



W.P.No.33978 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on 20.02.2023

Order delivered on 12.04.2023

CORAM

THE HONOURABLE MRS. JUSTICE J.NISHA BANU

W.P.No.33978 of 2014

and

W.M.P.No.7700 of 2020

Regional Provident Fund Commissioner,
O/o Regional Provident Fund Commissioner,
Dr.Balasundaram Road,
Coimbatore – 641 018

... Petitioner

Vs.

1. Presiding Officer,
Employees Provident Fund Appellate Tribunal
(Ministry of Labour & Employment,
Government of India)
SCOPE MINAR, COREII, 4th Floor,
Lakshmi Nagar District Centre,
Lakshmi Nagar,
New Delhi 110 092.

2. M/s. Ganga Hospital,
No.13, Mettupalayam Road,
Coimbatore 641 043.

.... Respondents

Writ Petition filed under Article 226 of the Constitution of India

praying to issue a Writ of Certiorari to call for the records of the 1st



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respondent in ATA No.81/(13) of 2013 dated 12.06.2013 and to quash the said order of the 1st respondent dated 12.06.2013.

For Petitioners : Mr.C.Kulanthaivel

For Respondents : Mr.B.A.Prabushankar for R1
Mr.R.Manoharan for R2

ORDER

This writ petition has been filed challenging the order dated 12.06.2013 passed by the 1st respondent/ Appellate Tribunal, allowing the appeal filed by the 2nd respondent, which was filed as against the order dated 21.01.2013 passed by the Regional Provident Fund Commissioner/petitioner herein under section 7-A of the Employees Provident Fund & Misc.Provisions Act, 1952, assessing the PF dues in respect of 207 persons non-enrolled employees for the purposes of Fund.

2. The case of the petitioner is that the 2nd respondent Company M/s. Ganga Hospital is an establishment covered under the provisions of Employees' Provident Fund and Miscellaneous Provision Act 1952 (hereinafter referred to as "the Act") and was allotted with code No.TN/CBE/28401. During inspection by a Team of Enforcement Officers, it was found that the establishment has not enrolled all the eligible employees under the Act. The squad of Officers vide letter dated



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23.12.2010 reported that the establishment has not enrolled 207 employees from their date of joining.

ii) Based on the report of the squad of Enforcement Officer, an enquiry under Section 7A was initiated to determine the dues payable by the establishment for the period from 04/2010 to 03//2012 for non-enrolled employees and for the period from 04/2011 to 03/2012 for evasion of wages. Notice was issued to produce the document in support of the claim before the respondent on 04.04.2011. The inquiry under Section 7A went at length for more than one year and finally, an order was passed on 21.01.2013. During the inquiry, the representative of the 2nd respondent establishment informed that the salary paid to the Nurses and Staff Nurses during the first six months is as per the Minimum Wages Act. Regarding the method and scheme of training provided to the probationers, he submitted the orientation literature, but the Scheme of Training as per certified standing orders was not produced.

iii) A copy of the map was produced showing training area and literature showing various training programme for probationers. However, he has not submitted the Standard Training Schedule for probationers for six months. He confirmed that all 207 nurses are engaged as probationers and there is no exam during the training



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programme to evaluate the progress of the training of the probationers.

Though the representatives have stated that the employees are 'apprentices', the Enforcement Officer has stated that they are not apprentices but given "on-the job-training" and they have also been given consolidated pay and not stipend, in addition to 'loss of pay'. There is no uniformity in payment of allowances to the same basic wage employees. The non-enrolled employees, i.e., the staff nurses and female nursing assistants, the consolidated pay given has been bifurcated into various components after six months. After bifurcation, the 2nd respondent establishment would be paying PF contributions only on basic + DA which would be on a lesser amount. There is no rationale in the salary structure being followed, as there is no uniformity and this would show that bifurcation of wages has been effected only as a subterfuge to avoid payment of statutory dues.

iv) Further, during the inquiry, the 2nd respondent representative informed that 15% is given as washing allowance and the rest is shown as other allowances. Since the washing allowance is paid universally to all the employees of the 2nd respondent establishment, it becomes a part of wages for the calculation of PF contribution as defined under Section 2(f) of the Act. After considering all the submissions made by the 2nd



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respondent establishment during the enquiry and having gone through the deposition of the Enforcement Officers and the documents/records produced by the establishment during the enquiry, the authorized officer relying on various court judgments, determined the dues in respect of the on-enrolled employees for the period from 04/2010 to 03/2012 to the tune of Rs.6727577/- and an amount to the tune of Rs.1711952/- for evasion of wages by order dated 21.01.2013.

v) The 2nd respondent challenged the same before the 1st respondent in ATA No.81(13)2013. By order dated 12.06.2013, the 1st respondent allowed the appeal and holding that 207 nurses and trainees are appointed under the Certified Standing Orders to the 2nd respondent for a period of six months and with regard to the allowance, the 1st respondent held that all the employees are not earning the allowances at the equal rates but at the differences. Regarding the excluded employees drawing more than Rs.6500/- per month, the 1st respondent held that there is no concrete finding by the petitioner to come to the conclusion as how many such employees are there with the 2nd respondent and from which date such employees were eligible for enrolment. Hence, this writ petition.

3. Heard the learned counsel for the petitioner and the learned



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counsel appearing for the respondents.

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4. Learned counsel for the petitioner would submit that the 1st respondent failed to note that the 2nd respondent did not produce any standard scheme of training as per the certified standing orders. Further, the petitioner, on verification of the records, submitted by the 2nd respondent came to the conclusion that the so called apprentices/trainees were exclusively engaged in or in connection with the work of the establishment and also they were engaged in shifts also and these persons were not paid stipends but given only consolidated pay for the period of first six months and the salary details reveal the fact that even the consolidated pay has been varying. Therefore, the order passed by the petitioner is well within the powers conferred under section 7A of EPF Act. He would further submit that the so called apprentices/trainees are not appointed by the 2nd respondent under any standard certified standing orders. The 2nd respondent did not produce any documentary proof for appointment of trainees viz., Standard Training Schedule, Scheme of training as per the certified Standing Orders etc. The Enforcement Officer, in his report has submitted that these so called apprentices have been given consolidated pay and not stipend in addition to loss of pay. Thus, as per the decision of the Hon'ble High Court of



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Madras in the case of Mangayarkarsi Mills (P) Ltd. v. APFC [2011(1)

CTC 851], the employees who have been termed as apprentice in another way are employees of the establishment and they are entitled for social security benefits under EPF Act from the date of joining. As per Section 2(b) of the Act, 'basic wages' mean all emoluments. The term 'emolument' includes variety of benefits received by an employee for having rendered services. Various allowances such as lunch allowance, medical allowance, conveyance allowance and house rent allowances paid by the employer and received by the employees for having rendered the service would be covered under the term 'emoluments'. Once a payment is held to be 'emolument', the same becomes part of 'basic wages' of the employee by virtue of definition 'wages' under section 2(b) of the said Act, unless it falls under any of the exceptions provided therein. The term 'basis wages' therefore, includes all emoluments which are earned by the employees, unless they are specifically excluded by the Act. He would further submit that the 1st respondent failed to note that some of the employees are excluded on the grounds that they are drawing more than Rs.6500/- but at the time of appointment, their salary is lesser than Rs.6500/-. The impugned order of the 1st respondent is cryptic without application of mind and therefore, liable to be set aside.



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5. i) On the contrary, the learned counsel appearing for the 2nd respondent Hospital would submit that the Hospital has engaged Nurses and Technician as trainees under its Standing Orders and they were appointed under the Standing Orders and were also paid stipend, not wages as admissible to the regular employees. The allowances paid to the regular employees are not liable to form part of basic wages since such allowances are not earned by all the employees uniformly. He would further submit that Section 2(f) of the Employees Provident Funds and Miscellaneous Provisions Act, 1952, defines an 'employee' to include an apprentice, but at the same time makes an exclusion in the case of an apprentice engaged under the Apprentices Act or under the Standing Orders. An 'apprentice' is described as a learner who is paid allowance during the period of training. In the case on hand, the trainees were paid allowance during the period of training. They had no right to employment, nor any obligation to accept any employment, if offered by the employer. Therefore, the trainees were 'apprentices' engaged under the 'Standing Orders' of the establishment. This being the position, it cannot be said that the 207 trainees were employees in terms of Section 2(f) of the Act. In other words, an apprentice engaged under the Apprentices Act or under the Standing Orders is excluded from the



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definition of an employee' as per Section 2(f) of the Act.

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ii) Learned counsel would further submit that regarding the excluded employees drawing more than Rs.6500/-, the enquiry officer held that such employees should be provided PF benefits since their wages at the time of appointment was less than Rs.6500/- p.m. and if the wages of an employee are exceeding Rs.6500/- pm, such employees shall be treated as excluded employees. However, in the instant case, the Enquiry Officer has only drawn the conclusion but no enquiry has been made as how many such employees are there with the 2nd respondent and from which date, such employees were eligible for enrollment and have been enrolled. In the absence of concrete findings in this regard, the impugned order is not sustainable.

6. This Court, considered the submissions made on either side and perused the materials available on record.

7. First of all, it has to be noted whether an apprentice can be deemed to be an employee within the meaning of Section 2(f) of the Employees' Provident Fund and Miscellaneous Provision Act 1952. Section 2(f) of the Act defines an employee to include an apprentice, but at the same time makes an exclusion in the case of an apprentice engaged under the Apprentices Act or under the Standing Orders. An apprentice is



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described as a learner who is paid allowance during the period of training.

8. In the case on hand, the trainees were paid stipend during the period of training. They have no right to employment, nor any obligation to accept any employment, if offered by the employer. Therefore, the trainees are 'apprentices' engaged under the "Standing Orders" of the establishment. Therefore, it cannot be said that the concerned 207 trainees are employee in terms of Section 2(f) of the Act. An apprentice engaged under the Apprentices Act or under the Standing Orders is excluded from the definition of an 'employee as per Section 2(f) of the Act.

9. In the instant case, the Hospital Management engaged trainee nurses under the certified standing orders of the hospital and giving training in various departments. The trainees were paid consolidated stipend and they are not eligible to any other benefits which are extended to the permanent workmen. There was no guarantee for their employment in the establishment after completion of the training period. As such, they could not be held to be employees of the establishment. They shall be treated as trainees and would not be entitled for the PF benefits under the Act as an employee. If the wages of an employee are exceeding



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Rs.6500/- p.m., such employees shall be treated as excluded employees.

In this regard, the enquiry officer has not made any enquiry and there is also no definite findings as to how many such employees are there with the Hospital Management and from which date, such employees were eligible for enrollment and have not been enrolled. Therefore, this Court is of the opinion that there is no infirmity or illegality in the order passed by the Tribunal and thus, the order passed by the Tribunal does not warrant interference.

10. In the result, the Writ Petition stands dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

12.04.2023

Speaking/Non Speaking
Index : Yes / No
Internet : Yes / No
vsi

To

1. The Presiding Officer,
Employees Provident Fund Appellate Tribunal
(Ministry of Labour & Employment,
Government of India)
SCOPE MINAR, CORE II, 4th Floor,
Lakshmi Nagar District Centre,
Lakshmi Nagar,
New Delhi 110 092.



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J.NISHA BANU,J.

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Pre-delivery order made in
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