

(2007) 10 GAU CK 0046

In the Gauhati High Court

Case No : Writ Appeal No. 52 of 2007 (in CR No,475 of 1998)

Sushil Choudhury

APPELLANT

Vs

Union of India and Anr.

RESPONDENT

Date of Decision : 11-10-2007

Acts Referred:

Citation : (2008) 3 GLR 308

Hon'ble Judges : R.B.Misra, J and U.B.Saha, J

Bench : Division Bench

Advocate : P.K.Biswas, Advocates appearing for Parties

Judgement

R.B. Misra, J.—Heard Mr. Soumik Deb, learned counsel for the appellant. Also heard Mr. P. K. Biswas, learned Asstt. Solicitor General for the respondents.

2. The present writ appeal has arisen from the judgment and order dated 22.5.2007 passed by the learned Single Judge in Civil Rule No. 475 of 1998 (Sri Sushil Choudhury versus Union of India & another) whereby learned Single Judge has dismissed the Civil Rule/ Writ Petition of the appellant herein, holding that the grounds taken herein for assailing the impugned letters and orders are not acceptable in the eyes of law and thereby dismissing the Civil Rule/Writ Petition, has negated the challenge made against the order dated 28.7.1998 (Annexure 9 to the writ petition), over the writpetitioner/appellantherein, purportedly in exercise of powers conferred under section 7A of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952, i.e., Act 19 of 1952 (hereinafter called "EPF & MP Act, 1952").

3. In respect of object and purpose of Act 1952 and scheme it is relevant to note as below :

(a) A necessity was felt that some provision should be made for granting of provident fund facilities, not only to the employees in industrial establishments but also to employees in commercial and other undertakings. On 15th November, 1951 the Government of India promulgated the Employees' Provident Funds

Ordinance which came into force on that date. Subsequently a Bill was introduced in the Parliament to replace the Ordinance.

(b) For the future of the industrial worker after retirement or for their dependents in case of early death, the old age and survivors' pensions scheme was in the industrially advanced countries. But in the prevailing conditions in India the institution of a pension scheme could not be visualized. Another alternative was providing gratuities after a prescribed period of service. The main defect of a gratuity scheme, however, was visualized that amount paid to a worker or his dependents would be small, as the worker would not himself be making any contribution to the fund. Taking into account the various difficulties, financial and administrative, the most appropriate course was conceived to achieve objective that institution compulsorily of contributory provident funds in which both the worker and the employer would contribute. Apart from other advantages, there is the obvious one of cultivating among the workers a spirit of saving something regularly. The institution of a provident fund of this type was expected to encourage the stabilization of a steady labour force in industrial centers.

(c) The subject of legislation for compulsory institution of contributory provident funds in industrial undertakings was discussed several times at tripartite meetings in which representatives of the Central and State Governments and of employers and workers took part.

(d) Therefore, for the purpose a Bill provided for institution, in the first instance, of contributory provident funds in the six major organized industries named in Schedule I, except undertakings owned by the Central or a State Government or by a local authority. There is also provision empowering the Central Government, by notification, to add other industries to the Schedule or to apply the Act to industrial undertakings employing less than fifty persons.

(e) To avoid any hardship to new establishments, a provision has been made for exempting them for a period of three years and similar exemptions are given to other establishments which are less than three years old till they have been in operation for a period of three years in all. The rate of contribution was indicated as 6 per cent of the total emoluments of the worker, the worker and the employer each contributing these amounts. Further, the scheme had empowered payment of a higher subscription by the workers at their option.

(f) Where Provident Funds exist in private industry, contributions are usually a percentage of the basic wage. Unlike Government Departments, wages in private industry have not, however, been rationalized and there are very great variations in the level of basic wages in private industry, even in different units in the same industry. If contributions are reckoned on the basis of basic wage only, there could be, therefore, be wide changes in the degree of benefit received. This might be unfair to the workers and also penalizing those employers who have brought the level of basic wages more in accord with current requirements.

Government appreciated that dearness allowance being a variable factor depends on the cost of living, it appears for reasonableness the Government was satisfied that contributions to the Provident Fund should be on the basis of basic pay plus dearness allowance.

(g) Where provident funds offering equal or more advantageous terms are operating efficiently, provision has been made for them to continue subject to certain safeguards in the interest of the workers.

(h) The "Bill" after enactment was to repeal the Ordinance promulgated on the same lines on the 15th November, 1951.

(i) The Employees' Provident Funds Bill was passed by both the Houses of the Parliament and it was assented by the President on 4th March, 1952. It came on the Statute Book as the Employees' Provident Funds Act, 1952 (19 of 1951). By section 13 of the Labour Provident Fund Laws (Amendment) Act, 1971 (16 of 1971) the nomenclature of the Act was amended as "The Employees' Provident Funds and Family Pension Fund Act, 1952" (w.e.f. 23.4.1971) and by section 17 of the Labour Provident Fund Laws (Amendment) Act, 1976 (99 of 1976), the nomenclature of the Act was again changed as "The Employees' Provident Funds and Miscellaneous Provisions Act, 1952" (w.e.f. 1.8.1976). Now it stands as the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952).

4. The provision of section (3) of the "EPF & MP Act, 1952" subject to the provision contained in section 16 the "EPF & MP Act, 1952" shall be applicable to two classes of establishments, i.e., (a) establishment which is a factory engaged in any industry specified in Schedules 1 to the Act in which 20 or more persons are employed and (b) Any establishment having employees 20 or more persons or class of such establishment which the Central Government may by Notification in the Official Gazette specified. The relevant provision of sections 1,4,5, and 16 of the "EPF & MP Act, 1952" relevant for the purpose are quoted hereunder :

"1. Short, title, extent and application. [(1) This Act may be called the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.3

(2) It extends to the whole of India except the State of Jammu and Kashmir.

[(3) Subject to the provisions contained in section 16, it applies

(a) to every establishment which is a factory engaged in any industry specified in Schedule I and in which [twenty] or more persons are employed, and

(b) to any other establishment employing [twenty] or more persons or class of such establishments which the Central Government may, by notification in the Official Gazette, specify in this behalf:

Provided that the Central Government may, after giving not less than two months' notice of its intention so to do. by notification in the Official Gazette, apply the provisions of this Act to any establishment employing such number of persons less than [twenty] as may be specified in the notification.]

[(4) Notwithstanding anything contained in subsection (3) of this section or subsection (1) of section 16, where it appears to the Central Provident Fund Commissioner, whether on an application made to him in this behalf or otherwise, that the employer and the majority of employees in relation to any establishment have agreed that the provisions of this Act should be made applicable to the establishment, he may, by notification in the Official Gazette, apply the provisions of this Act to that establishment on and from the date of such agreement or from any subsequent date specified in such agreement.]

2. Definitions. In this Act, unless the context otherwise requires,xxx xxx xxx

xxx xxx xxx

(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 in connection with the work of the establishment;

(ii) engaged as an apprentice, not being an apprentice engaged under the Apprentices Act, 1961 (52 of 1961), or under the standing orders of the establishment;]

xxx xxx xxx

xxx xxx xxx

(i) "Industry" means any industry specified in Schedule I, and includes any other industry added to the Schedule by notification under section 4 ;

xxx xxx xxx

xxx xxx xxx

(ic) "manufacture" or "manufacturing process" means any process for making, altering, repairing, ornamenting, finishing, packing oiling, washing, cleaning, breaking up, demolishing or otherwise treating or adapting any article or substance with a view to its use, sale transport, delivery or disposal;]

xxx xxx xxx

xxx xxx xxx

2A. Establishment to include all departments and branches. For the removal of doubts, it is hereby declared that where an establishment consists of different departments or has branches, whether situate in the same place or in different places, all such departments or branches shall be treated as parts of the same establishment.]

xxx xxx xxx

4. Power to add to Schedule I. (1) The Central Government may, by notification in the Official Gazette, add to Schedule I any other industry in respect of the employees whereof it is of opinion that a provident fund scheme should be framed under this Act, and thereupon the industry so added shall be deemed to be an industry specified in Schedule I for the purposes of this Act.

(2) All notifications under subsection (1) shall be laid before Parliament, as soon as may be, after they are issued.

5. Employees' Provident Fund Schemes. (1) The Central Government may, by notification in the Official Gazette, frame a Scheme to be called the Employees' Provident Fund Scheme for the establishment of provident funds under this Act for employees or for any class of employees and specify the [establishments or class or establishments to which the said Scheme shall apply and there shall be established, as soon as may be after the framing of the Scheme, a Fund in accordance with the provisions of this Act and the Scheme.

7A. Determination of moneys due from employers. (1) The Central Provident Fund Commissioner, any Additional Central Provident Fund Commissioner, any Deputy Provident Fund Commissioner, any Regional Provident Fund Commissioner, or any Assistant Provident Fund Commissioner may, by order,

(a) in a case where a dispute arises regarding the applicability of this Act to an establishment, decide such dispute, and

(b) determine the amount due from any employer under any provision of this Act, the scheme or the (Pension) Scheme or the Insurance Scheme as the case may be,

and for any of the aforesaid purposes may conduct such inquiry as he may deem necessary.

(2) The officer conducting the inquiry under subsection (1) shall, for the purposes of such inquiry, have the same powers as are vested in a Court under the Code of Civil Procedure, 1908 (5 of 1908), for trying a suit in respect of the following matters, namely :

(a) enforcing the attendance of any person or examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavit;

(d) issuing commissions for the examination of witnesses, and any such inquiry shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196, of the Indian Penal Code (45 of 1860).

(3) No order shall be made under subsection (1), unless the employer

concerned] is given a reasonable opportunity of representing his case.

(3A) Where the employer, employee or any other person required to attend the inquiry under subsection (1) fails to attend such inquiry without assigning any valid reason or fails to produce any document or to file any report or return when called upon to do so, the officer conducting the inquiry may decide the applicability of the Act or determine the amount due from any employer, as the case may be, on and the basis of the evidence adduced during such inquiry and other documents available on record.

(4) Where an order under subsection (1) is passed against an employer ex parte, he may, within three months from the date of communication of such order, apply to the officer for setting aside such order and if he satisfies the officer that the showcause notice was not duly served or that he was prevented by any sufficient cause from appearing when the inquiry was held, the officer shall make an order setting aside his earlier order and shall appoint a date for proceeding with the inquiry :

Provided that no such order shall be set aside merely on the ground that there has been an irregularity in the service of the showcause notice if the officer is satisfied that the employer had notice of the date of hearing and had sufficient time to appear before the officer.

Explanation. Where an appeal has been preferred under this Act against an order passed ex parte and such appeal has been disposed of otherwise than on the ground that the appellant has withdrawn the appeal, no application shall lie under this subsection for setting aside the ex parte order.

(5) No order passed under this section shall be set aside on any application under subsection (4) unless notice thereof has been served on the opposite party.

7B. Review of orders passed under section 7A. Any person aggrieved by an order made under subsection (1) of section 7A, but from which no appeal has been preferred under this Act, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the order was made, or on account of some mistake or error apparent on the face of the record or any other sufficient reason, desires to obtain a review of such order may apply for a review of that order to the Officer who passed the order :

Provided that such officer may also on his own motion review his order if he is satisfied that it is necessary so to do on any such ground.

(2) Every application for review under subsection (1) shall be filed in such form and manner and within such time as may be specified in the Scheme.

(3) Where it appears to the officer receiving an application for review that there is no sufficient ground for review, he shall reject the application.

(4) Where the officer is of opinion that the application for review should be

granted, he shall grant the same:

Provided that,

(a) no such application shall be granted without previous notice to all the parties before him to enable them to appear and be heard in support of the order in respect of which a review is applied for, and

(b) no such application shall be granted on the ground of discovery of new matter or evidence which the applicant alleges was not within his knowledge or could not be produced by him when the order was made, without proof of such allegation,

(5) No appeal shall lie against the order of the officer rejecting an application for review, but an appeal under this Act shall lie against an order passed under review as if the order passed under review were the original order passed by him under section 7A.

7D. Employees' Provident Funds Appellate Tribunal. (1) The Central Government may, by notification in the Official Gazette, constitute one or more Appellate Tribunals to be known as the Employees' Provident Funds Appellate Tribunal to exercise the powers and discharge the functions conferred on such Tribunal by this Act and every such Tribunal shall have jurisdiction in respect of establishments situated in such area as may be specified in the notification constituting the Tribunal.

71. Appeals to Tribunal. (1) Any person aggrieved by a notification issued by the Central Government, or an order passed by the Central Government or any authority, under the proviso to subsection (3), or subsection (4) of section 1, or section 3, or subsection (1) of section 7A, or section 7B [except an order rejecting an application for review referred to in subsection (5) thereof], or section 7C, or section 14B, may prefer an appeal to a Tribunal against such notification or order.

(2) Every appeal under subsection (1) shall be filed in such form and manner, within such time and be accompanied by such fees, as may be prescribed.

16. Act not to apply to certain establishments. [(1) This Act shall not apply

(a) to any establishment registered under the Cooperative Societies Act, 1912 (2 of 1912), or under any other law for the time being in force in any State relating to cooperative societies, employing less than fifty persons and working without the aid of power; or

(b) to any other establishments belonging to or under the control of the Central Government or a State Government and whose employees are entitled to the benefit of contributory provident fund or old age pension in accordance with any scheme or rule framed by the Central Government or the State Government governing such benefits ; or

(c) to any other establishment set up under any Central, Provincial or State Act

and whose employees are entitled to the benefits of contributory provident fund or old age pension in accordance with any scheme or rule framed under that Act governing such benefits ;

(2) If the Central Government is of opinion that having regard to the financial position of any class of [establishments] or other circumstances of the case, it is necessary or expedient so to do, it may, by notification in the Official Gazette, and subject to such conditions as may be specified in the notification, exempt [Whether prospectively or retrospectively,] that class of [establishments] from the operation of this Act for such period as may be specified in the notification." (emphasis supplied)

Section 2(c), 2(d), 2(f) and section 15 of the Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 runs as follows :

"2. Definitions. In this Act, unless the context otherwise requires,

(a) xxx xxx xxx

(b) xxx xxx xxx

(c) "newspaper employee" means any working journalist, and includes any other person employed to do any work in, or in relation to, any newspaper establishment;

(d) "newspaper establishment" means an establishment under the control of any person or body of persons, whether incorporated or not, for the production or publication of one or more newspapers or for conducting any news agency or syndicate [and includes newspaper establishments specified as one establishment under the schedule;

Explanation. For the purposes of this clause,

(a) different departments, branches and centers of newspaper establishments shall be treated as parts thereof ;

(b) a printing press shall be deemed to be a newspaper establishment if the principal business thereof is to print newspaper;]

(f) "working journalist" means a person whose principle avocation is h that of a journalist and [who is employed as such, either wholetime or parttime, in, or in relation to, one or more newspaper establishments] , and includes an editor, a leaderwriter, news editor, subeditor, featurewriter, copytester, reporter, correspondent, cartoonist, newsphotographer and proofreader, but does not include any such person who

(i) is employed mainly in a managerial or administrative capacity ;

(ii) being employed in a supervisory capacity, performs, either by the nature of the duties attached to his office or by reason of the powers vested in him,

functions mainly of a managerial nature ;"

15. Act 19 of 1952 to apply to newspaper establishments. The Employees' Provident Funds Act, 1952, as in force for the time being, shall apply to every newspaper establishment in which twenty or more persons are employed on any day, as if such newspaper establishment were a factory to which the aforesaid Act had been applied by a notification of the Central Government under subsection (3) of section 1 thereof, and as if a newspaper employee were an employee within the meaning of that Act."

5. The facts necessary for adjudicating the present writ appeal are indicate as hereinafter :

Shri Sushil Choudhury is admittedly the proprietor of two establishments, namely :

(1) Editor, Printer, Publisher and Proprietor of a Newspaper under the name and style "Dainik Ganadoot" and

(2) Printing Press under the name and stuyle "M/s. Pioneer Press".

The case of the writpetitioner Shri Sushil Choudhury is that "M/s. Pioneer Press" is registered and licensed under the Factories Act having nine workers while "Dainik Ganadoot" is a newspaper establishment with only fourteen workers out of whom four are casual and the temporary workers recruited only on daily basis. The said two establishments are different and also that the "Dainik Ganadoot" being the newspaper establishment is exempted from application of the provision of EPF & MP Act, 1952". Even if the said two establishments, i.e., "M/s. Pioneer Press" & "Dainik Ganadoot" are taken to be one and same establishment, total number of persons employed in the said establishment taken together is less than twenty persons inasmuch as four causal employees on daily basis cannot be counted for determining the number of employees under the provision of section 1(3) of the "EPF&MP Act, 1952".

6. In reference to the communication dated 2061995 of Enforcement Officer of the respondent No. 2, an inspection dated 3.7.1995 was conducted on the establishment of "M/s. Pioneer Press" and "Dainik Ganadoot" in connection with the applicability of the "EPF & MP Act, 1952".

7. The writpetitioner/Appellant herein, wrote a letter on 2281995 to the Regional Provident Fund Commissioner, N.E. SubRegional Office a that "M/s. Pioneer Press" & "Dainik Ganadoot" are the separate establishments and do not come under the "EPF & MP Act, 1952" and also that "Dainik Ganadoot" is a newspaper establishment with fourteen workers out of whom four are casual and temporary workers on daily basis and also alleged that the Assistant Provident Fund Commissioner b wanted the writpetitioner/appellantherein to come to him to an understand and to pay a good amount so that he might not process the matter for the said two establishments. However, the Regional Provident Fund Commissioner by his letter dated 31.8.1995 controverted the allegations made

by the writpetitioner by stating that the aspersions are unfortunate and baseless as he never visited the establishment of the writpetitioner alone as he was always accompanied by Subordinate Officers and since there was dispute about the applicability of the "EPF & MP Act, 1952" in respect of "M/s. Pioneer Press" & "Dainik Ganadoot", therefore, notice was issued under section 7A of the EPF & MP Act, 1952 for deciding the said dispute. The writpetitioner was further directed through the said letter dated 31081995 to start contribution of the fund payable for the Employees' Provident Funds Scheme, 1952 in compliance to the provision of section 6 of the "EPF & MP Act, 1952" Stating that as per the records maintained by "M/s. Pioneer Press" & "Dainik Ganadoot" clearly established that "Dainik Ganadoot" & "M/s. Pioneer Press" had twenty three employees and also two establishments are at the same premises with common office management under the same proprietorship and also there is functional and financial integrity and also only one Attendance Register of the employees had been maintained for both the establishments.

8. The writpetitioner sought several adjournments for filing his statement and also for his appearance before the Regional Provident Fund Commissioner. However, at the request of the writpetitioner itself, the hearing of the proceedings under section 7A of "EPF & MP Act, 1952" was fixed on 17111997. On that day also the writpetitioner requested for some time. On 18121997, the writpetitioner submitted his written representation. The Enforcement Officer also submitted his written argument on 911998.

9. The writpetitioner/appellant herein had made following submissions in support of nonapplicability of EPF & MP Act, 1952 to "M/s. Pioneer Press" & "Dainik Ganadoot":

(b) The Printing Press or Newspaper does not come under the purview of Schedule 1 read with section 2(i) & section 4 of the "EPF & MP Act, 1952":

(c) The owner is the same but "Dainik Ganadoot" being a newspaper is regulated under the Press Act while the "M/s. Pioneer Press" being press is not regulated under the Newspaper and the Press Act.

(d) Out of fourteen workers employed in the "Dainik Ganadoot", four are casual and as such the said four workers could not be counted in calculating the total number of persons employed in "Dainik Ganadoot" under section 1(3) of EPF & MP Act, 1952 :

10. An order dated 5.5.1998 was passed by the Regional Provident Fund Commissioner indicating as below :

(a) "M/s. Pioneer Press" & "Dainik Ganadoot" both come under the list of industry/class of establishments coverable under the "EPF & MP Act, 1952".

(b) "M/s. Pioneer Press" & "Dainik Ganadoot" are to be treated as one establishment for application of provisions of the "EPF & MP Act, 1952" and Schemes framed thereunder due to following factual situation.

- (i) Both are situated in the same premises with common address, telephone numbers and FAX number.
- (ii) Both are having common office management.
- (iii) Both are owned by same proprietor/occupier.
- (iv) There existed the functional integrity as the newspaper Dainik is printed in the press/M/s. Pioneer Press".
- (v) Attendance of the employees for both are recorded in one and the same Register during entire period from which Attendance Register was produced and up to the date of inspection by the Enforcement Officer that is July 1993 to June 1995 the establishment could not refute this fact till date nor could produce records to prove the contrary.
- (vi) There existed intertransferability of employees between "M/s. Pioneer Press" & "Dainik Ganadoot".
- (vii) There existed only one balance sheet up to 199091 for both the units.
- (viii) There existed financial, management, functional and locational integrity between "M/s. Pioneer Press" & "Dainik Ganadoot". Both are integral interdependent and complementary to each other.
- (b) Both together have employed twentythree persons on 1.7.1993.
- (c) Both were established in 1968 and as such had already completed 5/3 years from the date of set up.
- (d) "M/s. Pioneer Press" & "Dainik Ganadoot" qualify all the conditions stipulated for coverage under "EPF & MP Act, 1952" at least on 1.7.1993 subject to verification of records for the past period prior to 1.7.1993.
- (e) Regional Provident Fund Commissioner, Agartala in exercise of powers conferred upon him under section 7A of the "EPF & MP Act, 1952" decided both "M/s. Pioneer Press" & "Dainik Ganagoot, Placement Compound, Agartala taken together have rightly been covered under the "EPF & MP Act, 1952" w.e.f. 1st July, 1993 and as such both are covered under "EPF & MP Act, 1952" and Schemes framed there under at least w.e.f. 1,7.1993.
- (f) As regards the Provident Fund and allied dues from 1.7.1993 upto date period i.e. 30.4.1998 assessment for the same under section 7A of the "EPF & MP Act, 1952" and for which the relevant records viz Attendance Register, Payment Register, Bonus Payment Register, Cash Book, Vouchers etc. from 1.7.1993 to 30.4.1998 are to be produced by the establishment before the Inquiry Officer under section 7A of the Act.
- (g) The establishment was directed to produce all the relevant records as mentioned above through the authorized representative before the Regional Provident Fund Commissioner, Agartala in his office at Agartala on 16th June,

1998 at 11.30 a.m. The Enforcement Officer of the Departmental side was also asked to furnish his statement of dues on 16.6.1998 and be present at the time of hearing on 16.6.1998 for verification of records to be produced by the establishment.

11. In reference and sequence to above order dated 5.5.1998 an order dated 28.7.1998 was passed by the Regional Provident Fund Commissioner, whereby, in exercise of power under section 7A of EPF & MP Act 1952" the provident fund and allied dues against both "M/s. Pioneer Press" and "Dainik Ganadoot" were finalized and direction was issued to pay the same within 15 days. Both these orders dated 5.5.1998 and 28.7.1998 were not challenged in the Civil Rule No.475 of 1998; whereas, the covering letter dated 7.8.1998 enclosing the order dated 28.7.1998 regarding direction for recovery of dues was challenged.

12. Learned Single Judge in the impugned order has arrived at the conclusion as below :

(h) The EPF & MR Act, 1952 shall not be applicable to the newspaper establishment, i.e. Dainik Ganadoot is not acceptable under law;

(ii) The finding of the Regional Provident Fund Commissioner, Agartala vide order dated 5.5.1988 that M/s. Pioneer Press and Dainik Ganadoot are to be treated as one establishment for application of the provision of EPF & MP Act, 1952 are well founded and absolutely correct;

(iii) The petitioner had utterly failed to controvert the above finding arrived at in the order dated 5.5.1998 of the Regional Provident Fund Commissioner.

13. Serial 7 of the Schedule1 to EPF & MP Act, 1952 refers as below :

"1. XXX XXX XXXX

2. XXX XXX XXXX

3. XXX XXX XXXX

4. XXX XXX XXXX

5. XXX XXX XXXX

6. XXX XXX XXXX

7. Printing [other than printingindustry relating to the newspaper establishments as defined in the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955 (45 of 1955) including the process of composing types for printing, printing by letter press, lithography, photogravure or other similar process or bookbinding.]

XXX XXX XXXX

XXX XXX XXXX

XXX XXX XXXX"

14. In exercise of powers conferred under section 4 of the "EPF & MP Act, 1952", the Central Government may by notification in the Official Gazette add to Schedule I any other industry in respect of the employees whereof it is of the opinion that a Provident Fund Scheme shall be framed and thereupon the industry shall be deemed to be an industry specified in Schedule I for the purpose of the Act. In exercise of the powers conferred by section 5 of the PF Act, the Central Government framed the Employees' Provident Funds Scheme, 1952 (for short "the Scheme"). The employees to whom the provisions of the Scheme and the Act would not apply are defined as "excluded employee" in paragraph 2(f) of the Scheme. The said paragraph to the extent relevant for the present purposes reads as under:

"2 (f) "excluded employee" means (i) xxx xxx xxxx

(ii) an employee whose pay at the time he is otherwise entitled to become member of the Fund, exceeds six thousand and five hundred rupees per month;

Explanation. "Pay" includes basic wages with dearness allowance, retaining allowance (if any) and cash value of food concession admissible thereon;"

15. The Schemes framed in exercise of the power conferred by section 5 of "EPF & MP Act, 1952" shall be applicable to the factories relating to the industry added to the Schedule I of the Act by Notification of the Government of India, Ministry of Labour No. SRO/1566, dated 4.7.1956 which came into force w.e.f. 31.7.1956.

16. By a Notification of the Government of India in the Ministry of Labour No. SRO/2981, dated 4.12.1956 special provisions in the case of newspaper establishment and newspaper employees had been inserted as para No. 80 of Chapter X of the "Scheme". From the reading of the para No. 80, Chapter X of the Scheme it is clear that the scheme will be applicable to newspaper establishment and the newspaper employees.

The relevant portion of para 80 of Chapter X of "Scheme", are quoted hereunder :

[8Q. Special provisions in the case of newspaper establishments and newspaper employees. The Scheme shall, in its application to newspaper establishments and newspaper employees, as defined in section 2 of the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955, come into force on the 31st day of December, 1956 and be subject to the modifications mentioned below :

(1) In Chapters I to K, references to "industry", "factories" and "employees" shall be construed as references to "newspaper industry", newspaper establishment" and newspaper employees, respectively:

(2) For paragraph 2(f), the following shall be substituted, namely: "(f) "excluded employee" means,

[(i) an employee who, having been a member of the Fund, has withdrawn the full amount of his accumulations in the Fund under clause (a) or (c) of subparagraph (1) of paragraph 69;]

(ii) an apprentice.

Explanation. "Apprentice" means a person who, according to the standing orders applicable to the newspaper establishment concerned, is an apprentice or who is declared to be an apprentice by the authority specified in this behalf by the appropriate Government,"

The aforesaid paragraph came into force on 31.12.1956, Therefore since the said date, instead of paragraph 2(f), the employees of the newspaper establishments have a separate and distinct definition.

17. Mr. Somik Deb, learned counsel for the appellant has invited the attention of this court mainly on two aspects firstly whether the Central Government can make an entry by way of Notification in Schedule I [in reference to section 2(i) and section 4 of "EPF & MP Act, 1952"] contrary to the original Entry No.7 of such Schedule and secondly as to whether a person employed on seasonal or casual or temporary basis can be taken to be employee to count the number required, under "EPF & MP Act, 1952".

According to Mr. Somik Deb the original serial Entry No.7 in Schedule I was prescribing, only Printing, [other than printing relating to newspaper establishment as defined in Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 which came into force w.e.f. 20.12.1955 (hereinafter called as "Act, 1955") including the process of composing types for printing, printing by letter press, lithography, photogravure or other similar process or book binding] w.e.f. 4.7.1956. Though validity of section 15 of the "Act 1955" making applicability of "EPF & MP Act, 1952" to the newspaper establishment has not been exclusively challenged, however, the court cannot shut its eyes from considering this aspect of the matter in view of the observation of the Supreme Court made in *Ashok Lanka and Another v. Rishi Dixit and Others*, (2005) 5 SCC 598, para 57.

18. As submitted by learned counsel for the appellant in *State of Karnataka and Another v. H. Ganesh Kamath and Others* (1983) SCC 402, hon'ble Supreme Court, while observing that Rules must be intra vires and consistent with the statute under which they are framed and also observing that the conferment of rulemaking power by an Act does not enable the rulemaking authority to make a rule which is inconsistent therewith or repugnant thereto and has held that the Rule 5(2) (as inserted on July 7, 1976) in Karnataka Motor Vehicles Rules, 1963 was ultra vires. The same principle of interpretation of statute has also been acknowledged by the Supreme Court in *Additional District Magistrate (Rev.), Delhi Admn. V. Siri Ram*, (2000) 5 SCC 451 which runs as follows :

"It is a wellrecognized principle of interpretation of a statute that conferment of

rulemaking power by an Act does not enable the rule making authority to make a rule which travels beyond the scope of the enabling Act or which is inconsistent therewith or repugnant thereto, From the above discussion, we have no hesitation to hold that by amending the Rules and Form P5, the rulemaking authority has exceeded the power conferred on it by the Land Reforms Act."

19. Referring the decision of the Supreme Court in *State of M.P. and Another v. Bhola alias Bhairon Prasad Raghuvanshi* (2003) 3 SCC 1, paragraphs 8, 9 & 11 Mr.Soumik Deb has submitted that the Government may make the rule under the rulemaking power only consistent with the provision of its Act and in order to appreciate the spirit of the Act a brief survey of the scheme and root as well as of the Art shall be meaningful conveying the object of the Act and in the facts and circumstances, covering the printing press as a printing industry a relating to newspaper establishment for applicability of "EPF & MP Act, 1952" by section 15 of the "Act1955" though not specifically challenged has to be scrutinized and cannot be brushed aside from dealing the present controversy as both the establishments of the appellant, namely, M/s. Pioneer Press and Dainik Ganadoot are separate , and different establishment and/or financially independent in respect of bank account, loan account, etc.

In our respectful consideration the appellant herein has not specifically challenged any of the provisions of EPF & MP Act, 1952 or Act, 1955 before the learned Single Judge and provisions of both these "Act" have c been regulating and holding the field even at present then the appellant cannot be allowed to question the validity and legality of any of the section of above two "Act" indirectly at this appellate stage what he did not do at the initial stage.

20. Mr. Soumik Deb, learned counsel for the appellant in reference to the decision of the Apex Court in *Regional Provident Fund Commissioner, Andhra Pradesh v. Sri T. S. Hariharan*, (1971) 2 SCC 68 has submitted that even if M/S Pioneer Press and Dalnik Ganadoot are treated to be one establishment for the purpose of application for the provision of EPF & MP Act, 1952" and Employees" Provident Fund Scheme, 1952, but while counting the number of persons employed in the said two establishments four employed are to be excluded inasmuch as they are the temporary workers recruited on daily basis. However it is pertinent to note that the writ petitioner in the proceeding under section 7A of the "EPF & MP Act 1952" before the Commissioner Provident Fund, Agartala had not taken such plea at all whereas in the present writ petition such aspect has been mentioned in para No. 4 but without taking as a ground for assailing the impugned letters and orders and also the said order dated 5.5.1998.

21. On the other hand Mr. P.K, Biswas, learned Asstt. Solicitor General of India for the respondents has submitted that Dainik Ganadoot and M/s. Pioneer Press are treated to be one establishment for application of provision of the "EPF & MP Act, 1952" and the scheme framed therein. According to Mr. Biswas, the observations of the Apex Court in *Provident Commissioner, Jaipur v. Narangi Udyog and Others*, (1996) 5 SCC 522, is relevant for the purpose which is quoted

hereunder

"The fact of common Head Office at New Delhi, a common Bench at Bombay common telephone at Kota for residence and factories has also been not denied by Shri Krishan Kumar in his evidence. At the same time assertion that the Head Office though located in the same building but is separate lacks credibility. The letterhead of the two firms do not give any such indication. The stand of the estt. that the two are registered separately under the Factories Act, the Sales Tax Act, the ESIC Act are located at a distance of 3 km apart, have separate Central Exercise Nos. are registered as separate smallscale industries etc. and, therefore, the two should be treated as separate establishment is devoid of merit. As already analyzed earlier the concept of an establishment for the purposes of the Act is wide enough to include more than one factory and as such the factors relied upon by the management do not cut across that concept. The purpose of each Act is entitles (sic) for those Acts is immaterial so far the "EPF & MP Act, 1952" is concerned. The statement by the P.F. Inspector that he had seen some workers of M/s. Naraini Udyog working in M/s. Naraini Udyog working in M/s. Modern Steel has been denied by the employer but it is not very crucial to the point at issue. The submission on behalf of the department that the office of M/s. Naraini Udyog and accounts of the two are maintained by the same set of clerks has not been controverted by the employer. Thus taking into account the totality of the factors the conclusion that the two firms in reality constituted a single establishment for the purpose of the Act is inescapable. This is fully supported by the provision of section 2A of the Act as also the caselaws laid down by the Supreme Court mentioned in Para 4 earlier."

"2. On the basis thereof the appellant has called upon them to contribute the amount under section 7A of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (for short "the Act") holding that the above two concerns are establishments within the meaning of section 1(3)(a) of the Act. The Division Bench in the impugned order had held that they were registered under the Companies Act as two different individual identities. Though they are represented by the members of the same family. Therefore, they are to independent companies. Both cannot be clubbed together of the purpose of levying contribution under section 7A of the Act. We have gone through the reasoning given by the High Court. We find that the High Court is wholly unjustified in reaching the above conclusion. It is true as found by the High Court, that they are registered as two independent units and represented separately by the members of a Hindu Undivided joint Family. Nonetheless the commissioner recorded as a fact the functional unity and integrity between the two concerns. Consequently the definition of establishment which was widely defined would encompass within its ambit the two units as an establishment for the purpose of the Act. Accordingly the High Court had not considered in proper perspectives of the provisions of the Act which is a beneficial legislation to provide healthy security to the workmen. In the ultimate analysis the employer gets maximum outturn of his production by ensuring health insurance to its employees which is

the fundamental right of the latter."

22. It has also been submitted by Mr. P.K. Biswas, learned counsel for the Union of India that printing press relating to newspaper establishment is undisputedly a factory and since the principal business and dominant functioning of printing press owned by the appellant, namely, M/s. Pioneer Press is to print newspapers as such this pioneer Press is a newspaper establishment and as such in view of section 15 of the Act 1955, the provisions of EPF & MP Act 1952" shall apply to the M/s. Pioneer Press and in view of section 15 of the "Act 1955" M/s. Pioneer Press is a newspaper establishment as there are more than 20 persons employed and M/S Pioneer Press is a factory to which "EPF & MP Act, 1952 is applicable.

23. According to Mr. P. K. Biswas, in view of the decision of Express Publications (Madurai) Ltd. & another v. Union of India & Another (2004) 11 SCC 526 newspaper employees deployed in "newspaper establishment" are entitled to the benefits of the "EPF & MP Act, 1952" as well as the Provisions of Scheme.

24. According to Mr. Biswas, the order dated 5.5.1998 of the Regional Provident Fund Commissioner and on the basis subsequent order dated 28.7.1998 passed by the Regional provident Fund Commissioner were not challenged in Civil Rule/ Writ Petition No.475 of 1998. However, only a covering letter dated 781998 was challenged through which the order dated 2871998 of the Regional Provident Fund Commissioner was conveyed to the appellant. Being aggrieved by the decision of the Regional Provident Fund Commissioner, the appellant herein, has not even resorted to avail statutory remedy i.e. preferring review provided under section 7B of "EPF & MP Act, 1952" and has also not resorted to the remedy available before the Employees' Provident Fund Tribunal created under section 7D of EPF & MP Act, 1952" in case if aggrieved by any order passed under the provision of section 7B on review, the f appellant could have approached for appropriate remedy by way of appeal under section 7(1) of EPF & MP Act, 1952 before learned Tribunal created under section.7(D). After detailed scrutiny, inspection, survey and analysis having been made by the Enforcement Officer and after conclusion of the fact finding by the Regional Provident Fund g Commissioner vide its order dated 5.5.1998, the controversy has already been set at rest and the two establishments of the appellant, namely, M/s. Pioneer Press and Dainik Ganadoot though two establishments for the name sake but in fact are two sides of one coin and common employees working in these two establishments and casual employees cannot be isolated from the number of employees employed in the newspaper establishment and this court has correctly not made reappreciation of evidence as an appellate authority in exercise of its judicial power under article 226 of the Constitution in order to substitute its own finding in view of the observations made by the Supreme Court in Govt. of A.P & Ors. v. Mohd. Nasrullah Khan AIR 2006 SC 1214.

25. In context of the maintainability of the Civil Rule/Writ Petition even on the ground of availability of alternative remedy in the EPF & MP Act, 1952 the attention of this court was invited to the observation of the Supreme Court made

in Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and Others 1998 (8) SCC 1. For convenience paragraphs 14 and 15 are quoted below :

"14. The power to issue prerogative writs under article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the Fundamental Rights contained in Para II of the Constitution but also for "any other purpose".

15. Under article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of caselaw on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field."

26. In view of the observations made above, learned counsel Mr. Soumik Deb has submitted that when learned Single Judge of this court after adjudicating the civil Rule/writ petition has passed the impugned order which is under challenge in the present Writ Appeal, therefore, at this stage raising the issue of alternative remedy may not be appropriate.

27. According to the well-established principle for interpretation of statute, the maxim "expressum facit cessare taciturn" should be applied in interpreting the expressed meaning of the statute inasmuch as "when there is express mention of certain thing, then anything not mentioned is excluded." We may recall here the observations of LORD Reid in *Atkinson v. Union State Market Govt.* LR 1971 AC 197 that "It is now well-recognized that the court has powers to expand procedure laid down by statute if that is necessary to prevent infringement of natural justice and is not plainly the contrary to the intention of parliament." The Apex Court (Constitution Bench) in *Union of India & Anr. v. Tulsiram Patel*, (1985) 3 SCC has observed that the maxim "expressum a facit cessare taciturn" (when there is expressed mention certain things, then anything not mentioned is excluded) should be applied in interpreting the statute.

28. It is also fairly settled that a beneficial provision of Act must be liberally construed so as to fulfil the statutory purpose, not to frustrate it and since the "EPF and MP Act, 1952" is beneficial legislation for the employees of the establishment, therefore, a liberal interpretation is required.

29. It is cardinal rule of construction that no word should be construed redundant or surplus in interpreting the provision of a statute or rule Ref: Dinesh Chandra Sangma v. State of Assam & Ors., AIR 1978 SC 17. The Apex Court in State of Maharashtra & Ors. v. Santosh Shanker Acharya (2000) 7 SCC 463 has held that it is too wellknown principle of construction of statute that the legislature engrafted every part of the statute for a purpose. The legislative intention is that every part of the statute should be given effect. Legislature is deemed not to waste its words or to say anything in vain and a construction, which attributes redundancy to the legislature, will not be accepted except for compelling reasons.

30. The Apex Court in Bhavnagar University vs Palitana Sugar Mill (P.) Ltd. & Ors : (2003) 2 SCC 111 held that it is the basic principle of construction of statute that statutory enactment must ordinarily be construed according to their plain meaning and no word should be added, altered or modified unless it is plainly necessary to do so to prevent a provision from being unintelligible absurd, unreasonable, unworkable or totally irreconcilable with the rest of the statute. Paras 24, 25 and 26 of the Bhavnagar University (supra) reads as follows :

"24. True meaning of a provision of law has to be determined on the basis of what it provides by its clear language, with due regard to the scheme of law.

25. Scope of legislation on the intention of the legislature cannot be enlarged when the language of the provision is plain and unambiguous. In other words statutory enactments must ordinarily be construed according to its plain meaning necessary to do so to prevent a provision from being unintelligible, absurd, unreasonable, unworkable, or totally irreconcilable with the rest of the statute.

26. It is also wellsettled that a beneficent provision of legislature must be liberally construed so as to fulfil the statutory purpose and not to frustrate it."

31. The Supreme Court in the case of Promoters & Builders Ass of Pune v. Pune Municipal Corp & Ors., (2007) 6 SCO 143 para 11 has observed as below :

"11.....In Union of India v. Hansoli Devi, (2002) 7 SCO 273 it has be held that it is a cardinal principle of construction of a statute that when the language of the statute is plain ad unambiguous, then the court must give effect to the words used in the statute and it would no be open to the court to adopt a hypothetical construction on the ground that such construction s more consistent with the alleged object and the policy of the Act. In Nathi Devi vs Radha Devi Gupta: (2005) 2 SC 271 it was emphasized that it is wellsettled that I interpreting a statute, effort should be made to give effect to each and every word used by the legislature. The courts always presume that the legislature inserted every part of a statue for a purpose and the legislative intention is that ever part of the statute should have effect. In Ganga Prasad Verma (Dr.) v. State of Bihar 1995 Supp (1) SCC192 it has been held that where the language of the Act is clear and explicit, the court must give effect to it, whatever a be the consequences, for in that case the words of the statute speak the intention of the legislature....."

32. In *Pratap Press, etc v. Their Workmen* (AIR 1960 SC 1213) it was inter alia held by hon^{ble} Supreme Court as follows :

"The question whether the two activities which the single owner is engaged are one industrial unit or two distinct industrial units is not always easy of solution. No hard and fast rule can be laid down for the decision of the question and each case has to be decided on its own peculiar facts. In some cases the two activities each of which by itself comes within the definition of "industry" are so closely linked together that no reasonable man would consider them as independent industries. There may be other cases where the connection between the two activities is not by itself sufficient to justify an answer one way or the other, but the employer's own conduct in mixing up or not mixing up the capital, staff and management may often provide a certain answer."

33. The Supreme Court in *Regional Provident Fund v. Mis. Raj's Continental Exports (P.) Ltd.* 2007 AIR SCW 5342 has observed in para 7 as below :

"7. In *Regional Provident Fund Commissioner and Anr. v. Dharamsi Morarji Chemical Co. Ltd.*, (1998) 2 SCC 446, it was held that unless there is clear evidence to show that there was any supervisory financial or managerial control, it cannot be said that one is the branch of the other. As noted by learned Single Judge, the respondent was separately registered under the Factories Act. It was separately registered under the Central Sales Tax Act and the Employees' State Insurance Act. It has also been found by learned Single Judge that there was total independence of the two units. The learned Single Judge and the Division Bench were right in their conclusion that the respondent is not a branch of M/s. Continental Exporters.

34. It is pertinent to note that the order dated 5.5.1998 and 28.7.1998 passed by the Regional Provident Commissioner has neither been challenged by the appellant herein/writ petitioner nor prayed to quash the orders. The appellant/writ petitioner has only, inter alia, challenged the order dated 27.8.1998 which is nothing but a covering letter dated 7.8.1998 conveying the order dated 27.8.1998 of the Regional Provident Commissioner. We are also aware that the appellant herein/writ petitioner has without resorting to avail statutory remedy of review under section 7(B) or by preferring appeal before the learned Tribunal under section 7(1) of EPF & MP Act, 1952 and has directly come to this court by preferring Civil Rule No.475 of 1998. However, these defects go to the root of the case and could have been material aspects for declining to entertain the Civil Rule by the learned Single Judge itself. Since the Civil Rule has been adjudicated and verdict has already been given by the learned Single Judge and the same is before us in the present appeal, therefore, these infirmities are not being treated as material aspect at this stage to adjudicate the present writ appeal.

Since learned Single Judge while adjudicating the Civil Rule has examined the materials on record and finding of the Regional Provident Fund Commissioner and has arrived that EPF & MP Act, 1952 is applicable to "Dainik Ganadoot" and "M/s.

Pioneers Press" and as both have been treated as one establishment for applicability of EPF & MP Act, 1952 and finding of the Regional Provident Commissioner has also been approved by the learned Single Judge, therefore, in view of these facts and circumstances, we are ascertaining the legality and correctness of the finding and verdict of the learned Single Judge.

We have also noted from the unchallenged finding arrived at by the Regional Provident Fund Commissioner vide its order dated 5.5.1998 that both M/s. Pioneer Press and Dainik Ganadood had deployed 23 employees together and these two establishments are located at the same premises with common office management under the same Proprietor having common address, telephone numbers and FAX numbers and there existed inter transferability of employees between M/s. Pioneer Press & Dainik Ganadoot and one common balance sheet upto 199091 for both the Units. There existed financial, management, functional and locational integrity between M/s. Pioneer Press and Dainik Ganadoot and both are integral, interdependent and complementary to each other. So much so, there is only one Attendance Register of the employees maintained for both the establishments. The attendance of both the employees are recorded in one and the same Register during the entire period from July, 1993 to June, 1995 which was produced at the time of inspection before the Enforcement Officer.

In view of the above observations and prevailing interrelation of both the Units, the stand of appellant before us that both M/s. Pioneer Press and Dainik Ganadoot are treated as separate and different on the ground that both are financially independent because these are having . separate bankaccount & loan account is not correct, therefore, the Regional Provident Fund Commissioner, Agartala in exercise of powers conferred upon him under section 7A of the "EPF & MP Act, 1952" is said to have decided correctly that both "M/s. Pioneer Press" & "Dainik Ganadoot", Agartala are covered under the "EPF & MP Act, 1952" w.e.f. 1st July, 1993 and Schemes framed thereunder

35. Heard learned counsel for the parties and perused the documents and after scrutinizing the records, we find that on the basis of materials available on the records and taking into consideration the pleadings and rival contentions of the parties, the Regional Provident Fund Commissioner, Agartala vide its order dated 5.5.1998 has correctly arrived at a finding that the four casual workers and their names are recorded in the same Attendance Register of the regular employees and these casual employees have also been rightly included as employees of the establishment, more specifically the newspaper establishment of the appellant and holding all the employees permanent as well as casual/temporary as has rightly been held by the Regional Provident Fund Commissioner as well as by the learned Single Judge that the newspaper establishment of the appellant comprises of more than 20 employees. In our respectful consideration, learned Single Judge has rightly affirmed the verdict of the Regional Provident Fund Commission arrived at under section 7A of the "EPF & MP Act, 1952" that there is no material or/ reason for classifying the said four employees as a casual

employees of Dainik Ganadoot" and has rightly repelled the contentions of the appellant that those four casual employees by virtue of their being casual in nature were not to be included in the strength of the employees. In our respectful consideration in the facts and circumstances and on the basis of materials on record, the two establishments of the appellants are covered under the provisions of EPF & MP Act, 1952", and there is no scope of interference in the verdict and conclusion of learned Single Judge arrived in the impugned judgment. We do not find any illegality and impropriety in the impugned order. The writ appeal is accordingly dismissed.