

(1999) 03 MAD CK 0029

In the Madras High Court

Case No : Writ Petition No. 18090 of 1990 and W.M.P. No. 28518 of 1990

Sri Rama Vilas Service Ltd.

APPELLANT

Vs

Regional Provident Fund Commissioner

RESPONDENT

Date of Decision : 16-03-1999

Acts Referred:

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

Citation : (2000) 1 LLJ 709

Hon'ble Judges : Y. Venkatachalam, J

Bench : Single Bench

Advocate : S. Jayaraman, for the Appellant; Radha Srinivasan, for the Respondent

Final Decision : Allowed

Judgement

Y. Venkatachalam, J.—Invoking Article 226 of the Constitution of India, the petitioner herein has filed the present writ petition, seeking a

writ of certiorari to call for the records from the file of the Regional Provident Fund Commissioner, P. B. No. 588, W. B. Road, Tiruchirapalli-

620008, the respondent herein in his order No. TN/ 217/ ENF/SRO-TRY/90, dated October 11, 1990, and to quash the same.

2. In support of the writ petition, the petitioner herein has filed an affidavit wherein they have stated all the facts and circumstances that forced them

to file the present writ petition and requested this Court to allow their writ petition. Per contra, the respondent has filed a counter rebutting all the

material allegations levelled against them, one after the other and ultimately requested this Court to dismiss the writ petition for want of merits.

3. Heard the arguments advanced by learned counsel appearing for the parties. I have perused the contents of the affidavit and the counter-

affidavit together with all other relevant material documents available on record in the form of typed set of papers. I have also taken into

consideration the various points raised by learned counsel appearing for the rival parties during the course of their arguments.

4. In the above circumstances of the case, the only point that arises for consideration in this case is, as to whether there are any Valid grounds to allow this writ petition or not.

5. The short facts of the case of the petitioner-company, as seen from the affidavit are as follows :

The petitioner-company is having its goods transport services and also workshop. Apart from the permanent employees, the petitioner has been

engaging trainees for the purpose of training in accordance with the Training Scheme, the Rules and Regulations as well as the Standing Orders.

The trainees are classified as ""staff trainees"", who are trained in the administrative side of the office, ""technical trainees"" trained in the workshop,

workshop trainees"" and ""security trainees"". A separate scheme was also framed on January 31, 1983. As could be seen from the scheme, training

has been introduced with a view to impart training to persons with specified qualifications. The scheme itself is in accordance with the Rules and

Regulations, applicable to the company in force. Some trainees were trained on the technical side and some trainees were trained on nontechnical

side. Minimum qualifications have also been prescribed. Persons who are considered to be trained as trainees, shall be physically fit and shall not

suffer from any disease or disability. He shall have to undergo medical examination either in the company's medical centre or by a medical

practitioner authorised by the company. The training period has also been prescribed. The trainees were paid a consolidated stipend, which would

increase year after year, during the period of training. The management also reserved its right to determine the period of training, if they find that

there is no proper response from the trainees. Thus, it could be seen that a comprehensive training scheme has been prescribed by the petitioner

and persons were recruited as trainees and trained in their respective departments. On June 11, 1988, a communication was received from the

enforcement officer of the respondent stating, inter alia, that a number of persons are employed in the various departments and they have not been

enrolled as provident fund members from the date of eligibility. He also directed certain particulars with regard to the trainees to be furnished and the provident fund dues to be paid. The petitioner herein, replied to the same by their letter dated October 3, 1988. stating that in terms of the provisions of the Standing Orders applicable to the petitioner-company they have classified the trainees as learners, who may be paid or unpaid during the period of such training and it is not obligatory on the part of the petitioner to provide an apprentice with work, in the company after his training period. It is also made clear that the engagement of a trainee is in accordance with the Training Scheme and that the training is given to the individuals who possess the requisite qualifications. The petitioner also pointed out that the trainees are paid stipend and they are not eligible for any other benefits, monetary or otherwise which are extended to the permanent category of workmen. It was further made clear that the trainees are recruited for a specified period under the scheme and there is no, guarantee for their employment in the company after the completion of the training period. The respondent herein, however, reiterated their stand and by their letter dated October 31, 1988, and stated by their letter dated October 31, 1988, that barring apprentices appointed under the Apprentice Act, 1961, or under the Certified Standing Orders of the company, all the other employees are eligible for provident fund membership. The petitioner herein replied to the same on December 23, 1988, emphasising their contention made in their earlier letter dated October 3, 1988. The respondents, however, sent a notice dated December 16, 1989, stating that the Regional Provident Fund Commissioner will be holding an enquiry in accordance with Section 7A of the Employees' Provident Funds and Miscellaneous Provisions Act and fixed the date as December 15, 1989, for enquiry. Ultimately, a personal hearing was afforded on March 30, 1990, and the management representative attended the enquiry on March 30, 1990, and put forward its contentions. Thereafter, the enquiry was adjourned to April 30, 1990, and again on May 8, 1990. After hearing the petitioner and going through the written submissions of the petitioner, the respondent by his order dated October 11, 1990, holding that the trainees are all employees under the Employees' Provident Funds Act and directed that a total sum of Rs. 63,700.85 which comprised contribution to the tune of Rs. 51,310 and other charges. There is a further direction in

the order that the said sum should be remitted within 15 days from the receipt of the impugned order.

6. Inter alia, it is contended by the petitioner that the respondent has erroneously held that the employer's contention that the apprentices and trainees are not one and the same, cannot be accepted because of the reason that an apprentice is engaged in a skilled work trade only, whereas, a trainee can be engaged in any kind of work, manual or otherwise (non-technical) and has stated that an apprentice and a trainee cannot be one and the same. According to them, the respondent has further erroneously held that the stipend paid to the trainees is only wages. It is contended by the petitioner, that the impugned order of the respondent is bad in law, incompetent and also wrongful exercise of jurisdiction vested in the authority and that, therefore, the same is liable to be set aside. Their case is that the respondent failed to see that the training scheme itself has been formulated with a view to impart training to individuals possessing necessary qualifications in terms of the training scheme and that the respondent has not properly appreciated the training scheme filed on the side of the petitioner-management. According to the petitioner, the respondent also failed to see that the trainees are paid only stipend and they are not entitled to any benefit whatsoever, monetary or otherwise, which are otherwise given to permanent employees.

7. It is also their case that the respondent should have seen that even as per the training scheme, the trainees have no right to employment as such, on the completion of the period of training. Moreover, the traineeship can be terminated at any time without any notice or reason, in case they are found medically unfit during the course of training, or in case they are not able to cope up with the training which is given to them. They also state that the respondent should have seen that there is no guarantee of employment for these trainees after training, and that the respondent should have held that trainees are not employees u/s 2(f) of the Act and the stipend paid to them is not wages.

8. Per contra, it is contended by the respondent that the impugned order has been passed in accordance with the provisions of the Act after due compliance with all procedural formalities contemplated under the Act. The petitioner's establishment was covered under the Employees"

Provident Funds Act with effect from November 1, 1952. But the establishment failed to comply with the provisions of the Act with regard to some of its employees alleged to be "trainees". Since this fact was discovered during one of the inspections by the enforcement officer report was submitted to the Regional Provident Fund Commissioner. Consequently, the petitioner's establishment was summoned to appear before the authorities for an enquiry u/s 7A of the Act. After hearing the employees' representation and after considering the enforcement officer's submissions, it was decided that certain employees had not been enrolled for the provident fund contributions. As such the impugned order came to be passed covering those omitted employees for the provident fund benefits. The petitioner-establishment instead of enrolling those employees for the provident fund benefits has approached this Court by way of this writ. It is the categoric case of the respondent that the petitioner has deliberately classified certain regular employees as "trainees" with a view to deny them the provident fund benefits. However, from the records, it is established that the so called "trainees" have been working continuously for several years and have been paid wages, as such they are not really trainees", and that, therefore, such "trainees" cannot be categorised as the "exempted employees". It is the specific case of the respondent that the respondent is the statutory authority to determine the applicability of the Act to an establishment and to assess the quantum of the provident fund dues payable by an establishment on behalf of its employees. In the instant case, the respondent has exercised his statutory powers and passed the impugned order dated October 11, 1990, assessing the quantum of provident fund with regard to the omitted employees. Therefore, the impugned order is legal and valid and deserves to be sustained.

9. Having seen the entire material available on record, it is clear that the only dispute in this case, is, as to whether a set of persons in the petitioner-establishment in question herein are "trainees" as claimed by the petitioner or regular employees of the petitioner as contended by the respondent.

But the respondent herein has passed the impugned order saying that on an inspection and scrutiny of the records during the enquiry, it was found that the so called "trainees" were only the regular employees of the petitioner's establishment and that, therefore, in view of such discovery, the

impugned order is justified. Therefore, first of all we have to examine whether the persons in question herein are "trainees" as claimed by the petitioner or as contended by the respondents by virtue of the impugned order.

10. It is the specific contention of the petitioner herein that the petitioner herein has been engaging trainees for the purpose of training, in

accordance with the Training Scheme, the Rules and Regulations as well as the Standing Orders, that a separate scheme was also framed on

January 31, 1983, and as could be seen from the scheme, training has been introduced with a view to impart training to persons with specified

qualifications, that minimum qualifications have also been prescribed, the training period has also been prescribed, that the trainees were paid a

consolidated stipend, which would increase year after year during the period of training and that the management also reserves its right to

determine the period of training, if they find that there is no proper response from the trainees. That apart, it is also significant to note that the said

trainees are paid stipend and they are not eligible for any other benefits, monetary or otherwise, which are extended to the permanent category of

workmen. Further, it is also significant to note that the trainees are recruited for a specified period under the scheme and there is no guarantee for

their employment, in the company after the completion of the training period. Further, the traineeship can be terminated at any time without any

notice or reason in case they are found medically unfit during the course of training or in case they are not able to cope up with the training which is

given to them. All these aspects clearly go to show that the persons in question herein are only "trainees" and these aspects have not been properly

appreciated or considered by the respondent. Therefore, there is no merit in the contention of the respondent that the petitioner's establishment has

deliberately classified certain regular employees as "trainees" with a view to deny them the provident fund benefits. Therefore, such contention of

the respondent cannot be accepted. That being so, the impugned order of the respondent is vitiated by material errors of law apparent on the face

of record and that, therefore, is bad in law and consequently liable to be set aside.

11. Further, in support of their case, the petitioners rely on two decisions as follows:

The Employees" State Insurance Corporation and Another Vs. The Tata Engineering and Locomotive Co. Ltd. and Another, and Gnanambika

Mills Ltd. Vs. The Director General, Employees State Insurance Corporation and Another, .

12. In the Supreme Court case, it has been held by the Apex Court thus :

That certain payment is made during the apprenticeship, by whatever name called, and that the apprentice has to be under certain rules of

discipline do not convert the apprentice as a regular employee under the employer. Such a person remains a learner and is not an employee.

13. In the second decision cited above, this Court, also has held that the apprentices are not employees and hence the payment made to them do

not attract the Employees" State Insurance Act. In the said case, this Court followed the above decision of the Supreme Court. In the facts and

circumstances of the case on hand, above judgments squarely apply to it. Therefore, on the strength of all the above, the respondent cannot

consider the persons in question herein as employees of the petitioner-company and claim contribution from the petitioner for the payments made

to them.

14. Therefore, for all the aforesaid reasons and, in the facts and circumstances of the case, also in view of the above-cited judgments and also in

view of my above discussions with regard to the various aspects of this case, I am of the clear view that the petitioner herein has clearly made out a

case that the impugned order is vitiated by material errors of law apparent and bad in law and, therefore, the same is liable to be set aside. Thus,

the writ petition succeeds and the same deserves to be allowed as prayed for.

15. In the result, the writ petition is allowed as prayed for. No costs. Consequently, W.M.P. No. 18090 of 1990 is dismissed.