

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **LETTERS PATENT APPEAL No. 450/2010**

% **Reserved on: 5th October, 2016**
 Date of Decision: 8th December, 2016

REGIONAL PROVIDENT FUND COMMISSIONER Appellant
Through Mr. Balraj Dewan, Advocate.

Versus

M/S SRINIWAS MALLIAH MEMORIAL THEATRE CRAFTS
TRUST (REGD.) Respondent
Through Ms. Richa Kapoor and Ms. Mallika Parma,
ADvocates.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MS. JUSTICE SUNITA GUPTA

SUNITA GUPTA, J.

Who is an “employee” under The Employees, Provident Funds and
Miscellaneous Provisions Act, 1952 (hereinafter referred to as ‘Act’) is
the question raised in this intra court appeal challenging the order dated
2nd June, 2010 passed by the Learned Single Judge in W.P. (C) No. 2083
of 1989 titled as *M/S Srinivas Malliah Memorial Theatre Crafts Trust*
(Regd.) v. R.P.F.C.

2. The respondent, a charitable trust, registered under the Income Tax
Act, 1961, was engaged in promoting and imparting training in traditional
handicrafts like puppet making, embroidery, mask making, tailoring,
bamboo craft, paper figures, toys, needle work, etc. without use of
electricity.

3. The appellant-Regional Provident Fund Commissioner as per order dated 9th June, 1989 passed under Section 7A of the Employees, Provident Fund and Miscellaneous Provisions Act, 1952 (1952 Act, for short) held that the respondent trust was required to pay Rs.1,17,022.05 as provident fund dues for the period November 1977 to March 1984 and Rs.1,61,814/- for the period April 1984 to March 1989 for the respondent trust had eight regular employees and 46 trainee artisans, who were apprentices and hence employees. The contention of the respondent trust that they were not covered under the 1952 Act for the 46 trainee artisans were not their employees was rejected. The order held that definition of employee as per Section 2(f) of the 1952 Act both pre and post amendment with effect from 1st August, 1988 would include apprentices, who in the present case, were called trainees. The said apprentices were being paid and were earning income from the respondent trust.

4. The impugned judgment of the single Judge dated 2nd June, 2010 allowed the writ petition filed by the respondent trust, for the following reasons:-

“a. The Trust was engaged in laudatory work of keeping the traditional handicrafts and heritage of the country alive. The trust was not in the business of trading in such handicrafts but merely providing/imparting training in the arts and thus did not require to employ hands.

b. The dominant objective and intent of an apprenticeship is to impart and accept learning under

certain agreed terms. A certain payment made during an apprenticeship, whatever it may be called/termed, does not convert an apprentice into a regular employee. Element of employment inherently absent in an apprenticeship.

c. Most of the period was prior to the amendment of the definition of employee under Section 2(f) of the Act made with effect from 1st August, 1988, thus for that period old definition would apply. For the remainder, trust having come to a standstill and defunct, it would not expedient to remand the matter.

d. Employee strength was only 8, and hence the trust was not covered. Apprentice, in common parlance, is not an employee (*New India Assurance Co. Ltd. versus Abhilash Jewellery*, AIR 2009 SC 1827).”

5. Counsel for the appellant submits that the 1952 Act is a social welfare legislation and should be liberally interpreted to ensure coverage. The respondent trust had paid provident fund contribution for eight regular employees, but had failed to pay provident fund contribution for 46 apprentice or trainees, who were in fact employees. The definition of employees in Section 2(f) of the 1952 Act always included apprentice. The amendment with effect from 1st August, 1988 was only to exclude certain categories of apprentice and was not adding a new category. In the pre-amended definition there was no exclusion of apprentice, meaning thereby all employees, including apprentice were covered. The single Judge has accordingly misconstrued the effect of the amendment to Section 2(f) of the 1952 Act.

6. In order to appreciate the submissions made, it is necessary to take note of the definition of employee as given in Section 2(f) of the Act pre and post amendment with effect from 1st August, 1988:

“Pre-amendment

Section 2(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 employed by or through a contractor in or in connection with the work of the establishment.”

Post-amendment

Section 2(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.”

The word ‘employee’ as defined in Section 2(f) means a person who is employed for wages of any kind of work manual or otherwise in or in connection with work of an establishment and who gets his wages directly or indirectly. It also includes any person employed by or through a contractor in or in connection with work of their establishment. With effect from 1st August, 1988, any person engaged as an apprentice not being an apprentice engaged under Apprentices Act, 1961 or under the standing order of the establishment, are also treated as employees.

7. We agree with the finding of the single Judge that the effect of incorporation of clause (ii) was to add and include within the definition of employee, any apprentice, except an apprentice under the Apprentices Act, 1961 or under the standing orders. The Supreme Court in *Employees State Insurance Corporation versus Tata Engineering and Locomotive Company Limited*, AIR 1976 SC 76 has held:

“After considering the scheme of the Apprentices Act 1961, particularly the definition of ‘apprentice’ in S2(aa) and the provisions of S18 of that Act and the definition of ‘employee’ in S2(9) of the Employees’ State Insurance Act 1948, the Supreme Court held that an ‘apprentice’ is not an ‘employee’ as defined in the Employees’ State Insurance Act. In order to buttress its decision, the court made a significant observation that if the legislature intended to enlarge the definition of the word ‘employee’ in S2(9) of the ESI Act, it could have included the word ‘apprentice’ in it, as has been done in S2(s) of the Industrial Disputes Act. Such a deliberate omission on the part of the legislature can be attributed only to the well-known concept of ‘apprenticeship’ which the legislature assumed and took note of for the purpose of the Act. That is not to say that if the legislature intended, it could not have enlarged the definition of the word ‘employee’ even to include an ‘apprentice’, but the legislature did not choose to do so.”

Thus, distinction between an apprentice and worker can be drawn.

8. An ‘apprentice’ has been defined in Section 18 of the Apprentices Act, 1961 in the following manner:-

**“18. Apprentices are trainees and not workers.-
Save as otherwise provided in this Act,-**

- (a) every apprentice undergoing apprenticeship training in a designated trade in an establishment shall be a trainee and not a worker; and
- (b) the provisions of any law with respect to labour shall not apply to or in relation to such apprentice.”

Thus, definition of apprentice under the Apprentices Act states that the trainee undergoing apprentice shall be a trainee and shall not be a worker. Further and importantly, provisions of any law with respect to labour shall not apply in relation to an apprentice. Thus, Section 18 incorporates an overriding provision. This is the reason why the apprentice covered under the Apprentices Act have been excluded from the definition of an employee under Section 2(f) of the 1952 Act.

9. It is not the case of the respondent trust that the trainees in the present case were apprentice under Section 18 of the Apprentices Act, 1961. Therefore, we need not examine the said position. The question, which would remain and has to be answered is whether a trainee, an artisan who was being imparted and given training in traditional handicrafts such as puppet making, bamboo crafts, paper figures, toys, needle work, etc., without use of power, was an employee for the purpose of Section 2(f) of the 1952 Act. Employer-employee relationship has to be distinguished from a relationship between an NGO or a charitable trust which imparts and provides coaching and training to artisans to better their skills and improve their incomes. Normally, an organisation would charge money for

upgrading skills or coaching persons who desire and want to undergo such training. The respondent trust being a charitable organisation was giving free training and not charging any money from the artisans. The fact is that the artisans normally belong to poor and marginalised section of the society and cannot afford to pay any fee. In given circumstances, the respondent trust would pay the artisans who would attend coaching and training classes, for otherwise it would be difficult for them to attend classes and upgrade their skills. Payment in such circumstances cannot be treated as wages or earnings paid by an employer to an employee. The respondent trust is not employing a trainee or engaging an apprentice for doing work for them. The master-servant relationship does not exist.

10. The respondent trust was not engaged in business of manufacture or trading in the handcraft products made by artisans. The object and purpose of the respondent trust was to promote and improve skills of the artisans working in traditional crafts so that the said persons can earn more and lead a better life. If the argument of the appellant is to be accepted, it will lead to absurd results, quite different and unacceptable, for they would negate the very object and purpose to do philanthropy. It would be impossible for the respondent trust or any organisation to impart training and improve the skills of artisans or self-employed, for then they would be equally liable to deduct and pay provident fund. The trainee would become employee. In

such cases, where the Non-Government Organisations pays some amount to the trainees, the payment is not in the nature of wages or salary, but an incentive to the artisans who join the training programme without loss or fear that they would not earn on the days they attend the training or coaching programme. The training programme was sanctioned by the Government. The respondent trust has highlighted that the money, which was paid to the artisans was funded from the grants by the Government of India. This would strengthen the case of the respondent trust. In a given case even grants from the Government of India may not be necessary, as all payments made need not be classified as wages. Only when payment is made to an employee and qualify as wages, that Section 2(4) of the 1952 Act would be attracted. When the amount paid is not wages and the employer-employee relationship does not exist, Section 2(f) would not be attracted.

11. In view of the aforesaid discussion, we do not find any merit in the present appeal and the same is dismissed.

**SUNITA GUPTA
JUDGE**

**SANJIV KHANNA
JUDGE**

**DECEMBER 08, 2016
VKR**