
(2016) 01 OHC CK 0062
In the Orissa High Court
Case No : W.P.(C) No. 30932 of 2011

The Executive Engineer, Head Works Division, Rengali
Irrigation Project, Samal

APPELLANT

Vs

Regional Provident Fund Commissioner and Others

RESPONDENT

Date of Decision : 20-01-2016

Acts Referred:

Citation : (2016) 2 CLR 154 : (2016) 148 FLR 1059 : (2016) LabLR 473 :
(2016) 3 LLJ 319 : (2016) 2 LLN 777

Hon'ble Judges : S.N. Prasad, J.

Bench : Single Bench

Advocate : Sanjeebani Mishra, Additional Standing Counsel, for the Appellant;
Piyush Ku. Mishra, Satya Sundar Mishra and Girija Nandini Das, for the
Respondent

Final Decision : Dismissed

Judgement

S.N. Prasad, J.—1. This writ petition is against the order passed by the EPF Appellate Tribunal, New Delhi dated 24.2.2010 in A.T.A. No. 418(10)2006 by which the appeal preferred by the petitioner has been dismissed.

2. Facts of the case as has been pleaded by the petitioner in the writ petition is that Head Works Division, Rengali Irrigation Project, Samal, Angul comes under the controller of the Chief Engineer and Basin Manager, which is a division under the Water Resources Department, Government of Orissa having permanent regular employees, temporary regular employees as well as work charged employees besides NMR/Casual employees. NMR employees are employed by the petitioner establishment according to the workload of the Division.

In order to regulate the service condition of the work charged employees rules have been framed but no rule has been framed governing service condition of NMR employees. A notice under section 7A of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 has been issued by the Regional Fund

Commissioner, Bhubaneswar (hereinafter referred to as "the Act, 1952") directing the petitioner-establishment to show cause as to why legal action should not be initiated against the petitioner-establishment for contravening the provisions of the Act for not depositing the EPF dues for the NMR employees of the division for the period from 11/1981 to 4/1996.

The petitioner in terms of the show cause notice had appeared before the Regional Provident Fund Commissioner and submitted reply stating therein that the provisions of the Act, 1952 is not applicable to the NMR/casual employees of the petitioner-establishment because there was no notification to bring the establishment/Division of the Executive Engineer within the ambit of the Act as required under section 1(3) of the Act, 1952.

It has been contended that that their daily wages workers are getting fixed amount as contemplated under the act, but the opposite party No. 1 without considering the point raised, has adjudicated applicability of the Act bringing the petitioner-establishment within the purview of the act with a direction to pay contribution amount on different heads vide order dated 4.6.1996, accordingly notice of demand was issued on 7.8.1996 demanding amount of Rs. 24,43,107/-.

3. The State Government being aggrieved filed writ petition before this Court being O.J.C. No. 14326 of 1997 and this Court vide order dated 20.12.1999 permitted the petitioner to withdraw the writ petition to prefer an appeal under section 7A of the Act, 1952, petitioner had preferred appeal bearing No. ATA/189(10) of 2000 before the EPF Appellate Tribunal, New Delhi and the Appellate Tribunal decided the case vide order dated 14.12.2000 and the Appellate Tribunal remitted the matter before the original authority to determine the dues as per the guideline. In view thereof the Regional Provident Fund Commissioner initiated a fresh proceeding on the premises that the Act is applicable and amount to be paid was only to be calculated and thereafter final order was passed calculating the dues. Petitioner again approached this Court vide W.P.(C) No. 13739 of 2003 challenging the order dated 14.12.2000 and the notice dated 15.4.2002 but again this Court has given liberty to the petitioner-establishment to file appeal before the Appellate Forum as provided under section 7(1) of the Act and accordingly appeal was preferred which was dismissed vide order dated 24.2.2010 which is challenged in this writ petition.

4. Ground taken by the petitioner assailing the order passed by the Appellate Authority is that the Act, 1952 is not applicable and the establishment is not coming under the purview of the EPF Act, there is no notification as required under section 1(3) of the Act, 1952, as such it was contended before the Appellate Authority that when applicability of the Act itself was disputed petitioner-establishment is not liable to deposit statutory amount, hence not committed any offence contrary to the Act, 1952.

5. Counter affidavit has been filed by the opposite parties, inter alia, stating therein that the NMR/DLR employees are coming under the purview of the

definition of as provided under section 2(f) of the Act, 1952. It has been stated that since the Act, 1952 is Social Welfare Legislation which has been made to protect interest of poor workers and provide them the Employees Pension/ Provident Fund and of the miscellaneous benefits to the employees who are working in the unorganized sectors, hence Welfare Legislation is to be liberally constituted.

Petitioner has preferred an appeal before the Appellate Tribunal and the matter has been remitted before the original authority to decide the dues and accordingly the original authority has adjudicated part of dues which the petitioner-establishment is liable to pay against the statutory deposit as required for the period in question.

It has been contended that the NMR/DLR workers are engaged by this establishment to perform duties and such establishment is under coming under the purview of the Act, 1952.

6. Heard learned counsel for the parties and perused the documents on record.

7. Specific case of the petitioner is that the petitioner-establishment is not amenable to the jurisdiction of the Act, 1952 and as such petitioner-establishment is not liable to make any statutory contribution or deposit in terms of the Act, 1952.

8. In order to substantiate this argument it has been contended by learned counsel for the petitioner that NMR/DLR employees working under the petitioner-establishment is not coming under the purview of the Act, 1952, hence the proceeding initiated under section 7A of the Act, 1952 is without any jurisdiction.

It has further been contended that there is no notification as required under section 1(3) of the Act, 1952. In order to substantiate the argument it is necessary to see the provisions as contained in Section 1(3) which is being reproduced hereinbelow.

"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."

From perusal of the statutory provisions it is apparent that subject to the provisions contained in section 16, the Act will be applicable 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 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.

9. Provisions of Section 16 of the Act, 1952 is also needs to be referred which provides non-applicability of the Act to certain establishment is being reproduced hereinbelow.

"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 1992), 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 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 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 establishment from the operation of this Act for such period as may be specified in the notification."

From perusal of the provisions of section 16 it is apparent that the petitioner-establishment is not coming under the parameter of the provisions of section 16 of the Act, 1952 as because it is admitted case of the petitioner that the petitioner-establishment being Water Resources Department of the State Government is meant for construction work, implied meaning would be that the department has been established by the State Government for construction purposes.

10. Provision of Section 2(f) of the Act, 1952 which defines "employee" which needs to be referred to which is being reproduced hereinbelow.

"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."

From perusal of the definition "employee" it is evident that employee has been defined that a 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 get his wages directly or indirectly from the employer in connection with the work of the establishment. At this juncture, it needs to be referred to the definition of "exempted employee" as provided under Section 2(ff) which implies that an employee to whom a Scheme or the Insurance Scheme, as the case may be, would, but for the exemption granted under section 17, have applied, but it is specific case of the petitioner-establishment that NMR/DLR who are being engaged in the department for construction work being not a regular employee or the work charge employee, hence NMR/DLR employees will not come under the definition of section 2(ff) of the Act, 1952.

The Act also provides giving therein the list as contained in Section 1(3)(b) bringing the factory/establishment under the purview of the Act, to that effect the Central Government has also issued notification on 31.10.1980 being the building and construction work under the purview of the Schedule-I.

In this connection, judgment referred by the Hon'ble Apex Court in the case of M/s. P.M. Patel & sons and others, v. Union of India and others reported in , AIR 1987 S.C. 447 needs to be referred to wherein their Lordships of the Hon'ble Apex Court while interpreting definition of "employee" has been pleased to hold at paragraph-8, relevant part is being quoted.

"The real question is whether the home workers are entitled to that benefit. Clause (f) of S.2 of that Act defines an "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, employed by or through a contractor in or in connection with the work of the establishment." It will be noticed that the terms of the definition are wide. They include not only persons employed directly by the employer but also persons employed through a contractor. Moreover, they include not only persons employed in the factory but also persons employed in connection with the work of the factory. It seems to us that a home worker, by virtue of the fact that he rolls beedis, is involved in an activity connected with the work of the factory. We are unable to accept the narrow construction sought by the petitioners that the words "in connection with" in the definition of "employee" must be confined to work performed in the factory itself as a part of the total process of the manufacture."

Thus there may be dispute about the fact by taking into consideration the definition of employee under Schedule-1 containing construction work by virtue of notification issued by the Central Government under section 1(3)(b) of the Act, 1952 that NMR/DLR employee is employee within the meaning of the Act, 1952.

11. So far as the contention of the petitioner that there is no enquiry having been conducted under section 1(3)(a) of the Act, 1952 is concerned, there is no force in this argument for the reason that the Central Government has issued notification bringing the establishment under the purview of Schedule-I as per the notification dated 31.10.1980 by which building construction has been brought under the purview of Schedule-I as per Section 1(3)(a) of the Act, 1952 and since the petitioner-establishment being a Government department established for construction work for irrigation and other things hence it will be covered under this notification, hence there is no need to take any further enquiry in view of the statutory provision contained in Section 1(3)(a) which stipulates that every establishment which is a factory engaged in any industry specified in Schedule I and in which twenty or more persons are employed and as per the provision of Section 16 of the Act, 1952 the petitioner-establishment is not coming under Section 16 of the Act, 1952.

12. Now only question of argument which requires to be decided is whether after remand order having been passed by the Appellate Tribunal regarding claim of the dues, from perusal of the order passed by the original authority dated 31.3.2004 it is evident that detail calculation has been given on the basis of the documents produced before the competent authority and the original authority has directed the concerned Executive Engineer to produce records pertaining to amount of disbursement in respect of NMR employees as well as contracted employees but no such document has been produced rather the Executive Engineer in order to mislead the competent authority, has produced the relevant record pertaining to work charge employees vide letter dated 23.9.2002 but that was not accepted and therefore the Enforcement Officer was directed to impart guidance to the Executive Engineer while preparing the dues payable statement correctly and properly as per the requirement and accordingly clarifying the correctness of the dues payable statement has been placed and on the basis of which the authority has come to conclusion that NMR/DLR employees were paid consolidated wages without any perks/DA/ADA any allowance as decided by the Govt. of Orissa from time to time on the basis of minimum wages declared by the Labour Department. No service condition, scale of pay, leave of any kind, gratuity, pension was also available to those contingent paid Khalasis, thereafter the competent authority on the basis of the statement certified by the Enforcement Officer for the period from 11/81 to 4/96 recalculated the dues in respect of contingent khalasis on the basis of wages furnished by the establishment and verified by the Enforcement Officer since the same was not prepared showing the dues paying separately in A/C 1, 10 and 22. The establishment has admitted the fact for non-payment of P.F. and like dues and

the only grievance raised by the petitioner-establishment about the order of Appellate Tribunal was that there is some calculation mistake in redetermination of dues for the period from 11/81 to 4/96 and as such after taking into consideration all the records and when the competent authority of the establishment has failed to remit the Provident Fund, Family Pension Fund and Insurance Fund contribution and Administrative Charges towards Provident Fund and Insurance Fund for the period from 11/81 to 4/96 towards NMR and contingent Khalasis, employees of the establishment, hence detail calculation has been made for protection of interest of these NMR/DLR employees.

13. The said order of calculation has been challenged before the Appellate Tribunal and therein main point was urged by the petitioner-establishment that the petitioner-establishment is a Government undertaking and not covered under the EPF Act, 1952 and NMR employees who are not regular employees. But main contention that the NMR employees are not employees of the petitioner-establishment, the they are not liable to pay, while the appellate authority after consideration of definition of "employee" as provided under section 2(f) of the Act, 1952. The definite finding that the NMR/DLR employees working under the petitioner-establishment has come under the purview of section 2(f) of the Act and as such the appeal preferred has been dismissed.

14. From perusal of the appellate Tribunal order it is evident that the Appellate Tribunal after taking into consideration the fact that the NMR employees working under the petitioner-establishment since not being covered under any of the Scheme of the Government, hence the establishment will come under the purview of the Act, 1952 and since these NMR/DLR employees have been employed in the petitioner-establishment directly or through contractor will be said to be employees within the meaning of Section 2(f) of the Act, hence the contention of the petitioner-establishment was rejected by the Appellate Tribunal.

15. In totality of the facts and circumstances of the case, there is no merit in the writ petition.

Accordingly, the writ petition is dismissed.