(2007) 05 GAU CK 0062

In the Gauhati High Court

Sushil Choudhury APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 22-05-2007

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 1, 16, 2, 2A, 4

Citation : (2008) 1 GLT 238 : (2007) 3 LLJ 925

Hon'ble Judges : T.N.K. Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

T.N.K. Singh, J.—The writ petitioner Shri Sushil Chowdhury is admittedly Proprietor of two establishments viz. (1) being the Editor, Printer Publisher and the Proprietor of a Newspaper under the name and style of "Dainik Ganadoot", and (2) Printing Press under the name and style Pioneer Press filed the present writ petition assailing the letter of the Enforcement Officer being No. E.O./SRO/TR/INV/2262, dated December 31, 1997 for giving his comment and justification that Pioneer Press and Dainik Ganadoot come under the purview of the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952 and also the order of the Regional Provident Fund Commissioner, Employees Provident Fund Organisation, Sub-Regional Office, near Bholagiri Ashram, Airport Road, Kathal Bagan, Agartala dated July 28, 1998 u/s 7A of the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952 (for short Employees'' Provident Funds Act, 1952) as communicated under No. SRO/TR/Enf/ AS/ 2225/1247, dated August 7, 1998 for recovery of dues as provided u/s 8 of the Provident Funds Act, 1952 from the Pioneer Press and Dainik Ganadoot bearing No. SFO/TR/2225 for the period from July, 1993 to April, 1998 on the two grounds-

(a) The provision of the "Employees'' Provident Funds and Miscellaneous Provisions Act, 1952" and "The Employees'' Provident Funds Scheme" are not applicable to Dainik Ganadoot being the newspaper establishment.

(b) Pioneer Press and Dainik Ganadoot are separate and independent establishment.

2. Heard Mr. S.K. Deb, learned Counsel appearing for the petitioner as well as Mr. P.K. Biswas, learned Assistant Solicitor General of India appearing for the respondent Nos. 1 and 2.

3. The facts so far as they are relevant for; determining the present writ petition is that, the present petitioner as stated above is the Editor, Printer, Publisher and the Proprietor of the Newspaper Establishment "Dainik Ganadoot" and also proprietor of the Printing Press, "Pioneer Press". It is the case of the petitioner that Pioneer Press is registered and licensed under the Factories Act having nine (9) workers, while Dainik Ganadoot is a newspaper establishment with 14 workers out of whom four (4) 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 Employees'' Provident Funds and Miscellaneous Provisions Act, 1952. It is also further case of the petitioner that even if the said two establishments i.e. Pioneer Press and Dainik Ganadoot are taken to be one and same establishment, total number of persons employed in the said establishment taken together is less than 20 persons inasmuch as 4 casual employees on daily basis cannot be counted for determining the number of employees under the provision of Section 1(3) of the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952.

4. A communication was received from Enforcement Officer of the respondent No. 2 under No. EO/SRO/AGT/INV/95, dated June 20, 1995 informing the petitioner that an inspection will be conducted by the Enforcement Officer along with some other officers to verify the record of the establishment of "Pioneer Press" and "Dainik Ganadoot" in connection with the applicability of the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952 and also that petitioner should be ready on July 3,1995. Accordingly, the Enforcement Officer conducted inspection.

5. On August 22, 1995, petitioner wrote a letter to the Regional Provident Fund Commissioner, N.E. Sub-Regional Officer that "Pioneer Press" and "Dainik Ganadoot" are the separate establishments and do not come under the Employees'' Provident Funds and Miscellaneous Provisions Funds Act, 1952 and also that Dainik Ganadoot is a newspaper establishment with 14 workers out of whom 4 are casual and temporary workers on daily basis and also alleged that the Assistant Commissioner wanted the petitioner to come to an understanding with him and to pay a good amount so that he might not process the matter for the said two establishments. A copy of the said letter dated August 22, 1995 is available at Annexure-2 to the present writ petition. In reply to that the Regional Provident Fund Commissioner under his letter dated August 31, 1995 directed the petitioner to start compliance to contribute the fund payable for the Employees'' Provident Funds Scheme, 1952 in compliance with the provision of

Section 6 of the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952 stating that as per the records maintained by Pioneer Press and Dainik Ganadoot clearly established that Dainik Ganadoot and Pioneer Press had 23 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. In the said letter dated August 31,1985 it is also stated that the allegation made by the petitioner in his letter dated August 22, 1995 against the Assistant Provident Fund Commissioner is unfortunate and baseless because he never visited the establishment of the petitioner alone and he was always accompanied by Subordinate Officer. Ultimately, as there was dispute about the applicability of the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952 in respect of the Pioneer Press and Dainik Ganadoot, a notice had been issued u/s 7A of the Employees ''Provident Funds and Miscellaneous Provisions Act, 1952 for deciding the said dispute.

6. But the petitioner was praying time on a number of occasions for filing his statement and also for his appearance before the Regional Provident Fund Commissioner by filing number of applications. It appears that as per the requests of the petitioner the hearing of the proceeding u/s 7A of Employees'' Provident Funds and Miscellaneous Provisions Act, 1952 was fixed on November 17, 1997. Again on November 17, 1997 the petitioner appeared and stated that he would submit the, written representation covering the points of dispute and requested for some time for the same. On December 18, 1997, the petitioner submitted his written representation. The Enforcement Officer also submitted his written 4 argument on January 9, 1998. As per the representation submitted by the petitioner, the points agitated by the petitioner for not extending the Employees'' Provident Funds and Miscellaneous Provisons Act, 1952 to Pioneer Press and Dainik Ganadoot are that:

(a) The Printing Press or Newspaper does not come under the purview of Schedule 1 read with Section 2(i) and Section 4 of the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952.

(b) Although owner may be the same, Dainik Ganadoot being a newspaper is regulated under the Press Act while the Piomeer Press being a press is not regulated under the Newspaper and the Press Act.

7. But in the representation submitted by the petitioner before the Regional Provident Fund Commissioner in the proceedings u/s 7A of the Act, 1952, it is not clearly mentioned that four out of 14 workers employed in the Dainik Ganadoot are casual and as such the said 4 workers could not be counted in calculating the total number of persons employed in Dainik Ganadoot u/s 1(3) of Employees'' Provident Funds and Miscellaneous Provisions Act, 1952. The Regional Provident Fund Commissioner passed the final order dated May 5,1998 in the said proceeding u/s 7A of the Employees'' Provident Funds and

Miscellaneous Act, 1952 with a finding that-

On the basis of contentions taken by both the sides, analysis of the same and facts available on record as mentioned in earlier paras the following are concluded-

(a) Pioneer Press and Dainik Ganadoot came under the list of industry/class of establishments coverable under the EPF and MP Act. 1952.

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

(i) Pioneer Press and Dainik Ganadoot are situated in the same premises with common address, telephone numbers and FAX number.

(ii) Pioneer Press and Dainik Ganadoot are having common office management.

(iii) Pioneer Press and Dainik Ganadoot are owned by same proprietor/occupier.

(iv) There exists the functional integrity as the newspaper Dainik is printed in the press, Pioneer Press.

(v) Attendance of the employees for both Dainik Ganadoot and Pioneer Press 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 records to prove the contrary.

(vi) There existed inter-transferability of employees between Pioneer Press and Dainik Ganadoot.

(vii) There existed only one balance sheet up to 1990-91 for both the units.

(viii) There is financial, management, functional and locational integrity between Pioneer Press and Dainik Ganadoot. Both are integral, interdependent and complementary to each other.

(c) Pioneer Press and Dainik Ganadoot; together employed 23 persons on July 1, 1993.

(d) Pioneer Press and Dainik Ganadoot were established in 1968 and as such had already; completed 5/3 (sic) years from the date of set up.

Pioneer Press and Dainik Ganadoot qualify all the conditions stipulated for coverage under EPF and MP Act, 1952 at least on July: 1,1993 subject to verification of records for the past period prior to July 1, 1993.

Now, therefore, I, S.K. Thakur, Regional Provident Fund Commissioner, Agartala in, exercise of powers conferred upon me u/s 7A of the EPF and MP Act, 1952 decide on the basis of facts brought before me as discussed in the previous paras that Pioneer Press and Dainik Ganadoot, Palace, Compound, Agartala taken together has rightly been covered under EPF and MP Act, 1952 w.e.f. July 1,1993 and as such Pioneer Press and Dainik Ganadoot, Palace Compound, Agartala covered under EPF-and MP Act, 1952 w.e.f. July 1, 1993 with Code No. AS/TR/2225 is liable for compliance under the said Act and Schemes framed thereunder at least w.e.f. July 1, 1993.

As regards the Provident Fund and allied dues from July 1,1993 to up to date period, say April 30, 1998 assessment for the same Section 7A of the EPF and MP Act, 1952 and for which the relevant records viz. Attendance Register, Payment Register, Bonus Payment Register, Cash Book, vouchers etc. from July 1,1993 to April 30, 1998 are to be produced by the establishment before the Inquiry Officer u/s 7A of the Act. Therefore, the establishment is 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 June 16, 1998 at 11.30 a.m. If the establishment fails to produce records for verification on June 16,1998 assessment will be made on the basis of material available in the file and more precisely the information made available by the establishment at the time of inspection for coverage under the Act. Enforcement Officer of the Departmental side should furnish his statement of dues on June 16, 1998 and be present at the time of hearing on June 16, 1998 for verification of records to be produced by the establishment.

On the basis of the said order dated May 5, 1998, the impugned order had been issued. Hence the present writ petition.

8. The respondents also filed their affidavit-in-opposition supporting the findings of the Regional Provident Fund Commissioner in the order dated May 5, 1998. In the affidavit-in-opposition the respondents also categorically stated that Pioneer Press and Dainik Ganadoot are the one and same establishment within the purview of EPF and MP Act, 1952.

9. u/s 1(3) of the EPF and MP Act, 1952 subject to the provision contained in Section 16 of the EPF and MP Act, 1952, the EPF and MP Act, 1952 shall be applicable to 2 (two) classes of establishments i.e. (a) establishment which is a factory engaged in any industry specified in Schedule I to the Act in which 20 or more persons are employed, and (b) Any establishment having employed 20 or more persons or class of such establishment which the Central Government may by Notification in the Official Gazette specified. The relevant portion of Section 1, Section 4, Section 5, and Section 16 of the EPF and MP Act, 1952 which would be relevant for deciding the points agitated by the petitioner that EPF and MP Act, 1952 are not applicable to the Dainik Ganadoot Press are quoted hereunder-

Section 1. Short, title, extent and application--(1) This Act may be called the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952.

(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 Sub-section (3) of this Section or Sub-section (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.

Section 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 Sub-section (1) shall be laid before Parliament, as soon as may be after they are issued.

Section 5. Employees'' Provident Fund Scheme I--(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 of (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.)

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

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

(b) to any other establishment 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 1 of any class of (establishment) 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.

10. u/s 4 of the EPF and 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 under the scheme and thereupon the industry shall be deemed to be an industry specified in Schedule-I for the purpose of the Act. The; Employees'' Provident Fund Schemes, 1952" framed in exercise of the power conferred by Section 5 of the Employees'' Provident Funds Act, 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 in the Ministry of Labour No. SRO/566, dated July 4, 1956 which came into force on July 30, 1956. By a notification of the Government of India in the Ministry of Labour No. SRO/2981 c dated December 4,1956 special provision in the case of newspaper establishment and newspaper employees had been inserted as para No. 80 of Chapter X of the Employees'' Provident Funds Scheme, 1952. From the reading of the para No. 80, Chapter X of the Employees'' Provident Funds Scheme, 1952, 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 the Employees'' Provident Funds Scheme, 1952 are quoted hereunder:

80. 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 December 31, 1956 and be subject to the modifications mentioned below:

(1) In Chapters I to IX, references to ''industry'', ''factories'' and ''employees'' shall be construed as reference to ''newspaper industry'', ''newspaper establishments'' 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 sub-paragraph (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.

11. The learned Counsel appearing for the petitioner by selective reference to a portion of the Schedule-I to the EPF and MP Act, 1952 by neglecting other provision submits that under para No. 7 of the Schedule-I to EPF and MP Act, 1952 only the printing other than printing industry relating to the newspaper establishments as defined in the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955 including the process of composing types in printing, printing by letter press, lithography, photogravure or other similar process or book-binding are the establishments engaged in any industry mentioned in Section 1(3)(a) of the EPF and MP Act, 1952 and as such the newspaper establishment Dainik Ganadoot cannot be subject to the provision of EPF and MP Act, 1952. But the conjoint reading of Section 1(3)(a) and (b) and also Sections 4 and 5: of the Act, 1952 and the Employees'' Provident Funds Scheme, 1952, it is abundantly clear that the provision of EPF and MP Act, 1952 and EPF Scheme, 1952 are applicable to 2 (two) different classes of establishment i.e. factories] mentioned in Schedule-I to the EPF and MP Act, 1952 and also any other establishment contemplated in Section 1(3)(b) of the Employees'' Provident Funds Scheme Act, 1952. Two classes of establishments mentioned: in Sub-clause (a) of Clause (3) of Section 1 and Sub-clause (b) of Clause (3) of Section 1 are to be treated as inclusive of both the two classes of establishments for the purpose of extension of the provision of EPF and MP Act, 1952. According to the well settled 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 expressed 2 mention of certain things, then anything not mentioned is excluded''. We may here recall the observations of LORD REID in Atkinson v. Union Slate Market Govt. LR 971 AC 197, that "It is now well recognised that the Court has powers 3 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 and Another Vs. Tulsiram Patel and Others, held that the maxim "expressum facit cessare taciturn" (when there is express mention of certain things, then anything not mentioned is excluded) should be applied in interpreting the statute.

12. It is also fairly well settled that a beneficial provision of Act must be liberally 5 construed so as to fulfil the statutory purpose, not to frustrate it. EPF and MP Act, 1952 is beneficial legislation for the employees of the establishment.

13. 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 Vs. State of Assam and Others, . The Apex Court in State of Maharashtra and Others Vs. Santosh Shankar Acharya, held that it is too well known 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.

14. The Apex Court in Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others, 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 words 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 v. Palitana Sugar Mill (P) Ltd. and Ors. (supra) read 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 the 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 and no words shall 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.

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

15. For the reasons discussed above, the submissions of the learned Counsel appearing for the petitioner in the context of the facts of the present case that the EPF and MP Act, 1952 shall not be applicable to the newspaper j establishment i.e. Dainik Ganadoot is not acceptable under law.

16. The finding of the Regional Provident Fund Commissioner, Agartala in his judgment T and order dated May 5, 1998 for the reasons mentioned therein that M/s. Pioneer Press and Dainik Ganadoot are to be treated as one establishment for application of the provision of EPF and MP Act, 1952 are well founded and. absolutely correct. The petitioner had utterly failed to controvert the reasons mentioned in the order of the Regional Provident Fund Commissioner, Agartala dated May 5,1998 for coming to the finding that Pioneer Press and. Dainik Ganadoot are to be treated as one establishment by giving cogent reasons and also by producing materials.

17. The learned Asstt. Solicitor General of India in support of the case of the

respondents that Dainik Ganadoot and Pioneer Press are treated to be one establishment for application of provision of the EPF and MP Act, 1952 and the scheme framed therein had referred to the decision of the Apex Court in Regional Provident Fund Commissioner, Jaipur Vs. Naraini Udyog and Others, . The finding of the Apex Court in Provident Commissioner, Jaipur (supra) are quoted hereunder 1996 II LLJ 1063

1. ...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 4 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 letter-head 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 ESI Act are located at a distances of 3 kms. apart, have separate Central Excise Nos. are registered as separate small-scale industries etc. and, therefore, the two should be treated as separate establishment is devoid of merit. As already analysed 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 and MP Act, 1952 is concerned. The statement by the P.F. Inspector that he had seen some workers of Naraini Udyog working in Naraini Udyog working in 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 mat 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 2-A of the Act as also the case-laws laid down by the Supreme Court mentioned in para 4 earlier.

2. On the basis of thereof the appellant has called upon them to contribute the amount u/s 7-A of the Employees'' Provident Fund and Miscellaneous Provisions Act, 1952 (for short the Act) holding that the above two concerns are establishment 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 two independent Companies. Both cannot be clubbed together for the purpose of levying contribution u/s 7-A 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 out-turn of his production by ensuring health insurance to its employees which is the fundamental right of the latter.

3. The appeals are accordingly allowed. The order of the High Court is set aside and that of the Commissioner stands confirmed to the above extent. No costs.

18. The learned Counsel appearing for the petitioner by referring to the decision of the Apex Court in The Regional Provident Fund Commissioner, Andhra Pradesh Vs. Sri. T.S. Hariharan, , submits that even if Pioneer Press and Dainik Ganadoot are treated to be one establishment for the purpose of; application for the provision of EPF and MP Act. 1952 and Employees'' Provident Funds Scheme, 1952, while counting the number of persons employed in the said two establishments four (4) employed are to be, excluded inasmuch as they are the temporary workers recruited on daily basis. The writ petitioner in the proceeding u/s 7-A of the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952 before the Commissioner, Provident Fund, Agartala did not take such plea and in the present writ petition such fact is mentioned in para No. 4 but it has not been taken as a ground for assailing the impugned letters and orders and also the said order dated May 5, 1998. The Apex Court in State of Mysore v. G. N. Lingappa and Ors. 1969 SLR 709 (SC) held that the Court couldn''t grant relief in the petition in the absence of proper plea. But for the reasonableness and fairness in deciding the present writ petition, this Court also had given conscious application of mind to the materials available on record to decide as to whether there are materials on record to show that the said four persons are casual workers even if their names are recorded in the same attendance register for the regular employees. From the materials available on record and also on consideration of the reasons given by the Regional Provident Fund Commissioner, Agartala in his judgment and order dated May 5,1998 and also the plea taken by the petitioner in this representation before the authority in the proceeding u/s 7-A of the EPF and MP Act, 1952 this Court is of the considered view that there is no materials and/or reasons for classifying the said four employees as a casual employees of the Dainik Ganadoot and hence the said submissions of the learned Counsel appearing for the petitioner cannot be accepted.

19. For the reasons discussed above, the grounds taken by the petitioner in the present writ petition for assailing the impugned letters and orders are not acceptable in the eye of law. Accordingly, the writ petition is devoid of merit and the same is dismissed. The parties are to bear their own costs.

