

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

WRIT PETITION No.9425 of 2007

ORDER:

The petitioners seek Writ of Mandamus declaring the action of the respondents in issuing the proceedings No.AP/30750 to 54 and 30757/Enf-I/T-5/2007 dated 13.04.2007 against the petitioners as arbitrary, illegal, discriminatory and without jurisdiction and consequently declare the petitioners' weaving work on handloom is not a specified item under Schedule-I of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (for short "EPF Act").

2a) The petitioners are weavers, having handlooms in their residential houses at Narayanpet, Mahabubnagar District from the times immemorial and eking out their livelihood. After weaving sarees and other cloth materials, they will sell the same at different places with different names. They receive orders sometimes in advance for weaving of sarees and other materials. When they have more work, they will take assistance of some of their relatives/fellow weavers. There is no continuity of weaving work therefore they have not employed any weavers on regular basis. The persons who attend for weaving are of skilled works such as colouring, sizing, warping, wafting, winding etc. and the said skilled work is a short period therefore no regular employment is needed in weaving of a cloth. Whenever they require the assistance of skilled workers, they take their

assistance and pay the amount for the work done. Therefore, there is no employer and employee relationship between them.

b) While-so, in the month of February, 1997 the Enforcement Squad of 2nd respondent visited their place and forced them to enroll as an Establishment under the provisions of EPF Act even though they have not employed any persons. The Enforcement Officer also demanded for production of records such as attendance registers, wage registers etc, for the last four years. The petitioners submitted that there are no such registers with them, as they have not employed as persons for weaving of sarees. The Enforcement Squad behind their back submitted a report to the respondents, covering the handlooms of the petitioners as an Establishment under the provisions of the EPF Act simply showing certain names as employees without their details. Basing on the said report, the 1st respondent issued proceedings dated 09.04.1997 and forced the petitioners to pay some amount towards EPF. The petitioners submitted their detailed representation dated 07.05.1997 stating that they have not employed any weavers and the persons who worked on their handlooms are only their fellow weavers. On receipt of representation of the petitioners, 2nd respondent passed orders, directing them to produce the records relating to employment of the weavers by 02.07.1997. The petitioners submitted that they have not employed any person and therefore no records are available with them. In spite of the said submission, the 2nd respondent issued notices directing the petitioners to produce attendance register etc. adjourning

the enquiry to 24.04.2001. It is submitted that respondents have not initiated any proceedings in respect of other weavers who are similarly placed with the petitioners.

c) Aggrieved by the action of the respondents in issuing the notices, the petitioners filed W.P.No.7696 of 2001 before the High Court, wherein it was observed that it is open for the petitioners to raise all the contentions before the 2nd respondent about the applicability of the EPF Act and till then no demand can be made for payment of any amount due but the respondents did not pass any orders.

Hence, the instant writ petition.

3) The respondents filed counter *inter alia* contending that the writ petition is not maintainable since alternative and effective statutory remedy of appeal is available to the petitioners before the Tribunal constituted under Section 7-I of the EPF Act.

4) Heard arguments of Sri M.Narender Reddy, learned counsel for petitioners and Smt.Danda Radhika, learned Standing Counsel for Employees Provident Fund Organization.

5) Having regard to the fact that petitioners have got an alternative, effective and efficacious remedy of appeal before the Tribunal under Section 7-I of the EPF Act, they can approach the said Appellate Authority.

6) In the result, this Writ Petition is disposed of directing the petitioners to approach the Appellate Tribunal under Section 7-I of the EPF Act within four(4) weeks from the date of this order challenging the impugned order by raising all the pleas that are legally permissible to them, in which case, the Appellate Tribunal shall pass an appropriate order on merits expeditiously. No costs.

As a sequel, pending miscellaneous petitions, if any, shall stand closed.

Date: 20.12.2018

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U.DURGA PRASAD RAO, J

