

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

MONDAY, THE 30TH DAY OF MARCH 2015/9TH CHAITHRA, 1937

W.P.(C).No.32567 of 2010 (U)

PETITIONER(S):-

MRF LTD, POST BOX NO.2, VADAVATHDOR.P.O,
KOTTAYAM-682 010,
REPRESENTED BY ITS PLANT MANAGER
MR.SAJI VARGHESE.

BY ADVS.SRI.SAJI VARGHESE
SMT.MARIAM MATHAI.

RESPONDENT(S):-

1. THE EMPLOYEES PROVIDENT FUND APPELLATE TRIBUNAL,
SCOP MINAR, LAKSHMI NAGAR DISTRICT CENTRE,
CORE-2, NEW DELHI-1.
2. THE REGIONAL PROVIDENT FUND COMMISSIONER,
EMPLOYEES PROVIDENT FUND ORGANIZATION,
SUB REGIONAL OFFICE, KALOOR, KOCHI-682017.

R2 BY SENIOR ADVOCATE SRI.N.N. SUGUNAPALAN &
STANDING COUNSEL SMT.T.N.GIRIJA
R BY ADV.SRI.M.CHANDRABOSE.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
30-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1 TRUE COPY OF THE CERTIFIED STANDING ORDERS DATED 30.09.70 OF THE PETITIONER COMPANY.
- EXT.P2 TRUE COPY OF THE SCHEME FOR PROVIDING APPRENTICESHIP TRAINING IN THE PETITIONER COMPANY.
- EXT.P3 TRUE COPY OF THE ELIGIBILITY CERTIFICATE ISSUED BY THE DIRECTOR OF INDUSTRIES AND COMMERCE, STATE OF KERALA.
- EXT.P4 TRUE COPY OF THE PROCEEDINGS OF THE BOARD OF REVENUE, TAXES, THIRUVANANTHAPURAM, DATED 30.06.1998.
- EXT.P5 TRUE COPY OF THE NOTICE DATED 10.11.97 ISSUED BY THE ASSISTANT PROVIDENT FUND COMMISSIONER.
- EXT.P6 TRUE COPY OF THE REPLY SUBMITTED BY THE PETITIONER TO EXT.P5.
- EXT.P7 TRUE COPY OF THE ORDER OF THE 2ND RESPONDENT DATED 28.05.1999 DIRECTING THAT THE APPRENTICES ARE TO BE ENROLLED AS MEMBERS OF THE FUND.
- EXT.P8 TRUE COPY OF JUDGMENT OF THE LEARNED SINGLE JUDGE OF THIS COURT IN O.P.NO.14574 OF 1999.
- EXT.P9 TRUE COPY OF JUDGMENT OF THE DIVISION BENCH OF THIS COURT IN W.A.NO.1466 OF 1999.
- EXT.P10 TRUE COPY OF THE APPEAL A.T.A - 725(7) OF 2003 APPEAL FILED BY THE PETITIONER (WITHOUT ANNEXURES) BEFORE THE 1ST RESPONDENT.
- EXT.P11 TRUE COPY OF THE OBJECTION TO THE APPEAL FILED BY THE 2ND RESPONDENT.
- EXT.P12 TRUE COPY OF REPLY TO EXHIBIT P11, FILED BY THE PETITIONER (WITHOUT ANNEXURES).
- EXT.P13 TRUE COPY OF THE ARGUMENT NOTE FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.
- EXT.P14 TRUE COPY OF THE ORDER OF THE 1ST RESPONDENT DATED 5.8.10 DISMISSING THE APPEAL FILED BY THE PETITIONER.

RESPONDENT(S)' EXHIBITS:-

NIL.

Vku/-

[true copy]

K. Vinod Chandran, J.

W.P(C) No.32567 of 2010-U

Dated this the 30th day of March, 2015

JUDGMENT

The sole question which arises for consideration in the above writ petition is, as to whether the “Apprentices” appointed by the petitioner-Company as provided under its Certified Standing Orders, framed under the Industrial Employment (Standing Orders) Act, 1946 [for short “Standing Orders Act of 1946”], are to be covered under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 [for short “EPF Act”]. The answer to the question would involve the resolution of the dispute on law and on facts, the latter of which this Court is forced to look into for reason only of the appellate authority having not considered the same in the proper perspective.

2. The petitioner is a Public Limited Company, registered under the Companies Act, 1956, which is admittedly covered under the EPF Act, and there is no dispute with respect to the contributions paid, as against the regular employees in its rolls. An enquiry was initiated under Section 7A, wherein an inspection

was conducted and the Apprentices engaged by the petitioner were sought to be covered under the EPF Act.

3. Admittedly a large number of persons were employed as Apprentices under the petitioner. It was also admitted by the petitioner that the workers are first appointed as Apprentices and after giving adequate training, on finding them suitable, they are taken into the regular rolls of the Company. The Standing Orders of the petitioner-Company also provides for engagement of Apprentices for a period of two years, with an extended period of another year; but not more than three years.

4. The authority under the EPF Act found that there are large number of persons engaged as Apprentices in 1997, coming to around 252 persons. Considering the admission of the petitioner that the Apprentices were eventually taken into the rolls of the Company, it was found that the engagement as Apprentices was merely a ruse to avoid coverage under the EPF Act. The fact that on completion of training they were absorbed into the rolls of the Company, according to the Organisation, concluded the question of coverage of such employees, even when they continued as Apprentices. It was also noticed that in the Standing Orders,

Apprentices are mentioned as a category of employees. The termination of apprenticeship on completion of the learning process, was held to be an essential requirement and the same having not been satisfied, the exclusion under Section 2(f) was found to be not applicable to the 'Apprentices'. The number of Apprentices employed by the petitioner and covered under the EPF Act, from 1992 to 1998, were noticed and proceedings were issued at Exhibit P7. An appeal preferred before the Tribunal ended in Exhibit P14 without any consideration of the question of law or on the question of fact.

5. On facts, the learned counsel for the petitioner-Company would submit that the increase in the number of Apprentices was as a consequence of the modernisation programme introduced in the petitioner-Company in which a manufacturing activity; that of manufacturing tyres, were commenced during the relevant period. The increase in the number of Apprentices was in consonance with the increase of regular employee strength. A new manufacturing activity, under the modernisation programme, having been commenced, regular employees, skilled in such manufacturing activity, were appointed;

as a consequence of which the employee strength was increased. Parallel to this, anticipating the need for skilled workers, the petitioner-Company had also engaged Apprentices, that too a large number, so as to enable regularisation of such Apprentices in the regular employment of the Company after training. It has to be noticed that the said fact has not been considered in the proper perspective by the authority in Exhibit P7.

6. In any event, it has to be noticed that the law, as discernible from the provisions of the Act and as declared by the binding precedents of this Court and the Hon'ble Supreme Court, also favours the petitioner's contentions. Primarily it has to be noticed that the petitioner has Certified Standing Orders, under the Standing Orders Act of 1946, which is produced herein as Exhibit P1. The Certified Standing Orders provides for appointment of Apprentices with payment of stipend during the training period. The appointment is specifically for the purpose of imparting training and the period specified is of two years, out of which the initial six months is to be utilised for the purpose of aptitude test, etc. The period is subject to extension; but not extending a total of three years. An Apprentice, as per the Standing Orders, could be

terminated if his apprenticeship is below the expected standards and Clause 13 of the Scheme also speaks of consideration for appointment as a regular worker of the factory with an initial probation of minimum period of six months.

7. Section 2(f) of the EPF Act reads as under:

“2. Definitions.- In this Act, unless the context otherwise requires,-

xxx

xxx

xxx

(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;

xxx

xxx

xxx”.

Hence, though an Apprentice is included under the definition of “employee”, specific exclusion is provided to those appointed under the Apprentices Act, 1961 and under the Standing Orders of

the establishment. Herein, the engagement of Apprentices is under the Certified Standing Orders produced at Exhibit P1.

8. The finding in Exhibit P7 that the exclusion under Section 2(f) would not be applicable to the Apprentices sought to be covered under the EPF Act, as appointed by the petitioner-Company, cannot be countenanced. One of the reasons stated is that an Apprentice appointed has to be necessarily terminated from the apprenticeship. Definitely on absorbing an apprentice into the regular rolls of an establishment, the apprenticeship would stand terminated. There is no prohibition on regularising Apprentices and on regularisation, it cannot at all be said that the period of apprenticeship would also be deemed to be regular employment. There is no such prohibition in the Apprentices Act or under the Certified Standing Orders of the petitioner-Company.

9. In this context, the decision of the Hon'ble Supreme Court reported in ***E.S.I.Corp. v. Tata Eng. and Locomotive Co. Ltd. [(1975) 2 SCC 835]*** assumes significance. Therein, a similar question was raised with respect to the coverage of 'Apprentices' under the Employees State Insurance Act, 1948 [for brevity "ESI

Act”], on the ground that the Apprentices were subsequently regularised in the employment of the Company. Tracing the legislative history of the method of appointing Apprentices from the Apprentices Act, 1850, it was held that the word “Apprentice” does not include an element of employment, but only indicates an adequate well-guarded provision for training. It was also held that such training is for the purpose of suitable absorption in regular employment, which alone cannot be said to be a factum which could lead to a conclusion that the training provided as an Apprentice, is one of a regular employment. It was held so in paragraph 8:

“Again we find that where the Legislature intends to include apprentice, in the definition of a worker it has expressly done so. For example, the Industrial Disputes Act, 1947, which is a piece of beneficial labour welfare legislation of considerable amplitude defines 'workman' under Section 2(s) of that Act and includes apprentice in express terms. It is significant that although the Legislature was aware of this definition under Section 2(s) under the Industrial Disputes Act, 1947, the very following year while passing the Employees' State Insurance Act, 1948, it

did not choose to include apprentice while defining the word 'employee' under Section 2(9) of the Employees' State Insurance Act, 1948. Such a deliberate omission on the part of the Legislature can be only attributed to the well-known concept of apprenticeship which the Legislature assumed and took note of for the purpose of the Act. This is not to say that if the Legislature intended it could not have enlarged the definition of the word 'employee' even to include the 'apprentice' but the Legislature did not choose to do so".

It is to be noticed that the specific exclusion as provided in the ESI Act of 1948 continued in the EPF Act, enacted in the year 1952. The issue is also covered by the judgment of the Hon'ble Supreme Court in ***Regional Provident Fund Commissioner v. Central Arecanut & Coca Marketing and Processing Co-op. Ltd.*** [(2006) 2 SCC 381].

10. In such circumstance, the mere fact that the Apprentices were absorbed into the regular employment and were not sent out of the petitioner-Company has absolutely no relevance in considering the coverage under the EPF Act. The apprenticeship

to which they were appointed definitely would be terminated on their regular employment in the petitioner-Company.

11. The learned Standing Counsel for the respondent-Organisation would also refer to the counter affidavit, to indicate that there is a prohibition insofar as, no employer would be entitled to appoint more than 10% of the employees as Apprentices under Section 8 of the Apprentices Act, 1961. The exemption claimed is on the ground of appointment made as Apprentices under the Certified Standing Orders and not under the Apprentices Act, 1961. Then again it is to be noticed that Section 8 of the Apprentice Act does not provide for any such prohibition. Section 8 confers power on the Central Government to provide for a ratio of apprentices in each trade and the proviso to sub-section (1) specifically enables an employer to engage as many number of Apprentices as required *de hors* such ratio being notified.

12. The fact that 252 persons were engaged as Apprentices when there was a total employee strength of 997 is inconsequential, since there is no details available as to the ratio of employees and the Apprentices prior to the measure of modernisation brought in by the petitioner-Company. It is also to be

noticed that Exhibit P7 order but for merely finding that there are 252 persons engaged as Apprentices in 1997 does not speak of the strength of employees in the years in which the coverage was attempted under Section 7A of the Act.

For all the above reasons, this Court is of the opinion that Exhibit P7 order, as confirmed in Exhibit P14, is not sustainable. The impugned orders are set aside. The writ petition is allowed. No costs.

Sd/-

K. Vinod Chandran,
Judge

vku/

[true copy]