on this head can at all be lawfully collected. Under the Act, the employer has to pay both his contribution and the worker''s contribution

in the first instance. It is not open to the Regional Provident Fund Commissioner to collect only the employer''s share of the contribution. If the

employer is called upon to pay this double contribution in the case of employees who are no longer in the service of the employer, he cannot

possibly recover the employees'' share of the contribution by deduction from the wages of the employees. As pointed out by the Calcutta High

Court in Aluminium Corporation of India Ltd. Vs. Regional Provident Fund Commissioner and Others, it is not the intention of the Act that the

Government should be in a position to make up a fund with moneys so collected from the employer unless that money is to go to the benefit of the

employee. The counter-affidavit filed by the department does not show that these difficulties felt in the case of such employees as have ceased to

be in the employ are not real. The learned Additional Government Pleader is not able to say how the sum of money even if recovered from the employer can possibly be utilised for the purposes intended by the Act.

27. It should follow, therefore, that the Petitioner succeeds to a limited extent. The Act and the scheme are no doubt applicable to this

establishment from 1st August 1958, but that will be only in the case of employees who continue to be in the employment of the Petitioner. The

demand in so far as other persons who are no longer in the employ of the Petitioner are concerned is illegal.

28. The result would be that the demand made upon the Petitioner will have to be modified in the light of what I have stated. Administration

charges can also be demanded only on the basis of the above conclusion. There will be no order as to costs.

