

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION (L) NO. 23 OF 2007

Bhilai Mahila Samaj, registered under M.P. Societies Registration Act and deemed to be registered under the Chhattisgarh Societies Registration Act, 1973, with its Head Office at Udyog Kendra Centre, Sector-4, Bhilai Nagar, District Durg (C.G.) (through: Secretary)

... Petitioner

versus

1. Union of India, through: Secretary, Govt. of India, Ministry of Labour, Shashtri Bhavan, New Delhi.
2. Employees Provident Fund Organization, through Regional Provident Fund Commissioner, Regional Office at Block-D, Scheme No.32, Indira Vyavsayik Parisar, Pandri, Raipur (C.G.)
3. Shri B. Padhan, Regional Provident Fund Commissioner, Regional Office at Block-D, Scheme No.32, Indira Vyavsayik Parisar, Pandri, Raipur (C.G.)
4. Bhilai Shramik Sabha, Block No.14/E, Road No.9, Sector-2, Bhilai Nagar, District Durg (C.G.), presently at : Quarter No.16-D, Street-38, Sector-7, Bhilai Nagar, Durg (C.G.) (Through: Shri R.K. Yadav, General Secretary).
5. Smt. Mohini Tarang, C/o Bhilai Mahila Samaj, Udyog Kendra Centre, Sector-4, Bhilai Nagar, District Durg (C.G.)

... Respondents

For Petitioner	:	Dr. Saurabh Pandey, Advocate.
For Respondents	:	None appears.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

16/01/2018

1. By way of the present writ petition, challenge is to the order dated 20.11.2006 (Annexure P-15) passed by the Regional Provident Fund Commissioner, Raipur.
2. Vide the impugned order, in a proceeding under Clause 26-B of the Employees' Provident Fund Scheme, 1952, the learned Commissioner has ordered that the workers called 'associate members' are all employees of the Bhilai Mahila Samaj and they would also be entitled for the benefits under the Provident Fund Scheme and Act with effect from April, 1984 onwards.

3. Contention of the learned Counsel for the Petitioner-Society is that it is a case where the associate members are not provided employment on regular basis. He submits that it is a case where the engagement of the associate members depends upon the nature of work awarded by the Bhilai Steel Plant to the Bhilai Mahila Samaj and in accordance with the nature of work allotted, the associate members are engaged and all these engagements are purely periodical considering the nature and quantity of work. He further submits that even otherwise these people do not enjoy the status of an employee as they are also the members of the said Samaj and they form part and parcel of the said Society and they also have an equal say on the management of the Society and as such there is no employer-employee relationship between the associate members and the Petitioner-Society.

4. At this juncture, learned Counsel for the Petitioner submits that subsequent to the impugned order having been passed, the Petitioner-Society is duly complying with the orders and there is no grievance subsequent to the order being passed.

5. He fairly submits that in the light of the decision of the Hon'ble Supreme Court in the case of **Shri Mahila Griha Udyog Lijjat... Vs. Union of India and Another, 1999 (6) SCC 38**, the effect of the order so far as it being given a retrospective effect may be modified and the order may be made effective only prospective. He submits that subsequent to the impugned order being passed, there is no default on the part of the Petitioner-Society so far as the compliance of the provisions of the Employees' Provident Fund Act as also under the Employees Provident Fund Scheme.

6. He further submits that even otherwise the impugned order giving it a retrospective effect would not be proper for the reason that the associate

members keep changing periodically many must have already expired and many must have been engaged for a short period of time without there being any continuity and as such there would be a great difficulty so far as the quantification of contribution is concerned and the adjustment would be next to impossible for the retrospective effect.

7. In spite of proper service being made upon the Respondents, there does not seem to be any representation on behalf of the Respondents for a couple of occasions now.

8. This Court therefore proceeds to decide the case considering the fact that it is a writ petition of more than 10 years old and thus this Court proceeds to decide the same in absentia of any representation on behalf of the Respondents.

9. Considering the submissions made by the learned Counsel for the Petitioner where he fairly admitted the fact that the provisions of the Employees' Provident Fund Act and Scheme being duly complied with prospectively, this Court is of the opinion that it is a fit case where the judgment of the Hon'ble Supreme Court in **Shri Mahila Griha Udyog** (supra), can be applied with full force. Therefore, applying the same analogy and ratio, this Court is of the opinion that the impugned order under challenge, *i.e.*, order dated 20.11.2006 (Annexure P-15) will have a prospective effect and so far as the order being given a retrospective effect is concerned the same stands set aside/quashed.

10. The writ petition thus stands partly allowed and disposed of accordingly.

Sd/-
(P. Sam Koshy)
Judge