(2011) 01 MAD CK 0276

In the Madras High Court

Case No : Writ Petition (MD) No. 12085 of 2010 and M.P. (MD) No''s. 1 and 2 of 2010

The Executive Officer/Joint Commissioner — APPELLANT

Vs

The Registrar, Employees Provident Fund Appellate Tribunal, (Ministry of Labour and Employment, Government of India) and The Regional Provident Fund Commissioner — RESPONDENT

Date of Decision : 28-01-2011

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 1(3), 7A, 7I
Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 — Section 16(1)

Citation : (2011) 01 MAD CK 0276

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : M. Venkatachalapathy, SC and D. Rajendran, for the Appellant; G.R. Swaminathan, for R2, for the Respondent

Judgement

K. Chandru, J.—The Petitioner is the Executive Officer cum Joint Commissioner of Arulmigu Dhandayuthapaniswamy Thirukkoil at Palani. They have come forward to challenge the notice issued by the first Respondent dated 23.07.2010 in ATA. No. 906(13)2008 as well as the order of the second Respondent dated 23.10.2007 and seeks for quashing the same.

2. When the matter came up for admission on 23.09.2010, Mr. G.R. Swaminathan, took notice for the second Respondent Provident Fund Department.

3. The Petitioner Devasthanam was issued with a notice u/s 7A of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 in respect of the hospital run by the Devasthanam as well as Arulmigu Palaniandavar Matriculation School at Palani. The Petitioner Establishment was informed that their hospital and the educational institution were covered by the provisions of the Act with effect from 01.12.1977 and 01.08.1992 respectively u/s 1(3)(b) of the EPF Act. A memo dated 08.10.1994 was given to them and they were also allotted a code number.

The coverage memos were issued to them on the basis of the enquiry report issued by the Enforcement Officer. Therefore, the Petitioner was directed to cover the employees right from the date of the coverage. Though an enquiry was fixed on 08.11.994, none appeared.

4. However, the Petitioner moved this Court by filing a writ petition being W.P. No. 9662 of 1997 to stay the operation of the order dated 09.12.2006, wherein they were directed to comply the provisions of the scheme. This Court disposed of the writ petition on 13.02.2006, directing the Petitioner to approach the appropriate authority with all relevant information. Accordingly, summons were issued to the employer to appear for an enquiry on 02.05.2006. The enquiry was held on several dates starting from 18.05.2006 to 10.10.2007.

5. The contention raised by the Petitioner was that the employees working in the Devasthanam Hospital as well as in the Matriculation School were servants of the Devasthanam and they will not be covered by the provisions of the Act. The employees of the Thirukkoil are governed by the provisions of the Hindu Religious &Charitable Ednowment Act, which provides for payment of contributions to provident fund and gratuity. They are covered by the Devasthanam Contributory Provident Fund Rules. In view of the same, the Act is not applicable to them u/s 16(1)(b) and (c) of the Act.

6. It was also claimed that Hospitals are notified under the EPF Act by notification in GSR. No. 1082 dated 15.09.1973 with effect from 31.08.1973, which means Hospital run by any individual or association or institution other than the establishment were covered by clause (vi) of the notification. In the same way, educational institutions were notified by virtue of Statutory Order No. 986 dated 19.02.1982 with effect from 06.03.1982. The term Educational Institutions mean:

i) any university ii)any college whether or not affiliated to an University

iii)any School whether recognized or not or aided by the Central or State government iv)any Scientific institution v)any institution in which research in respect of any matter is carried on

vi)any other institution in which the activity of imparting knowledge or training is systematically carried on.

7. The argument that the employees working in the Matriculation School and Hospital are Thirukkoil employees cannot be accepted. There is difference between religious/spiritual matters relating to the temple and Welfare activities like running schools, hospitals, etc. The further argument that the Devasthanam is having Contributory Provident Fund Rules with effect from 01.07.1965 and giving benefits of provident fund to its employees are not made applicable to Matriculation Schools and Hospitals in terms of Section 16(b) and 16(c) of the EPF Act.

8. 16(1)(b) and 16(1)(C) of the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952 reads as follows:

16(1)(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;

9. Since the Devasthanam is neither under the control of the Central or State Government, the statutory exemption claimed are not available to them. Further under the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952, three different schemes are framed by which employees can get provident fund, Employees Pension and Employees'' Deposit Linked Insurance. The benefit given by the Devasthanam Provident Fund are no way comparable to the benefit given under the Act. Therefore, they are not eligible for any exclusion/exemption from the application of the EPF Actor the schemes provided therein. In view of the same, the Devasthanam was directed to comply with the provisions of the Act vide order dated 23.10.2007 passed by the second Respondent.

10. Thereafter, the Petitioner preferred an appeal u/s 7-I of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 before the first Respondent EPF Appellate Tribunal. The Petitioner''s appeal was taken on file as A.T.A. No. 906(13)2008 and the Petitioner was represented by the counsel. The Appellate Tribunal at its camp sitting at Cuddapah heard the Devasthanam and dismissed their appeal. In the operative portion of the order in paragraph 7, the Tribunal held as follows:

7. To attract Section B & C the Appellant has to prove that the institution was set up by State or Central Government Act or and State and Central Government was controlled the institution and employee remember of the CUFF and pension fund. Admittedly the institution was not set up under State Act. It is true that the executive officer managing the affairs of the temple but there is no material to hold that executive officer was controlling the hospital and school. The order reveals that 20 persons employed in hospital and also in the school and these fact at all not disputed. No infirmity is noticed in the order of the authority.

11. Challenging these two orders, the writ petition came to be filed.

12. Heard the arguments of Mr. M. Venkatachalapathy, learned Senior Counsel leading Mr. D. Rajendran, learned Counsel for the Petitioner and Mr. G.R. Swaminathan learned Counsel taking notice for the second Respondent Provident Fund Department.

13. Mr. M. Venkatachalapathy, learned Senior Counsel contended that by an

order dated 01.02.1969, the Provident Fund in respect of the Devasthanam was approved by the Commissioner for HR & CE and Devasthanam has framed its own Contributory Provident Fund Rules. Efforts are made to justify that the rules are more favorable to the employees. It is also stated that in the Matriculation School, there are about 27 persons working and in the Hospital, there are about 8 persons working. However it is seen from the records that the Special Commissioner, HR & CE by a letter dated 19.09.2007 directed all the Officers stating that employees working in Devasthanam can be granted pensionary and terminal benefits under the purview of the EPF Act and the practice of maintaining CPF in the temple should be brought an end and the accrued amounts to the credit of employees can be given to them at the end of their tenure.

14. Mr. M. Venkatachalapathy, learned Senior counsel also produced the Fixed Deposit receipts maintained towards PF in respect of employees working in the Hospital and Matriculation School which was maintained with the Indian Bank.

15. Before going into the contentions raised on the merits of the case, it must be noted that various Government Orders were issued in respect of employees working in the various Thirukkoils in Tamil Nadu under the control of Hr & CE Department. By G.O. Ms. No. 54 Tamil Development Culture and Religious Endowment Department, dated 13.02.2006 the State Government directed that the pension scheme for temple employees can be implemented by covering the employees under the PF Act and from the date on which the PF Act is made applicable and the CPF scheme can be dispensed with.

16. Another order was issued in G.O. Ms. No. 55, Tamil Development Culture and Religious Endowment Department, dated 13.02.2006 stating that those employees working in the temple which do not have proper income, they could be granted pensioner benefit under a departmental pension scheme on contributory basis. By the subsequent letter dated 20.02.2006, the existing CPF scheme was brought to an end and the ThirukKoil were directed to implement the PF scheme as well as Pension scheme under the PF Act. All the officers were directed to contact the office of the Provident Fund and to file appropriate forms. Subsequently, the Commissioner by a further letter dated 20.02.006 directed implementation of the departmental pension scheme in respect of Thirukkoils which do not have any regular income.

17. In light of the above, it is surprising as to how the Petitioner can contend that the Temple is not covered by the provisions of the PF Act and that u/s 119(2), the Government can accord relief by way of pension, gratuity and provident fund in its discretion and that it has already framed certain schemes as noted above.

18. All these arguments will pale into insignificance in the light of the subsequent orders passed by the Government referred to above which are not referred to by the Petitioner either in their affidavit or in the typed set of documents. It is only

by directing the learned Special Government Pleader these Government Orders were obtained by this Court. The second argument that Section 16(b) and(c) will apply also may not be correct since the temple is neither an establishment under the Central Government nor under the State Government and that it is an autonomous body governed by its own rules by which it was established. For a full discourse on the meaning of the term "Under the control of the Government" a very recent judgment of the Supreme Court in Smt. Sulochana Chandrakant Galande Vs. Pune Municipal Transport and Others, .

19. The HR & CE Department is merely a regulatory authority who do not have direct control over the affairs of the temple. The third argument that the employees of the Matriculation School and the Hospital are also Thirukkoil employees cannot be accepted under law. If several activities are carried on in an establishment such of those activities which are covered by the provisions of the PF Act alone can be covered. Merely because the larger activity is not covered, the other activities or its ancillary activities cannot be covered by the PF Act cannot be accepted.

20. The Supreme Court vide its judgment in Andhra University Vs. Regional Provident Fund Commissioner of Andhra Pradesh and Others, held that a printing press attached to an university can be independently covered by the provisions of the PF Act. For that purpose, it was unnecessary that the entire university should be covered by the Act.

21. Notwithstanding the same, the learned Senior Counsel referred to the judgment of the Sikkim High Court in State Bank of Sikkim Employees'' Association andAnr. v. State of Sikkim and Ors. 2001 II LLJ 797 for ontending that once the CPF Rules are applicable, the PF Act will not apply. But in that case, the Sikkim High Court found Section 16(1)(c) of the PF Act will apply to the Bank as State Bank of Sikkim was an establishment either belonging to the Central Government or it is under the control of the Central Government. It is not clear as to how the said ratio will have any application to the case on hand.

22. The learned Senior Counsel for the Petitioner thereafter relied upon a Division Bench of the Rajasthan High Court in Union of India (UOI) and Others Vs. Digamber Jain Secondary School, . In that case a private educational institution in the State of Rajasthan which was having recognition and grant-in-aid was held to be covered by Section 16(1)(b) as a scheme framed by the State Government for the benefits similar to the PF Act was in force.

23. In the present case the HR & CE Department itself directed the temples to get covered by the provisions of the PF Act and therefore, the Petitioner establishment cannot harp on having the benefit in terms of 16(1)(a)and (b) of the PF Act.

24. Lastly, he relied on the judgment of the Supreme Court in Regional Provident Fund Commissioner Vs. Sanatan Dharam Girls Secondary School and Others, . In that case, the Supreme Court held that even though the PF Act applied to

educational institutions since state Government had exempted educational institutions they are excluded by the provisions of the Act. Such is not the case in the present circumstances.

25. In the light of the above, the contentions raised by the Petitioner is misconceived. There is no error or irregularity in the impugned orders passed by the Tribunal and the order of the second Respondent PF department. No costs. Consequently, connected miscellaneous petitions are closed.