

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 28.05.2015

Decided on : 19.08.2015

+ **W.P.(C) 7342/2000**

BAL BHARTI PUBLIC SCHOOL

..... Petitioner

Through: Mr.Abhinav Vashisht, Sr. Advocate
alongwith Mr.B.B.Mahajan,
Advocate.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr.R.C. Chawla, Advocate alongwith
Mr.Charanjeet Singh and Mr.D.
Rajeshwaar Rao, Advocates for R-2
to R-4.

**CORAM:
HON'BLE MS. JUSTICE DEEPA SHARMA**

JUDGMENT

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1. Vide present writ petition, the petitioner has sought the quashing of the order dated 02.08.2000, whereby he was directed to deposit the Provident Fund (PF) at the rate of 12% with effect from 22.09.1997 and of quashing of the notification dated 09.04.1997 or in alternative to declare that the notification dated 09.04.1997 cannot be invoked by the respondents after the amendment of 1988 Act by the Amending Act No.10 of 1998 which came into force with effect from 22.09.1997.

2. The case of the petitioner is that it is an unaided private school recognized by the Directorate of Education under the provisions of the Delhi School Education Act, 1973 and the Rules framed thereunder and it was set up in the year 1984. Although the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as 'the Act') came into force in the year 1952, the educational institutions, including university, colleges and schools were not covered under the Act. The Central Government in exercise of its power conferred under Section 1(3)(b) of the Act, vide Notification No. 986 dated 19.02.1982 made the Act applicable to the educational institutions. This notification was challenged by some educational institutions and the Supreme Court in the case of **DAV College and Another vs. Regional Provident Fund Commissioner and Ors.** 1998 II LLJ 218 dismissed the petition and directed the educational institutions to comply with the provisions of the Act regularly with effect from 01.02.1988 and pay the arrears from March, 1982 up to 31.01.1988. Since then, the petitioner has been regularly depositing the PF contribution. It is submitted that initially the rate of contribution (fixed by the Central Government under Section 6 of the Act) was '**six and a quarter percent**' on the basic wages and the DA for all the establishments. Subsequently, a proviso to Section 6

was inserted by Amending Act No. 48 of 1962 which conferred the powers upon the Central Government to specify the establishments or class of establishments to which the proviso would apply by issuing a notification in the Official Gazette and which were thereafter required to pay the contribution at a higher rate of **eight per cent**. The Central Government, thereafter, issued Notification No.S.O.3793, under the first proviso to Section 6 of the Act of 1962 and brought certain categories of establishments under the ambit of proviso which were then to pay their contributions at the enhanced rate. Initially, only four establishments were so notified. However, the Central Government, from time to time, issued more than 20 notifications enlisting the establishments to be covered under said proviso. Thereafter, by Amending Act No.33 of 1988, Section 6, including its proviso was amended. This amendment came into force with effect from 01.08.1988. The basic minimum rate of PF contribution in respect of all establishments was enhanced from **‘six and a quarter percent’ to 8.33%** and for establishments covered by first proviso to Section 6 of the Act of 1988 to **10% from 8%**. The Government, thereafter, issued fresh notifications specifying the establishments required to pay the contributions at enhanced rate under proviso to Section 6 of the Act of 1988.

It is contended that whenever the 1st proviso to Section 6 of the Act is amended, the Government had issued fresh notifications specifying the establishments required to pay PF contribution at enhanced rate. The fresh notification is required to be issued since on the amendment of the Section, the old notifications stand automatically repealed and on the said premise, the Central Government were issuing fresh notification under first proviso to Section 6 of the Act notifying the establishments covered by proviso to Section 6 of the Act. It is submitted that the schools or the educational institutions were not listed in the notification issued by the Government under first proviso to Section 6 of the Act of 1988 and the educational institutions or the schools continued to pay their contributions at the rate of 8.33 %. The Central Government had been issuing notifications from time to time bringing more establishments under the ambit of first proviso to Section 6, but, had spared the educational institutions and the schools. Although in its Budget speech for the year 1997-98, the Finance Minister of India had proposed to enhance the basic minimum rate of PF contributions in respect of all establishments from 8.33% to 10% and to enhance the rate of contributions in respect of some industries, as may be specified, to 12%, but the Act could not be amended at the relevant time. The Central

Government, however, issued a notification bearing a Reference No. Ministry of Labour/F.No.S-35019/1/97-SS II dated 09.04.1997 bringing all establishments, except those exempted therein, under the ambit of first proviso to Section 6 of the Act of 1988 and it was done without making the enquiries as required. This notification also suffers from the vice of the excessive delegation and/or colourable exercise of the powers conferred upon the Central Government. The notification dated 09.04.1997 is also challenged on the ground that it is a negative notification since vide this notification first proviso to Section 6 of the 1988 Act is made applicable to every establishment, except those specifically excluded in Schedule-II of the notification and that the notifications are required to be in a positive connotation enumerating the establishments to be covered under the first proviso to Section 6 of 1988 Act. It is further contended that at no stage, the Regional Provident Fund Commissioner had called upon the petitioner to deposit the PF contribution at the enhanced rate of 10%. Section 6 as it stood in the Act of 1988 was further amended by Act No.10 of 1998 and was published in the Gazette of India on 22.06.1998 and this Act had come into force with effect from 22.09.1997. Vide this amendment, the rate of contribution which was payable at the rate of **8.33%** was enhanced to **10%**

and the rate of contribution under the first proviso of Section 6 which was payable at **10%** was enhanced to **12%**. It is submitted that the petitioner was never directed to deposit PF contribution at the rate of 12% even though the Inspecting Officers from the office of Respondent No.4 had visited their school on several occasions for inspection of records and for compliance under the Act. After a lapse of about two years, for the first time, the petitioner had received a letter dated 06.10.1999, directing the petitioner to deposit PF contribution at the rate of 12% with effect from 22.09.1997. The petitioner also received a notice dated 14.02.2000 directing the petitioner to deposit the PF contribution at the rate of 10% with effect from 01.05.1997 and 12% with effect from 22.09.1997. A reply dated 13.03.2000 was submitted and it was pointed out that petitioner's school had been paying their provident fund contributions at the rate of 10% with effect from 22.09.1997. It is contended that the notification dated 09.04.1997 stands repealed after the Amending Act No.10 of 1998 which replaces the Section 6 of the Act of 1988 and since no notification has so far been issued by the Central Government under first proviso to Section 6 of the Act of 1998, bringing the establishments or class of establishments within the ambit of first proviso and thus requiring them to pay enhanced rate of PF contribution

to 12%, the petitioners, after the Amendment of Act of 1998 are liable to pay their contribution only at the rate of 10 under Section 6 of the Amended Act of 1998.

3. The main contention of respondents is that since the notification dated 09.04.1997 was issued by the Central Government in exercise of its power conferred under first proviso to Section 6 of the Act of 1988 and as the EPF Act itself is a Social Security Act enacted for the benefit of working class, the notification dated 09.04.1997 since being passed within ambit of aims and objects of the EPF Act of 1988, can neither be said to be a colourable exercise of the power nor it suffers with the vice of excessive delegation of powers. After the notification dated 09.04.1997, the petitioner and all other establishments except those exempted under this notification are liable to pay their contribution at the rate of 10%. It is further submitted that the petitioner is required to pay its contribution at the rate of 12% with effect from 22.09.1997 as the rate of contribution has been increased from 10% to 12% by virtue of Amendment of EPF Act by Amendment Act No.10 of 1998. It is urged that it is the mandatory duty of the establishments to deposit their PF contributions suo moto under the Act which the petitioner has violated. Also that, there is no requirement to issue any notice to any

particular establishment prior to issuing any notification by the Central Government under first proviso to Section 6 of the EPF Act. It is submitted that petition has no merit and is liable to be dismissed.

4. I have heard the arguments of the learned counsels for the parties and have perused the record.

5. The Act, which is called Employees' Provident Funds and Miscellaneous Provisions Act, 1952, had come into force in the year 1952. The necessity arose since it was found that through with the industrial growth, big employers had introduced certain schemes of provident funds for the welfare of their workers which were private and voluntary, the workers of the small employers, remained deprived of such type of benefits. In order to provide the benefits of provident fund which was already available to employees of big employers, in 1946, a Committee known as the Labour Investigation Committee was formed to investigate the functioning of the private schemes of provident funds adopted voluntarily by big employers for the benefit of their employees. In November, 1950, the Standing Labour Committee discussed the subject of provident fund for industrial workers and thereafter, the Government of India promulgated the EPF Act of 1952.

6. Section 1 of the Act reads as under:-

*“1. **Short, title, extent and application**—[(1) This Act may be called the Employees’ Provident Fund and Miscellaneous Provisions Act, 1952.]*

2. XXX XXX XXX

[(3) Subject to the provisions contained in Section 16, it applies—

(a) to every establishment which is a factory engaged in any industry specified in Schedule I and in which [twenty] or more persons are employed, and

(b) to any other establishment employing [twenty] or more persons or class of such establishments which the Central Government may, by notification in the Official Gazette, specify in this behalf:

Provided that the Central Government may, after giving not less than two months’ notice of its intention so to do, by notification in the Official Gazette, apply the provisions of this Act to any establishment employing such number of persons less than [twenty] as may be specified in the notification.]

4. XXX XXX XXX

5. XXX XXX XXX

7. This Act, therefore, made applicable to all the factories engaged in any industry specified in Schedule-I, where twenty or more persons were engaged and to other establishments which the Central Government may by notification in the Official Gazette specify in this behalf. All the establishments brought within the ambit of EPF Act can be termed as establishments constituting Category 'A'. Under the EPF Act, both the employee and the employer has to contribute in the fund which is called as provident fund. The rate of such payment is determined by Section 6 of the Act. Till the year 1962, there was a single rate of PF contribution for all the establishments covered under the Act of 1952 by virtue of Section 1(3) either by way of Section 3(a) or Section 3(b) of the Act 1952. In the year 1962, however, by the Amending Act, first proviso to Section 6 was introduced and two rates of PF contribution were introduced. Under Section 6, the rate of contribution at that time was '**six and a quarter percent**'. Under the proviso, the rate of contribution was **8%**. The proviso conferred power on Government to notify the establishments by way of notification after the enquiry, to which proviso to Section 6 of the Act of 1962 was applicable. The effect of introduction of this proviso was that while earlier all the establishments covered under the EPF Act (Section 1 of the Act), i.e.,

Category-A were required to pay the contribution at one rate, after the amendment the establishments notified under the proviso to Section 6 of EPF Act 1962 were required to pay their contribution at higher rate. The effect of introduction of proviso to Section 6 was that certain establishments from Category-A were notified to pay their contributions at higher rate and a new Category say Category-B was created. The remaining establishments of Category A which were to pay their contribution under Section 6 of the Act of 1962 can be termed as Category C. Category C and B together form Category A. Category C were paying contributions at the rates specified under Section 6 of the Act and Category B at the rate specified under first proviso to Section 6 of EPF Act, 1962. The Central Government, in exercise of its power under first proviso to Section 6 of 1962 had been issuing notifications from time to time, by which it used to pick up establishments from Category-A and putting them into Category-B. Thereafter, the EPF Act of 1962 was further amended in the year 1988 and the rate of contribution for the establishments falling in Category C was enhanced from 'six and a quarter percent' to 8.33% and for establishments falling under Category-B from 8.33% to 10%. The Government under the first proviso to Section 6 of Amended Act of 1988 issued four notifications bearing Nos. SO 360(E)

dated 17.05.1989, SO 1837 dated 29.06.1990, SO 627 (E) dated 31.08.1994 and SO 126(E) dated 01.03.1995, by which the establishments falling in Category-B were notified. The Government also issued the impugned notification No.S-35019/1/97-SS. II, dated 09.04.1997 under first proviso to Section 6 of the Amended Act of 1988. Vide this impugned notification, earlier notifications dated 17.05.1989, 29.06.1990, 31.08.1994 and 01.03.1995 were superseded and thereby repealed. The notification reads as under:-

Appendix III

NOTIFICATIONS UNDER THE ACT AND THE SCHEMES

Ministry of Labour, F. No.-S-35019/1/97-SS.II dated April, 9, 1997—
In exercise of the powers conferred by the first proviso to Section 6 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1958 (19 of 1952) and in supersession of the notifications specified in Schedule I to this notification except as respects things done or omitted to be done before such suppression, the Central Government after making necessary inquiry into the matter hereby specifies with effect from the first day of May, 1997 every establishment and class of establishments other than those specified in Schedule II, to which the said proviso shall apply, the words 'eight and one-third percent at both the places where they occur, the words "ten percent" shall be substituted.

Schedule-I

- (i) *S.O. No. 360 dated the 17th May, 1989*
- (ii) *S.O. No. 1837 dated the 29th June, 1990*
- (iii) *S.O. No. 627(E) dated the 31st August, 1994*
- (iv) *S.O. No. 126(E) dated the 1st March, 1995*

Schedule-II

Establishments to which the first proviso to Section 6 shall not apply:

- (i) *Any establishment in which less than twenty persons are employed:*
- (ii) *Any sick industrial company as defined in clause (o) of sub-section (1) of Section 3 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986) and which has been declared as such by the Board for Industrial and Financial Reconstruction established under Section 4 of the Act, for the period commencing on and from the date of registration of the reference in the Board and ending either on the date by which the net worth of the said company becomes positive in terms of the orders passed under sub-section (2) of Section 17 of that Act or on the last date of implementation of the scheme sanctioned under Section 18 of the Act.*
- (iii) *Any establishment which has at the end of any financial year accumulated losses equal to or exceeding its entire net worth that is, the sum total of paid-up capital and free reserves and has also suffered cash losses in such financial year and the financial year immediately preceding such financial year.*

Explanation.—For the purposes of clause (iii) “cash loss” means loss as computed without providing for depreciation;

- (iv) *Any establishment in the—*
 - (A) *Jute industry;*

- (B) *Beedi industry;*
- (C) *Brick industry;*
- (D) *Coir industry other than the spinning sector; and*
- (E) *Gaur gum factories.”*

8. One of the grounds of challenge is that it is a negative notification amounts to excessive use of the delegation of power and neither the petitioner was consulted nor the necessary enquiry into the matter, which the Government was required to do before issuing the notification under first proviso to Section 6 of the Act, was made.

9. To substantiate its arguments, the learned counsel for the petitioner has also made a reliance on the Supreme Court’s findings in the case of **State of Tamil Nadu and Ors.. vs. K. Shyam Sunder and Others** JT 2011 (9) SC 166, wherein the Supreme Court has crystallized the law to the effect that whenever the Legislature wants to delegate its power in respect of the implementation of the law enacted by it, it must provide sufficient guidelines, conditions, on fulfillment of which, the Act would be enforced by the delegatee and where the Act has already come into force, such a power cannot be exercised just to nullify its commencement thereof.

10. The learned counsel for the respondents has urged that the necessary enquiry as required before promulgation of the notification had been done

by the Government and that there was no requirement of giving personal hearing to each and every establishment before issuing such notification.

11. I have given careful consideration to the rival arguments. Learned counsel for the petitioner has failed to point out any requirement of personal hearing of the each and every establishment before issuance of notification, under first proviso to Section 6 of the EPF Act 1988. The findings of the Supreme Court in the case of K. Shyam Sunder (*supra*) have no bearing on the facts of the present case. In the present case, the Act has itself delegated the power on the Government to issue a notification under first proviso to Section 6 of the EPF Act of 1988. Since the relevant provision itself requires that before issuing such notification, necessary enquiry be made into the matter, it cannot be said that unfettered powers have been delegated. The impugned notification dated 09.04.1997 also in no way supersedes the Act, rather it furthers the aim and object of the EPF legislation. The notification also cannot be termed as 'a negative notification' and cannot be discarded on the ground that it ought to have been positive in the sense that it ought to have enclosed the list of establishments which it intends to include within its ambit. It certainly is a positive notification as it brings into its ambit every establishment and class of establishments to which this Act of 1988 applies

by virtue of Section 1(3) of the Act and exempts from the operation only those establishments or class of establishments which are specified in Schedule-II. The effect of the notification was that all the establishments of Category-A were notified to pay the contribution at higher rate and thus became part of Category-B (excepting those covered by Schedule-II of notification which remained part of Category C). Thus, this notification also encloses within it the list of establishments which is the same notified by the Government under Section 1(3) of the Act. The Government had issued this notification in exercise of its delegated powers under first proviso to Section 6 of the Act of 1988, so the notification, issued in exercise of the express powers cannot be termed as a notification issued without any authority or power. The petitioner being covered by the provisions of EPF Act, the notification is binding on it. Even otherwise, during the course of arguments, the learned counsel for the petitioner, under instruction, had accepted the liability to pay the PF contribution at the rate of 10%. In terms of the impugned notification, petitioner is certainly liable to pay its PF contribution at the rate of 10% with effect from 01.05.1997.

12. Another leg of arguments addressed by the learned counsel for the petitioner is that, after the amendment in the EPF Act of 1988 by

Amendment Act No. 10 of 1998, a new Act had come into force with effect from 22.09.1997 and so the notification dated 09.04.1997 ceased to exist and till a notification is issued by Government under first proviso to Section 6 of Amendment Act of 1998, their liability to pay the PF contribution under Section 6 of the Act is at the rate of 10% and not at the rate of 12% under first proviso to Section 6 of the Act of 1998. The question for consideration, therefore, is whether after the amendment under Section 6 of EPF Act 1988 by the Amendment Act No. 10 of 1998, whereby the only amendment has been made in the rates of contribution and rate 8.33% was enhanced to 10% under Section 6 rate of 10% is enhanced to 12% under first proviso to Section 6, the Government is required to issue fresh notification under first proviso to Section 6 of Amendment Act 1998 before it can be said that the establishments notified under Section 1(3) of the Act, including the petitioner, are covered under the first proviso to Section 6 of Amended Act of 1998.

13. Section 6 of EPF Act 1988, reads as under:-

“6. Contributions and matters which may be provided for in Schemes.—

The contribution which shall be paid by the employer to the Fund shall be (eight and one-third per cent) of the basic wages, [dearness allowance

and retaining allowance (if any)], for the time being payable to each of the employees (whether employed by him directly or by or through a contractor) and the employee's contributions shall be equal to the contribution payable by the employer in respect of him and may, [if any employee so desires, be an amount exceeding eight and one-third per cent of his basic wages, dearness allowances and retaining allowance (if any), subject to the condition that the employer shall not be under an obligation to pay any contribution over and above his contribution payable under this section.]

*Provided that in its application to any establishment or class of establishments which the Central Government, after making such inquiry as it deems fit, may, by notification in the Official Gazette specify, this section shall be subject to the modification that for the words "**eight and one-third per cent**", at both the places where they occur, the words "**ten per cent**" shall be substituted;]*

14. By Amendment Act No.10 of 1998, which came into force with effect from 22.09.1997, the amendments in Section 6 were done. It reads as under:-

"6. Contributions and matters which may be provided for in Schemes.—The contribution which shall be paid by the employer to the Fund shall be (**ten per cent**) of the basic wages, [dearness allowance and retaining allowance (if any)], for the time being payable to each of the employees (whether employed by him directly or by or through a contractor)] and the employee's

contributions shall be equal to the contribution payable by the employer in respect of him and may, [if any employee so desires, be an amount exceeding [ten per cent] of his basic wages, dearness allowance and retaining allowance (if any), subject to the condition that the employer shall not be under an obligation to pay any contribution over and above his contribution payable under this section.]

*[Provided that in its application to any establishment or class of establishments which the Central Government, after making such inquiry as it deems fit, may, by notification in the Official Gazette specify, this section shall be subject to the modification that for the words [**“ten per cent”**], at both the places where they occur, the words [**“twelve per cent”**] shall be substituted;]*

15. The effect of Amendment is that Section 6 as it stood in the Amendment Act of 1988 was repealed by the Amendment of the year 1998 and the provisions of Section 6 were re-enacted. From the reading of Section 6 and its proviso of 1988 Act and the present Amended 1998 Act, it is apparent that the amendment relates only to the rates of contribution under Section 6 and its first proviso. In Section 6, the rates were substituted from 8.33% to 10% and under first proviso from 10% to 12% respectively. Besides that, no other change was introduced in the provision. Now, the question is, what is the effect of such an amendment on the notifications issued previously before the amendment under the repealed Act. This is not

the case where the whole Act had been repealed. Only amendment done was in the rate of contributions.

16. Section 6 and 6A of the General Clauses Act deals with the effect of repeal of an Act. It reads as follows:-

“6. Effect of repeal.—Where this Act, or any [Central Act] or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not—

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d) XXX XXX XXX

(e) XXX XXX XXX

Section 6A: Repeal of Act making textual amendment in Act or Regulation.

Where any [Central Government] or Regulation made after the commencement of this Act repeals any enactment by which the text of any [Central Government] or Regulation was amended by the express omission, insertion or substitution or any matter, then, unless a different intention appears, the repeal shall not affect the continuance of any such amendment made by the enactment so

repealed and in operation at the time of such repeal.]

The repeal, therefore, does not affect any obligation or liability under repealed Act and the liability continues. Section 24 of the General Clauses Act further clarifies it.

17. Section 24 of the General Clauses Act reads as under:-

“24. Continuation of orders, etc., issued under enactments repealed and re-enacted.—Where any [Central Act] or Regulation, is, after the commencement of this Act, repealed and re-enacted with or without modification, then, unless it is otherwise expressly provided any [appointment notification,] order, scheme, rule, form or bye-law, [made or] issued under the repealed Act or Regulation, shall, so far as it is not inconsistent with the provisions re-enacted, continue in force, and be deemed to have been [made or] issued under the provisions so re-enacted, unless and until it is superseded by any [appointment notification,] order, scheme, rule, form or bye-law, [made or] issued under the provisions so re-enacted [and when any [Central Act] or Regulation, which, by a notification under section 5 or 5A of the Scheduled Districts Act, 1874, (14 of 1874) or any like law, has been extended to any local area, has, by a subsequent notification, been withdrawn from the re-extended to such area or any part thereof, the provisions of such Act or Regulation shall be deemed to have been repealed and re-enacted in such area or part within the meaning of this section].”

18. On conjoint reading of both the Sections, it is apparent that any order passed/notification issued under the repealed Act, if not inconsistent with the provisions of re-enacted Act, shall be deemed to have been passed or issued under the provisions so re-enacted unless and until it is superseded. This has been done in order to avoid a vacuum which could be created by repeal of an Act by an Amended Act. Learned counsel for the petitioner has failed to point that notification dated 09.04.1997 issued under the repealed Act of 1988 is in any way inconsistent to Amended Act of 1998. He has also failed to bring to my notice any provision of Amended Act of 1998, which supersedes the notification dated 09.04.1997 or expressly de-notify or repeal notification dated 09.04.1997. Since there is no automatic cessation of a notification issued under the repealed Act on its amendment, it cannot be said that the notification dated 09.04.1997 post its application. My view gets support from the findings of Supreme Court in the case of Neel alias Niranjan Majumdar vs. State of West Bengal (1972) 2 SCC 668. The relevant paragraphs read as under:-

“8. Section 6(b) of General Clauses Act, however, provides that where any Central Act or regulation made after the commencement of the Act repeals any earlier enactment, then, unless a different intention appears, such repeal shall not "affect the

previous operation of any enactment so repealed or anything duly done or suffered thereunder". Section 24 next provides that where any Central Act is repealed and re-enacted with or without modification, then, unless it is otherwise expressly provided, any notification issued under such repealed Act shall, so far as it is inconsistent with the provisions re-enacted, continue in force and be deemed to have been made under the provisions so re-enacted unless it is superseded by any notification or order issued under the provisions so re-enacted. The new Act nowhere contains an intention to the contrary signifying that the operation of the repealed Act or of a notification issued thereunder was not to continue. Further, the new Act re-enacts the provisions of the earlier Act, and Section 4 in particular, as already stated, has provisions practically identical to those of Section 15 of the earlier Act. The combined effect of Sections 6 and 24 of the General Clauses Act is that the said notification of 1923 issued under Section 15 of the Act of 1878 not only continued to operate but has to be deemed to have been enacted under the new Act.

19. It has been urged by the learned counsel for the petitioner that the intention of the Legislature, while amending Section 6 and retaining the first proviso, is that a fresh notification was needed to be issued under first proviso to Section 6 of Amended Act of 1998 and that in past also when Section 6 along with its first proviso was amended in the year 1988, fresh notifications, including the impugned notification dated 09.04.1997 were issued by Government under the proviso, listing the establishments liable to

pay the enhanced rate of PF contribution. It is further argued that if the intention of the Legislature was to bring all the establishments within the ambit of proviso to Section 6 of the Act of 1998 requiring them to pay contribution at the rate of 12% then there was no occasion for Legislature to retain the proviso.

20. There is no doubt that after Section 6 of the EPF Act was further amended in the year 1988, several notifications dated 17.05.1989, dated 29.06.1990, 31.08.1994 and 01.03.1995 were issued under the first proviso to Section 6 from time to time. The notification dated 09.04.1997 was also issued by the Government under first proviso to Section 6 after amendment of 1988. These notifications were issued by the Government in its wisdom as per the necessity felt. By the notification dated 09.04.1997 all the previous notifications four were repealed and as already discussed the effect of the notification was that all the establishments notified under Section 1(3) of the Act, i.e., falling in Category A, except those shown in Schedule-II were brought within the ambit of first proviso to Section 6 of Amended Act of 1988 and were required to pay the contribution at rate of 10%. After the amendment of 1998, all these establishments, paying contribution at the rate of 10% were liable to pay it now at the rate of 12%. The Government, by

retaining the first proviso to Section 6 on amendment, is still empowered to issue notifications and it can still, by issuing fresh notifications, add, amend, vary or rescind, any establishment from the liability to pay enhanced rate of contribution. Even otherwise, this Act has been enacted for the welfare of the industrial workers and it is the part of the welfare scheme of the Government and since it is a beneficial piece of Social Welfare Legislation aimed at promoting and securing the well being of the employees, the Court refrains itself from adopting the narrow interpretation which will have the effect of defeating the very object and purpose of the Act. (**Andhra University vs. Regional Provident Fund Commissioner of Andhra Pradesh and Ors:** AIR 1986SC463. Also, once any notification has been issued under the authority conferred on the Government by a statute, such notifications like statutory rules form part of the statute itself and remain on the statute till repealed. In the present case, the notification dated 09.04.1997, which was issued by the Government under the authority it possessed by virtue of first proviso to Section 6 of amended Act of 1988, then on the amendment of the Act in 1998, it had become part of the amended Act of 1998 and continue to remain its part till repealed/amended by the Government in exercise of powers under first proviso to Section 6 of Amended Act of 1998.

21. The petitioner's plea that it was never asked to pay his PF contribution at the rate of 10% after the promulgation of the impugned notification dated 09.04.1997 and at the rate of 12% after the Amendment of the Act 1998, has no force in it since under the Act it was/is the statutory duty of the petitioner to pay its contribution, as per the rules.

22. For the foregoing reasons, I find no force in the pleas of the petitioner and find no merit in the writ petition. The petitioner is directed to deposit the entire arrears within four weeks from today and then continue to pay its contribution regularly without default. The petition is hereby dismissed with these directions.

No order as to costs.

AUGUST 19, 2015
BG

DEEPA SHARMA
(JUDGE)