
(1995) 09 KAR CK 0046
In the Karnataka High Court
Case No : Writ Petition No. 16331 of 1986

Sundaram Industries Ltd.

APPELLANT

Vs

The Regional Provident Fund Commissioner (Karnataka)

RESPONDENT

Date of Decision : 28-09-1995

Acts Referred:

Employees Provident Fund and Miscellaneous Provisions Act, 1952 — Section 2 (f), 2 (f) (ii)

Citation : (1995) 09 KAR CK 0046

Hon'ble Judges : V.P. Mohan Kumar, J

Bench : Single Bench

Judgement

1. The question raised in this writ petition is, whether the "trainees" engaged by the petitioner-Company come within the purview of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952, hereinafter referred to as the EPF Act" and "the Scheme" framed thereunder.

2. Annexure-B is the Standing Order of the petitioner Company which defines "trainee" as follows :

"2(1)- 'Trainee' is a person taken on the rolls of the company for purpose of learning a trade upon terms as may be fixed by the company and with a nominal allowance till otherwise and shall include (i) A trainee in respect of whom the Company undertakes to give implant training, whether stipendiary or otherwise, with an option to employing him, (ii) A trainee who is taken on the rolls to learn work with a view of possible employment by, the company (iii) A trainee who is taken for training under contract which contract shall provide for intensive training in theory and in practice and upon payment of such allowance and for such period as the Company may decide and the training upon the completion of such training be bound on a bond of indemnity as may be provided to serve the Company for such period as may be fixed in the contract. 'Trainee' will include the 'Apprentice' defined under the Apprenticeship Act, 1961 for the purpose of Section 18 and 19 of the Standing orders."

The definition states that for the purpose of Sections 18 and 19 of the Standing Order, a "trainee" will include an "apprentice" appointed under Apprenticeship Act, 1961.

3. The EPF Act has been enacted to provide for institution of provident fund etc., for "employees" in factories and other establishments. The said Act defines "employee" at Section 2(f) as follows :

"(f) "employee" means 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 who gets his wages directly or indirectly from the employer, and includes any person -

(i) employed by or through a contractor in or on connection with the work of the establishment;

(ii) engaged as an apprentice, not being engaged under the Apprentices Act, 1961 (52 of 1961) or under the Standing Orders of the establishment."

By virtue of Section 2(f)(ii) of the Act, an apprentice engaged under the Apprentices Act or under the Standing Orders of the establishment is not an employee within the meaning of the Act. In other words, the apprentice standing outside the definition alone is an employee for the purpose of the Act. We may now turn to Para 2(f) of the Scheme framed under the Act. The said paragraph excludes certain classes of the employees as defined under the Act from the purview of the Scheme. Sub-clause (iv) thereof excludes an apprentice. Therefore, an apprentice who is an employee and who is not appointed under the Apprentices Act or under the provisions of the Standing Order is also excluded from the purview of the Act. In other words, all apprentices other than the category mentioned in Section 2(f) of the EPF Act are employees : but these employees are outside the purview of the scheme by virtue of paragraph 2(f)(iv) of the scheme. Therefore, "apprentice" referred to in para 2(f)(iv) of the scheme is neither an employee appointed under the Apprentices Act nor under the Standing Order but a third category of employee. In other words, the conjoint effect of these provisions would be that an apprentice of all types is excluded from the purview of the EPF Act and the Scheme framed thereunder. The EPF Act filters a category of apprentice by the definition clause. The remaining category of apprentice is totally taken outside the purview of the Scheme by means of Section 2(f)(iv).

4. We have to examine the question raised in the with the above statutory provisions in mind. Annexure-A is the letter of appointment issued to a trainee in the petitioner Company. The relevant portion reads as follows :

Ref : Your application dated April 30, 1984

1. You will undergo training in our Company effective May 2, 1984. The period of training initially fixed at twelve months. However at the discretion of the Management for such period or periods as may be determined by the

management.

2. It is specifically understood that the period of your training is liable to be terminated at any time by the Management without notice and/or without assigning any reason.

3. During the period of training, you will be paid Rs. 500/- per mensem as stipend.

4. As you are only a trainee, and not a workman of the factory, you are not entitled to any benefit or privilege available to the workman of the Company. But it is upto the management to permit you to avail such of the benefits/privileges which they deem fit in your case and it is specifically understood that your having been permitted to avail any privilege or benefit, that are available to the workmen only, will not confer on you any claim for the same as of right or otherwise and the same will not change your status as trainee.

5. Your having undergone training in the Company for any period/periods will not confer on you any claim for appointment as an employee of the concern.

6. Your aptitude and interest for the job and your performance and behaviour will be watched. You are expected to follow the rules of discipline in the factory.

For SUNDARAM INDUSTRIES LIMITED Sd/- Manager.

I agree to the conditions stated above and accept the appointment.

Sd/- M. Varada Raju Signature of the applicant."

"Now, the term of the appointment clearly shows that the appointee is appointed to learn the trade; he is not receiving any wages or pay but stipend; the period of training is prescribed and that there is no guarantee of future employment. The offer to teach is accepted by the recipient as well.

5. Who is an "apprentice" ? The Supreme Court has stated thus in The Employees' State Insurance Corporation and Another Vs. The Tata Engineering and Locomotive Co. Ltd. and Another,

4. "..... Even etymologically, as a matter of pure English, "to serve apprenticeship means to undergo the training of an apprentice" (Chamber's Dictionary).

According to the Shorter Oxford English Dictionary apprentice is "a learner of a craft; one who is bound by legal agreement to serve an employer for a period of years, with a view to learn some handicraft, trade, etc., in which the employer is reciprocally bound to instruct him". Stroud's Judicial Dictionary puts it thus :

"In legal acceptance an apprentice is a person bound to another for the purpose of learning his Trade or calling; the contract being of that nature that the master teaches and the other serves the master with the intention of learning".

While dealing with the nature of the relationship of master and servant in comparison with other relationship in Halsbury's Laws of England, Third edition, Volume 25, the following passage appears at Para 877, pages 451-452 :

"By a contract of apprenticeship a person is bound to another for the purpose of learning a trade or calling, the apprentice undertaking to serve the master for the purpose of being taught, and the master undertaking to teach the apprentice. Where teaching on the part of the master or learning on the part of the other person is not the primary but only an incidental object, the contract is one of service rather than of apprenticeship; but, if the right of receiving instruction exists, a contract does not become one of service because, to some extent, the person to whom it refers does the kind of work, that is done by a servant, or because he receives pecuniary remuneration for his work".

"5. The heart of the matter in apprenticeship is, therefore, the dominant object and intent to impart on the part of the employer and to accept on the part of the other person learning under certain agreed terms. 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 to a regular employee under the employer. Such a person remains a learner and is not an employee".

Hence, basically a person who accepts the offer to learn a trade from a willing employer and undergo a training in this behalf on agreed term is an apprentice. It is also clear that there should be an offer to teach and an acceptance to learn and a period is spent in for being trained in the trade.

6. Now the stand taken by the department in the impugned order is that these trainees are appointed against the existing vacancies or vacancies likely to arise and that unlike an apprentice, they are engaged to discharge work. It is further stated as follows :

"... When the trainees are appointed against possible vacancies the object of learning and imparting knowledge gets automatically obliterated and the main object of engaging trainees obviously is to extract work from them and not to teach them the work. Therefore the element of learning and teaching so necessary in the case of apprentices is missing here. When this dominant object of training is missing it would be a farce to persist in designating the so-called persons as trainees"

The reasoning in the impugned order proceeds on the footing that, a trainee in the instant case is engaged against a vacancy existing and the object of learning the trade is subsidiary. They are being employed to extract work from them and not for teaching work.

7. This reasoning apparently misses the point. A person recruited as a trainee from the open market has obviously no knowledge or little knowledge or expertise of the trade carried on by the master. He has no knowledge of the craft

of the master; he has to be taught, chiseled and shaped into a full-fledged worker. The existence of a particular number of vacancies in the organisation of the employer is of no consequence. The dominant object and intent in the arrangement is to impart, on the part of the employer, the learning and on the part of the trainee to accept and to learn the trade under certain agreed term. It is essential that in that process he has to turn out work. Without this, it may not be possible to learn. This part of the activity cannot be termed as an engagement by the employer for extracting work. An apprentice or a trainee has to turn out work so as to enable the master to ascertain whether he has learnt the trade he is teaching. The crucial question to be addressed is as indicated by the Supreme Court in *The Employees' State Insurance Corporation and Another Vs. The Tata Engineering and Locomotive Co. Ltd. and Another*,

"..... but if the right of receiving instruction exists, a contract does not become one of service because, to some extent, the person to whom it refers does the kind of work, that is done by a servant, or because he receives pecuniary remuneration for his work".

Hence, the circumstance that a "trainee" in the course of his training receives remuneration or turns out work are of no consequence and these circumstances will not elevate him to the status of circumstances will not elevate him to the status of an employee.

8. Now we have seen that by virtue of Section 2(f) of the EPF Act, an apprentice other than those appointed under the Apprenticeship Act, 1961, and under the Standing Orders alone are employees. And by virtue of Para 2(f)(iv) of the Scheme even these employees are outside the purview of the Act. In the instant case, we are concerned with trainees. The definition of a "trainee" in the Standing Orders of the petitioner Company makes it abundantly clear that these persons are taken on the rolls of the Company only for the purpose of learning a trade. The definition part clearly shows that there is an obligation on the part of the master to teach the trainee the work. As seen, the trainee also agrees to accept the offer. There was thus an offer to teach and an acceptance of the offer to learn.

9. One other incidental point may also be adverted to. The last para of the definition of "trainee" in the Standing Orders brings out the relationship more clearly. It states that a "trainee" will include an "apprentice" defined under the Apprentices Act, 1961 for purpose of Sections 18 and 19 of the Standing Orders. Sections 18 and 19 of the Standing Orders relate to misconduct and imposition of punishment for misconduct. In the light of the definition of I.D. Act, 1947, the definition of "workman" includes an apprentice as well. Hence, obviously, by addition of the last paragraph in the definition, it is clear that a trainee is declared as an "apprentice" and thus enjoys all the advantages and disadvantages conferred under the I.D. Act. If so, he should be in the same status of an "apprentice" for the purpose of EPF Act and the Scheme framed thereunder. Further, even though the last paragraph in the definition section

states that it is for the limited purpose of Sections 18 and 19 of the Standing Orders, all the same it pinpoints the relationship that the trainee has vis-a-vis the Company. He occupies the position of an apprentice.

10. The learned counsel for the petitioner has brought to my notice the decision of this Court in *Regional Provident Fund Commissioner v. Hotel Highway Limited*, reported in 79 FJR 190, wherein this Court has referred to the Supreme Court decision and stated thus :

"It would be clear that unless and until there was a relationship of employer and employee this definition cannot be put in motion as was pointed out by their Lordships in *E. S. I. Corporation v. Tata Engineering and Locomotive Co. Ltd.*, (supra). The crux of the matter is whether there is such a relationship. If there is none it matters very little whether the qualification prescribed under the Apprenticeship Act are satisfied or not. We may now usefully extract the headnote in *E.S.I. Corporation. Tata Engineering and Locomotive Co. Ltd.*, (supra). That reads as under :

"When under the terms and conditions of agreement under which apprentices are engaged by a company, they are mere trainees for a particular period for a distinct purpose and the company is not bound to employ them in their work after the training period is over, such apprentices cannot be said to be employed in the work of the company more so when they are not given wages within the meaning of that term as defined in Section 2(22). Thus, an apprentice is not an employee within Section 2(9) of the Act (1966) 30 FJR 304 : AIR 1966 Pat 455, affirmed.

The heart of the matter in apprenticeship is the dominant object and intent to impart on the part of the employer and to accept on the part of the other person learning under certain agreed terms. That certain payment is made during the apprenticeship, by whatever name called and that the apprentice has to be under certain rules of the discipline do not convert the apprentice into a regular employee under the employer. Such a person remains a learner and is not an employee. It is inherent in the word "apprentice" that there is no element of employment as such in a trade or industry."

Where, therefore, only training is imparted and no wage are paid we are unable to see as to how they could be called employees at all"

In the light what is stated above, I am of the view that the "trainee" engaged by the petitioner Company are not "employees" within the meaning the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 and the Scheme framed thereunder. Hence, the petitioner is not liable to make any contribution on their behalf and the respondent are not entitled to make any claim. Annexure-J is quashed. Rule hence made absolute. No costs.