BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON: 14.03.2018
ORDER DELIVERED ON: 04.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE **G.R.SWAMINATHAN**

W.P.(MD)Nos.3437 and 3438 of 2018
and
W.M.P.(MD)Nos.3572 to 3577 of 2018

Tamil Nadu Generation and
Distribution Corporation Ltd,
(Formerly Known as Tamil Nadu
Electricity Board) Represented by
Superintending Engineer,
Virudhunagar Electricity Distribution Circle,
Virudhunagar. ... Petitioner in W.P(MD).No.3437 of 2018

Tamil Nadu Generation and
Distribution Corporation Ltd,
(Formerly Known as Tamil Nadu
Electricity Board) Represented by
Chief Engineer,
Distribution Madurai Region,
Madurai. ... Petitioner in W.P(MD).No.3438 of 2018

-Vs-

1. The Central Provident Fund Commissioner,
   Bhavishya Nidhi Bhawan,
   14, Bhikaji Cama Place,
   New Delhi-110 066.

2. The Regional Provident Fund Commissioner,
   Office of the Regional Provident Fund,
   Organization, Bhavishya Nidhi Bhawan,
   No.1, Lady Doak College Road,
   Madurai-625 002.

3. The Enforcement Officer,
   District Officer, AKM Complex,
   Old Virudhunagar Road,
   Sivakasi-626 189. ..Respondents in W.P.(MD)No.3437 of 2018

1. The Central Provident Fund Commissioner,
   Bhavishya Nidhi Bhawan,
   14, Bhikaji Cama Place,
   New Delhi-110 066.



2. The Regional Provident Fund Commissioner,
   Office of the Regional Provident Fund,
   Organization, Bhavishya Nidhi Bhawan,
   No.1, Lady Doak College Road,
   Madurai-625 002.

3. The Assistant Provident Fund Commissioner (C&R),
   Office of the Regional Provident Fund Organization,
   Bhavishya Nidhi Bhawan,
   No.1, Lady Doak College Road,
   Madurai-625 002. ..Respondents in W.P.(MD)No.3438 of 2018

COMMON PRAYER:Writ Petitions are filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, forbearing the Respondents from enforcing the provisions of the Employees Provident Funds and Miscellaneous Provisions Act against the petitioners establishment in the light of Section 16 (1)(c) of the EPF Act.

For Petitioner : Mr.Mr.AL.Somayaji
Senior counsel for Ms.P.Malini
(for both petitions)
For Respondents : Mr.K.Muralisankar
(for W.P.(MD)No.3437 of 2018)
For Respondents : Mr.Venkateshwaran
(for W.P.(MD)No.3438 of 2018)

**COMMON ORDER**

The Tamil Nadu Generation and Distribution Corporation Limited is the petitioner in both these Writ Petitions.

2.The Superintending Engineer, Virudhunagar Electricity Distribution circle is the petitioner in W.P.(MD).No.3437 of 2018. In W.P.(MD).No.3438 of 2018 the Chief Engineer, Distribution, Madurai Region is the petitioner. The issue raised in both these Writ Petitions is one and the same.

3.The case of TANGEDCO is that it is a Government undertaking. The Madras State Electricity Board was constituted under the provisions of Electricity supply Act on 01.07.1957. The Government servants of the then Government of Madras working in the Electricity Department were transferred to the Madras State Electricity Board. The employees of the Board were enjoying either pension under the liberalised pension scheme or contributory provident fund. The Board used to engage contractors for carrying out certain project works. The contract workers were expected to mobilise the required man power and get the work done by them. Such contract workers were demanding absorption and regularisation. A large number of such contract workers who were absorbed and regularised from 1991, are getting the benefit of pension / contributory pension from the date on which they were absorbed.

4.Since the contract labour engaged by the Board were not covered by any scheme, the Regional Provident Fund Commissioner of Chennai and Pondicherry summoned the Chairman of the Board to appear before him to determine the amount due from the Board under Section 7A of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952, in respect of the contract workers. The said proceedings were challenged in W.P.(MD).Nos.43867 and 43868 of 2006. In the mean while, the petitioner had taken steps seeking exemption from the application of the Act. The said Writ Petitions were dismissed on 21.03.2007. Aggrieved by the same, the Writ Appeals in W.A.Nos.887 and 888 of 2007 were filed. The Writ Appeals were also dismissed on 13.07.2007. The Hon'ble Supreme Court also dismissed Civil Appeals on 20.07.2017. The dismissal by the Hon'ble Supreme Court was on 20.07.2017. Since the challenge regarding the initiation of action by the Provident Fund Authorities failed, the orders determining contribution under Section 7A of the Act made between 02.02.2005 and 06.12.2007 were sought to be enforced. The Provident Fund Authorities had made it clear to the petitioners that if the contributions are not remitted within the stipulated time, coercive measures will be taken.

5.In the mean while, the petitioners were advised that in view of amendment of Section 16 of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952, with effect from 01.08.1988, the provisions of the Act cannot be extended to TANGEDCO. Hence these two Writ Petitions have been filed for forbearing the respondents from enforcing the provisions of Employees' Provident Fund and Miscellaneous Provisions Act, 1952, against the petitioner Establishment.

6.Heard the learned Senior Counsel appearing for the petitioners and the learned Standing Counsel appearing for the respondents.

7.The learned Senior counsel appearing for the petitioners submitted that there cannot be any estoppel in these matters. Only because the petitioners had participated in the enquiry held under Section 7(A) of the Act, the same cannot be put against them. He also contended that the present Writ Petitions cannot be said to be not maintainable, merely because the earlier round of litigations culminated to the prejudice of the petitioner in Civil Appeal Nos.7516 and 7517 of 2009 dated 20.07.2017. This was because, the issue of applicability of the Act was not raised or gone into in the said earlier round of litigation.

8.The learned Senior Counsel pointed out that since the petitioners' establishment was not covered in view of Section 16 (1) (c) of the Act, the mandamus sought for ought to be granted. He would contend that Section 16(1)(c) of the Act set out two eligibility criteria.

(i).The first one is that the establishment in question should have been set up under any Central, Provisional or State Act. In this case, the petitioner was indeed set up under a central statute.

(ii).The second condition is that its employees must be entitled to the benefits of contributory provident fund or old age pension in accordance with any scheme or rule framed under that act governing such benefits.

9.In this case, the regular employees of the petitioners' establishment are admittedly entitled to such benefits. Since both these two criteria stood satisfied even as early as on 31.07.1988, the Act ceased to apply with effect from 01.08.1988. The learned Senior Counsel would also argue that in view of the inapplicability of the statute itself with effect from 01.08.1988, the amendment to Section 2(f) of the Act, by which the contract workers were included, would not make the Act applicable to the petitioners' Establishment.

10.The learned senior counsel would contend that the issue on hand is no longer *res integra*. According to him, the case on hand is clearly covered by the decision of the Hon'ble Supreme Court reported in ***2017 (5) SCC 579-(Yeshwant Gramin Shikshan Sanstha Vs. Assistant Provident Fund Commissioners and others).*** He also drew the attention of this Court to the counter affidavit filed by the learned Standing Counsel on behalf of the respondents.

11.The learned Standing counsel appearing for the respondents submitted that the petitioner is re-litigating the matter after losing the battle before the Hon'ble Supreme Court. He also submitted that this Court should adopt such construction or interpretation which would serve the interest of the workmen. He wanted this Court to dismiss both these Writ Petitions.

12.This Court bestowed its anxious consideration to the rival submissions.

13.The case of the petitioners is centred on Section 16(1) (c) of the Act. The said provision reads as under:-

16.Act not to apply to certain establishments.-[(1) This Act shall not apply-

(a).......

(b).......

"(c)to any other establishment set up under any Central, Provincial or State Act and whose employees are entitled to the benefits of contributory provident fund or old age pension in accordance with any scheme or rule framed under that Act governing such benefits."

14.The said provision contains two conditions. If both the conditions are fulfilled, the Act will not apply to the establishment in question. It is not in doubt that the first condition is fulfilled in the present case. The petitioner is an establishment set up under a Central Act. There can be no doubt about it. The only point is whether the second condition enshrined in Section 16 (1) (c) of the Act is also fulfilled or not. The second condition is that the employees of the establishment must be entitled to the benefits of the contributory provident fund or old age pension in accordance with any scheme governing such benefits. The statutory language is very clear and unambiguous. The expression used is "Whose employees are entitled to". It means that all the employees of the establishment must be entitled to the benefits in question. The expression "employee" is defined under Section 2(f) of the Act. It reads as follows:-

"(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;]

It thus includes a contract labour also. In fact, it is an expansive definition. It includes any person employed by or through a contractor or in connection with the work of establishment. This amendment was brought out by Act 33 of 1988. Even earlier also, a contract labour was within the definition of the term "employee". In any event, this amendment was also made with effect from 01.08.1988. In other words, both Section 2(f) of the Act as well Section 16 were amended by Act 33 of 1988. Therefore, this Court rejects the contention of the petitioner that if once it is held that the Act will not apply to the establishment in question, this Court should not take note of the amendment made to Section 2(f) of the Act. Since the amendment to both the provisions were made by the same Amending Act, Section (16) (1) (c) of the Act will have to be interpreted only in the light of Section 2(f) of the Act. It is conceded that only the regular employees of establishment are entitled to the benefits in question. The contractor workers are admittedly not entitled to the benefits in question. Therefore, the second condition set out in Section 16(1) (c) of the Act is not satisfied. Therefore, this Court will have to necessarily hold that the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 will very much apply to the petitioners' establishment. It is true that the decision of the Hon'ble Supreme Court reported in ***2017 (5) SCC 579-(Yeshwant Gramin Shikshan Sanstha Vs. Assistant Provident Fund Commissioners and others)*** appears to be favouring the writ petitioners. However, on a closer scrutiny of the factual matrix obtaining in the case before the Hon'ble Supreme Court, this Court can very well come to the conclusion that the case on hand is clearly distinguishable. That was a registered Society employing over 1151 employees which clearly fell within Section 16 (1) (b) of the Act. The said Society also engaged 16 part time employees. 1151 employees were entitled to the benefits in question whereas 16 part time employees were left out and were not conferred with the said benefits. The question arose whether the Act can be applied to the said Society.

15.The Hon'ble Supreme Court held as follows:-

> “Once an establishment is covered under any one of the excepted category under Section 16 of the Central Act, the officials empowered by the Central Act will have no authority to proceed against such establishment; and more so on the ground that a miniscule number of employees (16 part-time employees) working in the establishment were not eligible for the benefits under the State Contributory Provident Fund Scheme governing the rest of the regular employees of the establishment.”

16.Such is not the case here. Since this Court has already held that the second condition laid down under Section 16 (1) (c) of the Act has not been fulfilled, the petitioners' contention that the Act is not applicable to them cannot be accepted. There is no merit in these Writ Petitions.

17.These Writ Petitions stand dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(T&P)

/True Copy/

Sub Assistant Registrar

To

1. The Central Provident Fund Commissioner,
   Bhavishya Nidhi Bhawan,
   14, Bhikaji Cama Place,
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   Bhavishya Nidhi Bhawan,
   No.1, Lady Doak College Road,
   Madurai-625 002.

+ 1 cc TO Mr.K.Murali Sankar , Advocate in SR No. 66759

tsg
AE/SV MMS/SAR1/12.06.2018/7P/6C

order made in
W.P.(MD)Nos.3437 and 3438 of 2018
**04.06.2018**