

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 4TH DAY OF FEBRUARY 2015/15TH MAGHA, 1936

WP(C).No. 35146 of 2010 (P)

PETITIONER:

**M/S.TEEKOY RUBBERS (INDIA) LTD.,
PALAI-686 575, REPRESENTED BY ITS
DIRECTOR-MR.THOMAS MATHEW.**

**BYSRI.JOSEPH MARKOSE (SENIOR ADVOCATE)
ADVS. SRI.BINU MATHEW
SRI.TERRY V.JAMES
SRI.B.J.JOHN PRAKASH
SRI.TOM THOMAS (KAKKUZHIYIL)
SRI.MATHEWS K.UTHUPPACHAN**

RESPONDENT:

**THE REGIONAL PROVIDENT FUND
COMMISSIONER-I, KERALA,
EMPLOYEES PROVIDENT FUND ORGANIZATION,
REGIONAL OFFICE, BHAVISHYA NIDHI BHAVAN,
PATTOM P.O., TRIVANDRUM, PIN-695 004.**

**BY SRI.N.N. SUGUNAPALAN, (SENIOR ADVOCATE)
ADV. SMT.T.N.GIRIJA, SC**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 04-02-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

mbr/

APPENDIX

PETITIONER'S EXHIBITS:

- EXHIBIT P1 :** TRUE COPY OF PROCEEDINGS UNDER SECTION 57 OF THE ACT AGAINST THE PETITIONER BASED ON A LETTER DATED 5.1.2000 RECEIVED FROM THE PLANTATION LABOUR CONGRESS TO THE ENFORCEMENT OFFICER.
- EXHIBIT P2 :** TRUE COPY OF OBJECTION DATED 20.6.2000 FILED BY THE PETITIONER BEFORE THE RESPONDENT.
- EXHIBIT P3 :** TRUE COPY OF THE PROCEEDINGS DATED 11.6.2003 OF THE RESPONDENT.
- EXHIBIT P4 :** TRUE COPY OF THE APPEAL ATA NO.598(7)2003 DATED 16.8.2003 FILED BY THE PETITIONER BEFORE THE APPELLATE TRIBUNAL AGAINST EXHIBIT P3.
- EXHIBIT P5 :** TRUE COPY OF COUNTER DATED NIL FILED BY THE RESPONDENT IN APPEAL ATA NO.598(7)2003.
- EXHIBIT P6 :** TRUE COPY OF THE ORDER DATED 13.8.2010 OF THE APPELLATE TRIBUNAL IN APPEAL ATA NO.598(7)2003.
- EXHIBIT P7 :** TRUE COPY OF THE LETTER DATED 3.10.2000 ISSUED BY THE PLANATATION LABOUR CONGRESS TO THE RESPONDENT.

RESPONDENT'S EXHIBITS:

- EXT. R1(A) :** TRUE COPY OF THE COMPLAINT DATED 11.11.09.
- EXT. R1(B) :** TRUE COPY OF THE REPORT DATED 6.12.1999 FILED BY THE ENFORCEMENT ORDER.
- EXT. R1(C) :** TRUE COPY OF THE COMPLAINT DATED 5.1.2000 OF THE PLANTATION LABOUR CONGRESS, KOTTAYAM.

/TRUE COPY/

P.S. TO JUDGE

mbr/

K. VINOD CHANDRAN, J.

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W.P.(C) No.35146 of 2010 - P

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Dated this the 4th day of February, 2015

J U D G M E N T

The petitioner is aggrieved with the order at Ext.P3, made under Section 7A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (for brevity, 'EPF & MP Act'); affirmed in appeal as per Ext.P6. Ext.P6 proceeds on the premise that, the minute, the employee deposes in the box that the employee was working for 240 days in an year, the burden stands discharged. If the evidence of the workmen was not controverted by the other side by producing documentary evidence, then the Labour Court is correct in drawing an adverse inference against the petitioner, is the finding. Obviously, the said findings are based on two judgments, one of the Hon'ble Supreme Court in **R.M. Yellatti v. Executive Engineer [2006 Vol.108 FLR page 213]** and the other of the Hon'ble High Court of Gujrat in **Executive Engineer v. H. Jani [2007 Vol.115 FLR page 244]**.

2. Primarily, it is to be noticed that, the issue raised herein, is with respect to the employment of certain workers, allegedly on a temporary basis. The original proceedings were initiated on a complaint made by one of the Unions, in which it was alleged that more than 100 persons are employed on a temporary basis without any statutory benefits. Admittedly, the said complaint stood withdrawn. However, many of the workers appeared personally before the authority under the 'EPF & MP Act' and deposed that, they had been working for 140 days on a temporary basis in the estate of the management.

3. Even amongst them, many resiled from their statement. Eventually, the Regional Provident Fund Commissioner, who considered the matter, was left with 10 employees, whose statements were relied upon to find that they were employed during various periods and that the contributions payable with respect to them under the 'EPF & MP Act' were not regularly paid by the employer management. On such premise, again relying upon the wages as submitted by the workmen, a computation was

arrived at and Ext.P3 order was passed.

4. The learned Counsel for the petitioner urges that, all these workmen were cross-examined by the management. Their version that they had been employed for 140 days as temporary workers stood dispelled in cross-examination, is the contention. To emphasise the said aspect, the learned Counsel would also point out that, one of the workmen, one Parameswary on being asked as to whether she was aware of the estate being categorised into divisions, answered that, she was not aware of such a division. Another worker one B. Krishnan, is said to have admitted in cross-examination that, he does not remember his Code number assigned by the management. The work allotment in the Estates are based on the divisions and with reference to the Code number of employees; which is a fundamental aspect an employee claiming to have been employed, can be ignorant of. There were valid reasons for finding that the employees were not in fact employed in the management estate, is the argument.

5. The learned Counsel would invite this Court to

an examination of the evidence recorded before the original authority. However, it is trite that, under Article 226 of the Constitution of India, this Court would not endeavour to go on a re-appreciation of facts. Especially when there is a two-tier system, where factual adjudication is carried out by the statutory authorities.

6. However, it is to be noticed that the appellate authority, being the Tribunal, has not considered any of these aspects. The Tribunal merely proceeded on the premise that on the deposition of the workmen, the burden to prove their employment is discharged and the management has to prove to the contrary. This would in effect lead to negative evidence being adduced by the management as to their non-employment.

7. The reliance placed on **R.M. Yellatti** (supra) is clearly wrong. The extracted portion has been read out of context. The extracted portion is in Paragraph 17, which reads as under:-

17. Analyzing the above decisions of this Court, it is clear that the provisions of the Evidence Act in terms do not apply to the proceedings under Section 10 of the Industrial

Disputes Act. However, applying general principles and on reading the aforesaid judgments we find that this Court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked for 240 days in a given year. This burden is discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In cases of termination of services of daily wages earner, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus in most cases, the workman (claimant) can only call upon the employer to produce before the Court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register etc. Drawing of adverse inference ultimately would depend thereafter on facts of each case. The above decisions however make it clear that mere affidavits or self-serving statements made by the claimant/workman will not suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. The above judgments further lay down that mere non-production of muster rolls per se without any plea of suppression by the claimant workman will not be the ground for the Tribunal to draw an adverse inference against the management. Lastly, the above judgments lay down the basic principle, namely, that the High Court under Article 226 of the Constitution will not interfere with the concurrent findings of fact recorded by the Labour Court unless they are perverse. This exercise will depend upon facts of each case.

8. In fact the said decision noticed a number of decisions of the Hon'ble Supreme Court which found that the mere statement of a workman on affidavit or in the box that he has worked for 240 days is not sufficient evidence.

Without substantiating material, the mere assertion of a workman even on affidavit was found to be a self-serving statement. Definitely, the Tribunal, being a fact finding authority, ought to have looked at the evidence and not merely rejected the appeal quoting the dictum of two judgments and without properly understanding the dictum laid down and without examining whether it would apply to the facts of the case.

9. In such circumstance, the order of the Tribunal, at Ext.P6 is set aside. The appeal filed by the petitioner shall stand restored and the same shall be considered in accordance with law and in accordance with the observations made herein above, after looking at the evidence said to have been recorded before the original authority.

The writ petition would stand allowed. No costs.

Sd/-
K. VINOD CHANDRAN,
JUDGE

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P.A to Judge