IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Writ Petition No.1886 of 2015
Date of Decision: March 24, 2015

Employees Provident Fund Organization, Gurgaon & another

...Petitioners

Versus

M/s Bristol Hotels (P) Ltd., Gurgaon & another

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr.Sanjay Tangri, Advocate,
for the petitioners.

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AMIT RAWAL, J.

The petitioners have approached this Court for quashing the order dated 4.6.2013 (Annexure P-3) passed by the Employees' Provident Fund Appellate Tribunal, New Delhi, vide which the appeal bearing No.01 (16) of 2011 filed by respondent No.1 has been accepted and the order dated 20.12.2010 (Annexure P-1) passed under Section 7-A of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (for short “the Act”) has been set-aside.

It would be apt to refer few facts.

The Assistant Provident Fund Commissioner initiated proceedings under Section 7-A of the Act vide notice dated 17.7.2009 for determination of the amount due and accordingly the respondent-employer was summoned and directed to produce the P.F. record. The occasion to summon the establishment of the Hotel was that E.O. had conducted the inspection and as per the report, it was found that the Hotel had made rate per trip contract with transporter and the charges were on the requisition basis/kilometers used by the user as and when there was a requirement of car by the Hotel. The Inspector had made a report that the company had made a rate contract with M/s Miles Travellers Private Ltd., Miles Travels and R.P. Travels owned by one Abhay Poonia and the company/firms of the transporters were not covered under the P.F. Act. The establishment/hotel submitted that the wages of the concerned drivers were paid by the transporter and the drivers, who are provided on requisition/demand of the Hotel at different times and dates and in order to avoid inconvenience to the customers, the Hotel had entered into an agreement with the transporter.

The Inspector had also submitted in his report that the Hotel had employed one Chef for the month of October, 2008, who remained with the Hotel upto 14.1.2009, i.e., for 3½ months. It was further mentioned in the report that the said Chef was engaged temporarily for updating the requirement of the customers and not on regular basis and, therefore, requested the authorities not to assess the P.F. dues in respect of the temporary working employee.

While rejecting the submissions made by the establishment/ Hotel, the Provident Fund Commissioner determined a sum of ₹7,35,189/- as provident fund dues payable by the employer in respect of the establishment for the period October, 2000 to May, 2009 and directed the establishment to pay the dues along with interest due under Section 7Q of the Act within 15 days from the receipt of the order, failing which the same will be recovered in the manner prescribed in Sections 8B and 8G of the Act. It further directed that the establishment would not be absolved to pay the damages under Section 14B of the Act.

The aforementioned order was assailed by the establishment/ Hotel by filing an appeal (Annexure P-2). The Appellate Tribunal, vide order dated 4.6.2013 (Annexure P-3) accepted the appeal of the establishment on the ground that the employees of M/s Miles Travelers Pvt. Ltd. (transporter), from whom cars were hired, cannot be treated as employees of the establishment/appellant and the aforementioned findings came to be passed by relying upon the judgment of the High Court in **M/s. Springdales School Vs. RPFC, 2006 (108) FLR 908.** It is the said order which has been challenged by filing the present writ petition in March, 2014.

Mr.Sanjay Tangri, learned counsel appearing for the petitioners, in support of his arguments, submitted that the Appellate Tribunal has committed an illegality and perversity in accepting the appeal of the establishment and while doing so, had ignored the provisions of Section 2 of the Act. In order to lend support to the aforementioned contention, referred to the definition of employees provided in Section 2F of the Act to contend that the employee, in any case, would mean the person who has been employed for wages in any kind of work manually or otherwise and who gets his wages directly or indirectly from the employer, which shall also include any person employed or by or through a contractor in or in connection with the work of the establishment. By referring to the aforementioned provisions, he has referred to the judgment of the Full Bench of the Hon'ble Supreme Court rendered in **P.M.Patel & Sons Versus Union of India and others, 1986 (1) L.L.J 88.** He has referred to paragraphs, 3, 9, 11 and 12 of the judgment to contend that the case of P.M.Patel pertained to the engagement of beedis workers for the manufacture and sale of beedis and the labour employed in the manufacture of beedis consisted of different categories (i) at the factory which constituted the formal establishment, there is an administrative and clerical staff, accountants, packers, checkers and bhattimen; (ii) the work of rolling the beedis done by one or the other of different categories of workers and the work was entrusted by the manufacturers directly to workers who prepared the beedis at home after obtaining a supply of raw material consisting of tobacco, beedi leaves and thread from the manufacturers; and (iii) the workers employed by the manufacturers through contractors and the manufacturers passed on the raw material to such workers for rolling the beedis in their dwelling houses and in such type of cases, it has been held that there had been a direct relationship between the manufacturers and those workers and, therefore, there was a relationship of master and servant.

I have heard the learned counsel for the petitioner and appraised the paper book and as well as the judgment cited (supra) and am of the view that there is no substance, much less, merit in the aforementioned arguments. The case in hand is distinguishable from the judgment in P.M.Patel's case (supra).

In order to draw the distinction, it would be necessary to refer to the terms and conditions of the contract entered into between the establishment and the transporter, copy of which has been annexed with the writ petition as Annexure P-4. The same is extracted herein below:-

"BRIGHT STAR HOTELS PVT.LTD.

CAR HIRE AD-HOC RATE CONTRACT

This agreement is made and executed at Gurgaon on this 1st Feb 2010 between "The Bristol Hotel", DLF Phase-I, Gurgaon a unit of M/s Bright Star Hotels Private Limited having registered office at B-3, Greater Kailash Enclave Part-I, New Delhi hereinafter referred to as "The Hotel".

AND

M/s Miles Travellers Private Limited having its office at C-122, First Floor, Sun City, Sector 54, Gurgaon (Haryana) by Mr.Abhay Poonia-Director of the company hereafter referred as "Transporter"

Now it is hereby agreed by and between both the parties hereto shall abide and be bound by the terms and conditions set out herein namely:

1. That the transporter has agreed to provide car rental services to hotel on demand and use basis on the rates given below, which are including of all taxes of car, fuel & fee except parking/toll tax will be paid on actual on provide a valid proof.

a. KM/Hourly Package

(All rates are of air-conditioned vehicles with Driver & Fuel)

Type of Vehicle	***2 Hrs/20 Kms (Rs.)***	***4Hrs/40 Kms (Rs.)***	***8 Hrs/80 Kms (Rs.)***	***Extra Per KM (Rs.)***	***Extra Per Hour (Rs.)***
Innova	600	800	1400	16	75
Corrola	900	1600	2200	22	100
Indica/wagon R		500	800	7	20

b. 24 Hours/Monthly Basis

The Hotel may require the following cars on monthly basis with drivers and petrol Minimum guaranteed mileage 4000 KM per car in a month on 24 hours basis, on the following monthly package rate, in case of over run the hotel, will pay for extra KM done. The Hotel will inform to the transporter in the beginning of every month the numbers of cars, types of cars required by the hotel on monthly basis.

Type of Vehicle	***Minimum Rate charged (Rs.)***	***Run KM in a Month***	***Extra Per KM (Rs.)***
Esteem/Icon	38000	4000 KM	8
Innova	55000		10

c. Pick or Drop-Airport/local city office

Type of Vehicle	***Rate Charged (Rs.)***
Innova-Airport/Pick up & Drop	750
Carolla Airport/Pick up & Drop	1000
Railway station pick/drop	1000
Local office drop up to 10 km	300

d. Monthly Coach

As when required the hotel, the transporter will deploy one dedicated Coach with driver-

-The Coach will run from "The Bristol Hotel to AIMS, at least 8 trips in a day.

Type of Vehicle	***Monthly Run KM***	***Rate Charges (Rs.)***	***Extra Per KM***
Bus Tempo Traveler 18 Seater	14000 KM	12,0000	Rs.14/per KM

e. Outstation Trip

As when required the hotel, the transporter will provide car for outstation Trip

Type of Vehicle	***Innova Monthly Run KM***	***Carolla Rate Charged (Rs.)***
Trip to Agra & Jaipur up to 450 KM	6300	8000
Extra KM	12	18

2. The hotel will make a telephonic call to Miles Supervisor to place the order for any car requirement. On the arrival of car, Miles will give the car requisition to front office which will

have opening KM and after the completion of duty, the driver will fill up the closing KM.

3. All cars will be placed in the hotel only when it is required for hotel use. None of the driver will be allowed to sit in the hotel premises unless or otherwise there is duty in the car.

4. All payment shall be made against the submission of invoices.

5. In case of any dispute, the same shall be subject to Gurgaon jurisdiction only.

For Bright Star Hotels Private Limited
Financial Controller
For Miles Travellers Private Limited
(Authorized Signatory)."

From the perusal of the terms and conditions of the car hire ad-hoc rate contract, it is evident that the transporter had agreed to provide car on rental services to hotel on demand and use basis as per the rates given and also agreed to provide the cars as and when the Hotel requires on monthly basis with drivers and petrol with minimum guaranteed mileage 4000 KM per car in a month of 24 hours basis, on the prescribed monthly package rate and in case of over run the hotel will pay for extra KM done. The terms and conditions of the agreement do not provide any condition that the drivers would be employees of the establishment. It was only the transporter, who had to provide the cars with drivers. The Appellate Tribunal is justified in accepting the appeal by referring to the judgment in <u>M/s Springdales School's case</u> (supra), wherein in identical situation had arisen as the school in its normal source of business, to pick and drop its students from various localities of Delhi to the School, had availed the services of Bakshi Transport Company and transporters had also entered into an agreement which provided that the school had to pay the transportation charges for the bus hired on the basis of distance of each trip and there was no stipulation in the agreement for the payment of wages by the transporter to his staff. In the present case also, there was no stipulation in the agreement for providing any staff by the transporter to the hotel for driving the car of the hotel. Rather, the agreement has been entered to provide facility of the cars to be driven by the drivers employed by the transporter. Therefore, the car drivers cannot be held to be exclusively working for the establishment as the establishment had no control, i.e., deep and pervasive, much less, even the drivers had been assigned duties by the transporters as per the conditions and instructions of the transport. The facts, circumstances and the ratio decidendi in the case of P.M.Patel (supra) also do not apply as it has been observed that for an employee, it is necessary that the relationship of master and servant should exist with the employer. In the instant case, there was no relationship of master and servant, whereas in P.M.Patel's case, while applying the test for determining the relationship of master and servant, the Hon'ble Supreme Court had an occasion to consider the existence of the right in the master to supervise and control the work done by the servant not only in the manner of directing what work the servant was to do but also the manner in which he should do it. However, in the instant case, there was no such provision in the agreement, whereby the establishment had kept any supervisory control over the drivers or to pass on any instructions/directions to the drivers of the transporters and, therefore, the establishment has rightly been held to be not the employer of the drivers provided by the transporters and, therefore, they were not liable to make any contribution of P.F. as there is no illegality and perversity.

In view of what has been observed above, the order dated 4.6.2013 (Annexure P-3) is upheld.

The writ petition is accordingly dismissed.

March 24, 2015 **(AMIT RAWAL)**
ramesh **JUDGE**