

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.10844 of 2011 (O&M)
Date of Decision: 20.12.2018

DAV Senior Secondary School (Lahore)

... Petitioner

Versus

Employees Provident Fund Appellate Tribunal,
New Delhi and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Rajiv Atma Ram, Senior Advocate with
Mr. Sube Sharma, Advocate and
Mr. Jaitej Mittal, Advocate,
for the petitioner.

Mr. Rajesh Hooda, Advocate,
for respondents No.2 & 3.

Mr. Ankur Malik, Advocate,
for respondent No.4.

Ms. Deepali Puri, Advocate,
for respondent No.6.

RAJIV NARAIN RAINA, J.

1. The DAV Senior Secondary School (Lahore) Sector-8, Chandigarh has approached this Court under Article 226 of the Constitution seeking a writ of certiorari quashing orders dated November 24, 2006 passed by the Assistant Provident Fund Commissioner, the order dated August 26, 2009 dismissing the review application filed by the petitioner-Establishment (henceforth “establishment”) and the further order passed by the Employees' Provident Fund Appellate Tribunal, New Delhi dated February 07, 2011 dismissing the appeal.

2. The dispute in this case relates only to non-teaching staff of the

establishment which comprise a total of 16 employees. The establishment receives 95% grant-in-aid since 1967 from the Chandigarh Administration. It is controlled by the DAV College Managing Committee, New Delhi under the aegis of DAV College Trust and Management Societies. The Trust is exempted under Section 17 (1) (a) of the Employees' Provident Fund & Miscellaneous Provisions Act, 1952 ("1952 Act"). Are these 16 non-teaching employees covered by the 1952, Act is the question to be answered.

3. The establishment asserts that it is under the control of the State Government (UT) and the affairs of the establishment are governed by rules and regulations framed by the Punjab Government and by the Chandigarh Administration. This is witnessed by the letter dated June 02, 1998 whereby the Education Secretary, UT, Chandigarh sent a letter to all the Principals of Government aided privately managed colleges and schools run in Chandigarh informing them of the decision to follow the rules and regulations issued by the State of Punjab in respect of their employees. The Central Government has issued rules called The Union Territories Government Aided Schools Teachers Contributory Fund-cum-Insurance-cum-Pension Rules, 1965 ("1965 Rules"). The teachers are in receipt of the Triple Benefit Scheme since April 22, 1971. Management was under liability to subscribe to the Contributory Fund of the teachers @8% and $1\frac{1}{3}^{\text{rd}}$ % of the pay of teachers, 5% of which will be credited to the individual Contributory Fund accounts and the balance 3 and $1\frac{1}{3}^{\text{rd}}$ % to be refunded to by the Government. Payment of gratuity and pension would be the responsibility of the Government.

4. The establishment was exempted under the 1952 Act since July 12, 1989 for a period of five years. Extension for a further period of one year was granted on December 06, 1994 to be further extended by two years vide notification dated November 21, 1995 ending 1998. Thereafter, the school is covered by the 1952 Act.

5. The Regional Provident Fund Commissioner, Chandigarh made a request to Chandigarh Administration vide its communication dated September 30, 1996 to issue directions to the managements of privately managed schools and colleges in the Union Territory of Chandigarh to report compliance of the various provisions of the Act and scheme or to submit applications for seeking exemption from 1952 Act, in case managements have their own Provident Fund rules/pension schemes for their employees. The Government of India, Ministry of Labour, New Delhi issued instructions in the year 2000 to all the regional and sub-regional offices of the EPF organization where the State Government had framed Provident Fund and pension schemes and the employees were getting benefits accordingly, the Act is not applicable to such aided schools/institutions.

6. The dispute began on January 18, 2005 when two non-teaching employees made a complaint to the authorities under the 1952 Act which led the RPFC to issue show cause notice to the establishment stating that it had violated the provisions of the 1952 Act. The establishment was summoned in August 2005 and filed a reply in December of the same year. Proceedings were initiated against the establishment under Section 7-A of the 1952 Act on the basis of the complaint beginning August 23, 2005 even

before the reply was received from the establishment. The establishment presented its statement of defence on January 09, 2006. A flying squad was sent by the RPFC to visit the establishment and verify facts. This happened on September 11, 2006. Accordingly, the squad calculated the dues in respect of non-teaching staff w.e.f. April 01, 1982 till date and submitted its report. Thereafter, a show cause notice dated September 12, 2006 was issued to the establishment calling it to explain why the amount of ₹23,37,741/- may not be assessed against it on the basis of Enforcement Officers' Report. The Assistant Provident Fund Commissioner determined a sum of ₹26,88,541/- w.e.f. April 01, 1982 onwards vide the first impugned order dated November 24, 2006. Establishment was directed to deposit the amount within 15 days of the receipt of order.

7. Aggrieved by the order, the establishment filed a review application under Section 7-B of the 1952 Act on January 09, 2007. The RPFC rejected the review application by the second impugned order dated August 26, 2009. Aggrieved, the establishment appealed to the Employees' Provident Fund Appellate Tribunal at New Delhi. The appeal has been dismissed by the third impugned order dated February 07, 2011. I would revert to the short order at the appropriate place. In these circumstances, the establishment has approached this Court challenging the orders.

8. The case of the establishment before the authorities and in appeal to the Tribunal was that their teaching and non-teaching staff are working on aided posts and getting the benefits of Contributory Provident Fund in accordance with the 1965 UT Rules. The establishment brought to the notice of the authorities that the provident fund of the non-teaching staff

had already been deducted regularly and the closing balance as on March 31, 2006 comes to ₹33,14,285/- for all these employees which is more than the amount assessed by the authority at ₹26,88,541/-. Further still, the establishment is exempted under Section 16 (1) (b) of the 1952 Act.

9. The learned Senior counsel Mr. Rajiv Atma Ram in the beginning of his address draws attention of the Court to the provisions of Section 16 (1) (b) of the 1952 Act and it is, therefore, reproduced:-

“16 (1) (b) to any other establishment belonging to or under the control of the Central Government or a State Government and whose employees are entitled to the benefit of contributory Provident Fund or old age pension in accordance with any Scheme or rule framed by the Central Government or the State Government governing such benefits; or”

Section 16 keeps out certain establishments from the applicability of the 1952 Act. Sub-Section (b) provides exemption to establishments belonging to or under the control of the Central Government or a State Government and whose employees are entitled to the benefit of Contributory Provident Fund or Old Age Pension in accordance with any scheme or rule framed by the Central Government or the State Government governing such benefits. To claim exemption the establishment must either belong to or be under the control of Central or State Government. The establishment does not belong to either Central Government or State Government.

10. The moot issue raised by Mr. Rajiv Atma Ram is that the establishment is under the control of the Central Government and regulated by Punjab State Government laws on subject matter. Therefore, there has

been much debate on the expression “under the control” for which he would refer to various provisions of law and precedents. His submissions in assailing the orders are based on the following grounds:-

11. The Establishment follows rules, regulations and policies framed or adopted by the State Government (UT) and thus the State Government exercises substantive control over the establishment. The employees of the establishment are in receipt of Contributory Provident Fund benefits as per the 1965 rules framed by the Central Government. Thus, the establishment is entitled to the benefit of Section 16 (1) (b) of the 1952 Act. The two conditions precedent in this section to claim exemption must be that the establishment either belongs to or is under the control of either the Central or State Government and, is a an establishment whose employees are entitled to the benefits of Contributory Provident Fund etc. in accordance with any scheme or rule framed by the Central Government for such benefits. The authorities have ignored this facet and thus the impugned orders are liable to be quashed.

12. It is contended that the respondent-Tribunal in case of *M/s. Sanjay Memorial Teachers Education Society, Nagpur v. RPFC, Maharashtra and others* (P-22) had held the petitioner - institution to be entitled to get the benefit of exemption under Section 16 (1) (b) of the 1952 Act and exclusion from the coverage of the Act due to the control of the State. The Tribunal has not followed its earlier view and applied it to this case. The Tribunal has failed to consider whether the establishment is under the control of the State Government even when its employees are entitled to the benefit of CPF according to 1965 Rules. The letter dated June 02, 1998

(P-2) issued by the Education Secretary, Chandigarh Administration would reveal that the following rules are applicable to privately managed schools which are the Punjab Civil Service Rules, Vol.-I Part-I, II and III; the rules/guidelines/instructions issued by the University Grants Commission, New Delhi in case of teaching staff of colleges; the Punjab Education Code and other notifications issued by the Punjab Government from time to time for deciding service matters and pay fixation cases of the teaching and non-teaching employees; the Punjab Privately Managed Recognized Schools/Colleges (Security of Service) Act, 1974 and any other rules/instructions issued by the Punjab Government in respect of aided schools/colleges issued from time to time as applicable to Union Territory Chandigarh. It is clear that the establishment is an aided school of UT Chandigarh and is controlled by it and is entitled to get the benefit of Section 16 (1) (b) of the 1952 Act and on this ground as well the order of the Tribunal deserves to be set aside as it does not consider the legal position obtaining from this law.

13. The action of the respondent-authorities after 24 years is not maintainable as a triable issue of limitation also arises. It is submitted that all other privately managed Government aided schools in UT Chandigarh follow the same regulations and are giving the same benefits as the present establishment, but no action has been taken against other institutions and, therefore, a pick and choose policy has been adopted by the EFP Organisation. The authorities have failed to understand that the establishment has already deposited amount in excess of the amount assessed by the APFC and, therefore, it sounds not only illogical but absurd

to insist on a lower amount for the non-teaching staff whose accounts are maintained in the Punjab National Bank at New Delhi.

14. The learned Senior counsel contends that a similar controversy also arose before this Court in CWP No.11717 of 2005 decided on October 07, 2005 in case, *M.R.S.D. Senior Secondary School, Shahzadpur v. Union of India and others*. The writ petition was allowed and the orders assessing amounts were quashed and the EPF organization was directed to refund the amount paid by the petitioner-Institution. Against that order, the RPFC filed SLP (CC) 2510/2006 which was dismissed on April 03, 2006. The Tribunal has ignored the earlier view taken by it which should have been followed. This is an additional ground on which the impugned orders are liable to be set aside.

15. Mr. Rajiv Atma Ram brings to the notice of this Court that the establishment has already deposited under protest an amount of ₹18,81,979/- on June 21, 2011, ₹14,17,619/- on December 22, 2011 and ₹13,87,834/- on June 23, 2012 with RPFC Chandigarh totalling ₹46,87,432/-.

16. Next, he refers to the relevant provisions of The Punjab Privately Managed Recognized Schools Employees Security of Service Act, 1979 to bring his case within the purview of Section 16 (1) (b) contending that the establishment functions under the control of the Government. A privately managed recognized school has been defined in Section 2 (g) of the 1979 Act as follows:-

“(g) "privately managed recognised school" means a school, which is not run by the Central Government, the State Government, a local authority or any other

authority designated or sponsored by the Central Government, State Government or local authority, as the case may be, and is recognised by the State Government for imparting pre-primary, primary middle, high and higher secondary education or training below the degree level, but does not include an institution which imparts technical education;”

17. Section 3 of this Act regulates the terms and conditions of service of employees. Section 4 deals with dismissal, removal etc. of employees which cannot be done except with the prior approval of the Director and his orders are appealable to the School Tribunal. The establishment cannot suspend an employee for a period exceeding six months without the prior approval of the Director as per Section 5. Section 6 prescribes that every employee is governed by Code of Conduct as may be prescribed. Section 7 regulates the salaries of employees which shall not be less than those of the employees of the State Government holding corresponding posts in schools run by the State Government. If they are less, the Director can bring them at par with the employees of State Government. Non-compliance with orders or directions may lead to stoppage of grant-in-aid (Section 11). Failure to carry out any orders made by the School Tribunal are punishable with imprisonment for a term which may extend to three months or a fine which may extend to ₹1000/- or with both. Section 16 repeals the Punjab Aided Schools (Security of Service) Act, 1969 but saves action taken thereunder.

18. Mr. Rajiv Atma Ram then dwells on the provisions of the Punjab Privately Managed Recognized Schools Employees (Security of Service) Rules, 1981. Rule 22 deals with Provident Fund and reads as

follows:-

*“[22. **Provident Fund.** - (1) Every managing committee of a privately managed recognised school shall establish Provident Fund for the employees of such school who, -*

(i) had attained the age of superannuation before the 5th day of February, 1987; and

(ii) opt to remain out of the Scheme as provided under rule 22-A.

(2) An employee referred to in sub-rule (1) shall be entitled to contribute to Provident Fund established or to be established by the managing committee at such rate as may be specified by the Government from time to time :

Provided that an employee who is governed by the provisions of the Scheme shall contribute towards the General Provident Fund in accordance with the provisions thereof.

(3) The standard Provident Fund rules as contained in Appendix III of the Punjab Educational Code, Twelfth Edition, 1956, shall mutatis mutandis apply to the Provident Fund of the employees.]”

Rule 22-A deals with retirement benefits and reads as under:-

*“[22A. **Retirement Benefit.** - The Government shall make a scheme for the grant of retirement benefits to the employees of the privately managed recognised schools who, -*

(a) are appointed to the aided posts on or after the 5th day of February, 1987; and

(b) were working on aided posts on the 5th day of February, 1987:

Provided that the provisions of the Scheme so made shall not apply to the employees who retired from such posts before the 5th day of February 1987;

Provided further that the employees who were

appointed to the aided posts, -

(i) before the 5th day of February, 1987, and who have attained or will attain the age of superannuation on or after that date; and
(ii) on or after the 5th day of February, 1987, but before the date of commencement of the Punjab Privately Managed Recognised Schools Employees (Security of Service) (First Amendment) Rules, 1991;
shall have the right to exercise option within a period of four months from the date of publication of the Scheme to be or not to be governed by the provisions of the Scheme.]”

19. To further show that aided schools in Chandigarh controlled by or belonging to Government, where a scheme or rule framed by Government is applicable, are exempted under Section 16 (1) (b) of 1952 Act, he refers to case law precedent in Regional Provident Fund Commissioner v. Sanatan Dharam Girls Secondary School and others, (2007) 1 SCC 268. There the Supreme Court dealt with the provisions of Section 16 (1) (b) (c) and (d) of the 1952 Act as substituted by the 1988 amendment in the context of the provisions of the Rajasthan Non-Government Educational Institutions Act, 1989 exempting educational establishments belonging to or controlled by Government and recognized or aided educational institutions by the State of Rajasthan are covered by the term “establishment belonging to or under the control of” Government and are entitled to exemption. The 1952 Act itself provides for exemption for those establishments having their own equivalent schemes or rules providing equal benefit as provided by the Act. The Supreme Court held that the State Act is a complete code in itself. Government exercises substantive control over the institutions even though

the same are not owned by it. The Supreme Court distinguished its earlier precedent in M.P. Shikshak Congress v. R.P.F. Commissioner, Jabalpur, (1999) 1 SCC 396 when it was not based upon non-availability of any similar provisions of the State Act. The Rajasthan Government had made parallel provisions in its Act and enjoyed full power of superintendence and authority to direct, restrict or regulate the working of an educational institution when it had issued a notification in exercise of powers under Section 17 of the 1952 Act exempting such institution. In Paras.19 to 23 the Supreme Court explained the words “belonging to or under the control of the Central Government or State Government” as follows:-

“19. In respect to the contention of the respondent that the establishment belonging to or under the control of the Central Government or a State Government, it was submitted that the establishments must either be (a) belonging to or (b) under the control of the Central Government or the State Government. In our view, the two words used in the said Section have different connotations. The words "belonging to" signifies ownership i.e. the Government owned institutions would be covered under the said part and the words "under the control of" signifies control other than ownership since ownership has already been covered under the words "belonging to". It must be also noted that the two words are separated by the word "OR" and therefore these two words refer to two mutually exclusive categories of institutions. While the institutions "belonging" to the Central or the State Government would imply the control of the State but the privately owned institutions can be "under the control of" the Government in various ways.

Under the State Act itself, the "Control" by the State is in the following ways:

(a) Under Section 3 the State Act, the State Government grants recognition to the "Non-government educational institutions".

It was submitted that recognition by the State is of prime importance for running and operating an educational institution. The said recognition can be withdrawn on the failure of the institution to abide by the terms and the conditions of the grant of recognition.

(b) Under Section 7 of the State Act, the State Government grants aid to only recognized educational institutions. The aid given by the State can be used only for the purpose for which the aid has been given. Under Section 8, the institutions are thereafter required to keep accounts in the manner prescribed by the State. It was submitted that in such manner, the State exercises Financial Control over the institutions.

(c) Under Section 9, it has been prescribed that the institutions shall be governed by a managing committee and Section 10 of the Act empowers the State to take over management of the institutions "whatever it appears to the State that the Managing Committee has neglected to perform the duties assigned to it by or under the Act or the Rules made thereunder.

(d) Chapter V of the Act relates to properties of the institutions and the manner in which the institutions can manage the properties of the institution. It was submitted that under Section 13 of the Act, the institutions have to apply and get the approval of the competent authority set up under the said Act before transferring the management of the institution. Under Section 15, restrictions have been placed on the transfer of immovable properties of the institutions.

(e) Section 14 of the Act prohibits closure of any institution or its class or the teaching of any subject therein without notice in writing to the competent authority. It was submitted that the government thus has Functional control over the institution.

(f) Chapter VI of the State Act deals with recruitment and removal etc. of employees. Their salary, conditions of service, provident fund, code of conduct are all prescribed under the Act. The Act further prescribes setting up of a Tribunal for resolution of the disputes whose decision is final and binding on the parties.

The State Government also exercises Administrative Control over the institution. Section 17 deals with the manner of recruitment and Section 18 deals with the procedure in which the employees may be removed or dismissed or reduced in rank. Section 28 permits the State Government to prescribe the code of conduct of the employees and Section 29 enjoins upon the institutions not to give to its employees a pay lesser than the scales of pay and the allowances paid to similar categories of the State Government.

20. *In our view, the State Act is a complete code in itself with regard to the educational institutions and the State Government exercises substantive control over the institutions even though the institutions are not "owned" by it. The word "control" has not been defined under the EPF Act, 1952.*

21. *However, this Court in **Shamrao Vithal Coop. Bank Ltd. vs. Kasargode Panduranga Maliya, (1972) 4 SCC 600 at page 604** has cited with approval the meaning of the word "control" as it appears at page 442 of Words & Phrases Vol.9, Permanent Edition as under:*

"The word "control" is synonymous with superintendence, management or authority to direct, restrict or regulate."

*In the case of **State of Mysore vs. Allum karibasappa, (1974) 2 SCC 498 at page 501**, this Court defined the words "word control" as under:*

"The word "control" suggests check, restraint or influence Control is intended to regulate and hold in check and restrain from action."

22. We further observe that the State Government has the power of Superintendent or the authority to direct, restrict or regulate the working of the educational institutions. It was, therefore, submitted that the institutions had satisfied both the conditions (i) and (ii) mentioned above and as such they would fall within the exception contained under Section 16 (1) (B) of the EPF Act, 1952.

23. In this context we may refer to the decision cited by the appellant in the case of **M.P. Shikshak Congress vs. R.P.F. Commnr., 1999(1) SCT 172 (SC) : (1999) 1 SCC 396**, in which it was stated that the provisions of the E.P.F. Act apply in supersession of the State Act. This contention is not correct; the said case is clearly distinguishable on facts as has been noted in the judgment itself. The State Act did not provide for establishment of any Scheme as has been provided under the provisions of the State Act in the State of Rajasthan. In this regard, this Court noted as under:

"12.....The Act did not even provide for any scheme for setting up a provident fund. The Act incidentally required that the institutional contribution to any existing provident fund scheme should be paid into the institutional fund set up under the said Act."

20. In a similar case in Civil Appeal No.721 of 2013, M/s Yeshwant Gramin Shikshan Sanstha v. Assistant Provident Fund

Commissioner Nagpur and others, decided on March 09, 2017 the Supreme Court recently considered the entire legal position. The Supreme Court applied the law in *Sanatan Dharam Girls Secondary School* case (Supra). In paragraphs 21 and 22 the legal position was analyzed with the Supreme Court observing as follows:-

“21. The question is whether there are similar provisions in the subject State Act and Rules framed thereunder, so as to infer that the State Government exercises substantive control over the establishments such as that of the appellant. On analyzing the provisions of the State Act and Rules framed thereunder, similar inference can be drawn as in the case of Sanatan Dharam (Supra). In the present case, the State Act which has received assent of the President of India on 16th March, 1978, contains several provisions elucidating the extent to which the State Government has control over the private schools:

- a). Section 2(19), 2(20) and Section 2(21) of the State Act, are indicative of the fact that the State Government grants recognition to the Primary Schools and Private Schools in the State.*
- b). Section 4 (4) of the State Act inter alia empowers the State government to withdraw the recognition granted to the concerned school on its failure to comply with directions issued by the Director of Education, who is appointed by the State Government;*
- c). Under Section 4 of the State Act, the State Government also has the power to make Rules governing the terms and conditions of service of employees, including minimum qualification for recruitment and the procedure to be followed thereof, duties, pay, allowances, post-retirement and other benefits, other conditions of service of*

employees of private schools and for reservation of adequate number of posts for backward classes. Additionally, the State Authorities are empowered to continually monitor that the management of the school is fulfilling the prescribed terms and conditions of service of its employees and including to issue directions to the Management for that purpose.

d). Under Section 4A of the State Act, the Director Education has been empowered to issue directions in relation to the inquiries against the employees regarding alleged misconduct, misbehavior or moral turpitude of an employee.

e). Section 5 postulates the obligations of the management of private schools such as to fill in the permanent vacancy in a private school in the manner, as may be prescribed by the Competent Authority.

f). Under Section 16 of the State Act, the State Government has the power to make rules governing the duties of employees of private schools and about their Code of Conduct and disciplinary matters. This is a form of administrative control.

g). The State Rules deal with gamut of matters relating to service conditions of the employees and the manner in which it is to be adhered to by the management, in respect of which the management is accountable to the Competent Authority of the State to report compliance and including to adhere to the directions issued by the authority in that regard.

h). The Rules also specifically deal with the facility of Pension Provident Fund and other matters to be extended to every employee working

on a full time basis or on a part-time basis but doing full time load of work.

i). Besides the provisions of the State Act and the Rules framed thereunder, the schools recognized and receiving grant-in aid from the State Government have to fulfill additional conditions, as are specified in the grant-in aid scheme and the Maharashtra Secondary School Code applicable to such schools. As the grant in aid can be used by the school only for the purpose for which it has been granted and that the school is required to maintain and submit proper accounts in the manner prescribed by the State, is also indicative of financial control of the State over such schools/colleges.

j). The provisions in the Secondary School Code also empower the State Government to take over or transfer the management of the institution.

k). Besides the State Authorities have to oversee that the management is making payment of proper salary and allowances as specified.

l). The Secondary School Code, which is a compendium of the executive instructions and orders, also deals with matters concerning recognition, organization and management of schools; staff service conditions, records and inspection; records, registers and inspection of schools and hostels; and grant in aid etc. The provisions regarding grant in aid deal with matters of salary/non salary grant; building grant; and other grants. Stipulations in respect of these matters are indicative of financial control exercised by the State over such institutions. Similarly, Chapter III deals with staff service conditions, records and inspection provides for

matters relating to maintenance of adequate staff; conditions of service of employees; and rules of discipline and leave. These provisions are also indicative of administrative control exercised by the State over the institutions. All this is in addition to the incipient requirement of obtaining recognition from the State before starting any school within the State or for that matter commencing additional sections and increasing the intake capacity of students, as the case may be.

22. Suffice it to observe that the State Act, the Rules made thereunder and the provisions of the Secondary Schools Code are a complete code in themselves with regard to the educational institutions and indicative of the extent of exercise of substantive control by the State Government over such institutions, whether owned by it. The State Government has the power of superintendence and the authority to direct, restrict or regulate working of the educational institutions. It necessarily follows that the establishment of the appellant, which in this case is 100% grant-in aid schools in which 16 part-time employees were working, is under the control of the State Government and thus would fulfill even the first condition of Section 16(1) (b) of the Central Act.”

21. In the same chain of thought, Mr. Rajiv Atma Ram, learned Senior counsel refers to Union of India v. M/s Digamber Jain Secondary School, 2003 (1) SCT 207 while referring to paragraphs 16 to 18 of the judgment.

22. In order to understand the scope of the meaning of the word “Control” learned senior counsel refers to the Right to Information Act, 2005 in which Act also the word “control” finds place of mention and the

interpretation assigned by the Supreme Court to the ambit of the word in the case, Thalappalam Service Coop. Bank Ltd. and others v. State of Kerala and others, (2013) 16 SCC 82 and the meaning to be assigned to “Control” in Section 2 (h) (d) (i) of the RTI Act. In paragraphs 31 to 34 the Supreme Court discussed the issue and observed as follows:-

“31. The RTI Act, therefore, deals with bodies which are owned, controlled or substantially financed, directly or indirectly, by funds provided by the appropriate government and also non-government organizations substantially financed, directly or indirectly, by funds provided by the appropriate government, in the event of which they may fall within the definition of Section 2(h)(d)(i) or (ii) respectively. As already pointed out, a body, institution or an organization, which is neither a State within the meaning of Article 12 of the Constitution or instrumentalities, may still answer the definition of public authority under Section 2(h)d (i) or (ii).

(a) Body owned by the appropriate government

– A body owned by the appropriate government clearly falls under Section 2(h)(d)(i) of the Act. A body owned, means to have a good legal title to it having the ultimate control over the affairs of that body, ownership takes in its fold control, finance etc. Further discussion of this concept is unnecessary because, admittedly, the societies in question are not owned by the appropriate government.

(b) Body Controlled by the Appropriate Government

A body which is controlled by the appropriate government can fall under the definition of public authority under Section 2h(d)(i). Let us examine the meaning of the expression “controlled” in the context

*of RTI Act and not in the context of the expression “controlled” judicially interpreted while examining the scope of the expression “State” under Article 12 of the Constitution or in the context of maintainability of a writ against a body or authority under Article 226 of the Constitution of India. The word “control” or “controlled” has not been defined in the RTI Act, and hence, we have to understand the scope of the expression ‘controlled’ in the context of the words which exist prior and subsequent i.e. “body owned” and “substantially financed” respectively. The meaning of the word “control” has come up for consideration in several cases before this Court in different contexts. In **State of West Bengal and another v. Nripendra Nath Bagchi**, AIR 1966 SC 447 while interpreting the scope of Article 235 of the Constitution of India, which confers control by the High Court over District Courts, this Court held that the word “control” includes the power to take disciplinary action and all other incidental or consequential steps to effectuate this end and made the following observations :*

“The word ‘control’, as we have seen, was used for the first time in the Constitution and it is accompanied by the word ‘vest’ which is a strong word. It shows that the High Court is made the sole custodian of the control over the judiciary. Control, therefore, is not merely the power to arrange the day to day working of the court but contemplates disciplinary jurisdiction over the presiding Judge.... In our judgment, the control which is vested in the High Court is a complete control subject only to the power of the Governor in the matter of appointment (including dismissal and removal) and posting and promotion of District Judges. Within the

exercise of the control vested in the High Court, the High Court can hold enquiries, impose punishments other than dismissal or removal, ...”

32. The above position has been reiterated by this Court in **Chief Justice of Andhra Pradesh and others v. L.V.A. Dixitulu and others**, (1979) 2 SCC 34. In **Corporation of the city of Nagpur Civil Lines, Nagpur and another v. Ramchandra and others**, (1981) 2 SCC 714, while interpreting the provisions of Section 59(3) of the City of Nagpur Corporation Act, 1948, this Court held as follows :

“4. It is thus now settled by this Court that the term “control” is of a very wide connotation and amplitude and includes a large variety of powers which are incidental or consequential to achieve the powers- vested in the authority concerned.....”

33. The word “control” is also sometimes used synonyms with superintendence, management or authority to direct, restrict or regulate by a superior authority in exercise of its supervisory power. This Court in **The Shamrao Vithal Co-operative Bank Ltd. v. Kasargode Pandhuranga Mallya**, (1972) 4 SCC 600, held that the word “control” does not comprehend within itself the adjudication of a claim made by a co-operative society against its members. The meaning of the word “control” has also been considered by this Court in **State of Mysore v. Allum Karibasappa & Ors.**, (1974) 2 SCC 498, while interpreting Section 54 of the Mysore Cooperative Societies Act, 1959 and Court held that the word “control” suggests check, restraint or influence and intended to regulate and hold in check and restraint from action. The expression “control” again came up for consideration before this Court in **Madan Mohan Choudhary v. State of Bihar & Ors.**, 1999 (1) S.C.T.

848 : (1999) 3 SCC 396, in the context of Article 235 of the Constitution and the Court held that the expression “control” includes disciplinary control, transfer, promotion, confirmation, including transfer of a District Judge or recall of a District Judge posted on ex-cadre post or on deputation or on administrative post etc. so also premature and compulsory retirement. Reference may also be made to few other judgments of this Court reported in **Gauhati High Court and another v. Kuladhar Phukan and another 2002 (2) S.C.T. 768 : (2002) 4 SCC 524**, **State of Haryana v. Inder Prakash Anand HCS and others (1976) 2 SCC 977**, **High Court of Judicature for Rajasthan v. Ramesh Chand Paliwal and Another 1998 (2) S.C.T 137 : (1998) 3 SCC 72**, **Kanhaiya Lal Omar v. R.K. Trivedi and others (1985) 4 SCC 628**, **TMA Pai Foundation and others v. State of Karnataka 2003 (2) S.C.T. 385 : (2002) 8 SCC 481**, **Ram Singh and others v. Union Territory, Chandigarh and others, 2004 (1) S.C.T. 366 : (2004) 1 SCC 126, etc.**

34. We are of the opinion that when we test the meaning of expression “controlled” which figures in between the words “body owned” and “substantially financed”, the control by the appropriate government must be a control of a substantial nature. The mere ‘supervision’ or ‘regulation’ as such by a statute or otherwise of a body would not make that body a “public authority” within the meaning of Section 2(h)(d) (i) of the RTI Act. In other words just like a body owned or body substantially financed by the appropriate government, the control of the body by the appropriate government would also be substantial and not merely supervisory or regulatory. Powers exercised by the Registrar of Cooperative Societies and others under the Cooperative Societies Act are

only regulatory or supervisory in nature, which will not amount to dominating or interfering with the management or affairs of the society so as to be controlled. Management and control are statutorily conferred on the Management Committee or the Board of Directors of the Society by the respective Cooperative Societies Act and not on the authorities under the Cooperative Societies Act.”

23. In the light of this case law and the rules and regulations of UT Administration and of the Punjab Government, it is canvassed that there is substantial control by the State on the establishment and, therefore, it falls in the exemption clause of Section 16 (1) (b).

The stand of the EPF Organisation.

24. On the other hand, Mr. Rajesh Hooda, learned counsel appearing for the RPFC contends that the establishment in its reply to the show cause notice dated January 18, 2005 tried to mislead the authority stating that all the employees are getting the benefit of CPF-cum-Insurance-cum-Pension under the 1965 Rules of the Government but the bare perusal of the 1965 rules (p.24 of the paper-book) clearly shows that these rules are applicable only to teaching staff and not to non-teaching staff and is therefore inapplicable to this case. The assessing authority had rightly made assessment after hearing the establishment by maintaining the figure of ₹26,88,541/- due and payable to EPF Organisation towards contributions for the period April 1982 to September 2006 qua only 16 non-teaching staff members. The establishment did not produce any record regarding deposit of dues qua the non-teaching staff. A specific finding of fact was returned by the assessing authority that the establishment had not submitted any proof regarding deposit of PF dues in respect of non-teaching staff. The

order in review was rightly passed dismissing the application under Section 7-B of the 1952 Act. The Tribunal did not commit any error in appeal under Section 7-I in dismissing the same on failure of establishment to produce any material to hold that all the employees of the establishment are members of the CPF and old age Pension scheme. The Tribunal was correct in holding that the establishment had failed to prove that the affairs of the establishment are controlled by the State and it was set up by Act of the State and, therefore, Section 16 (1) (b) of the 1952 Act is not attracted.

25. Mr. Hooda says that the establishment challenged the order of the Tribunal only on the ground that the establishment is under the control of Chandigarh Administration and is governed by the 1965 Rules and hence is exempted, and further, that in view of notification of the Government, the establishment was exempted from the year 1989 to 1999 under Section 16 (2) of the 1952 Act. He submits that on its own showing the establishment is controlled by the DAV College Managing Committee, New Delhi which is exempted under Section 17 of the 1952 Act and not under Section 16 (2). Therefore, the establishment cannot be allowed to urge anything beyond its own pleading that the establishment is controlled by UT Administration.

26. Mr. Hooda says that ordinarily an institution cannot be managed and controlled by more than one committee or administration. Even otherwise, it has not been pleaded at all that the establishment is controlled by the Chandigarh Administration and pleadings to this effect are to the contrary. Therefore, the establishment cannot claim exemption under Section 16 (2) (b) only on the ground that the establishment is under the control of the UT Administration. There is no material on record to show

that the establishment is under the control of UT Administration. He submits that even as per the Triple Benefit Scheme framed under the 1965 Rules, as stated to be adopted by the establishment, the same is not more beneficial than the scheme under the 1952 Act as the establishment's liability to contribute is only 8.33% and that too only qua the teaching staff but not qua non-teaching staff, which staff have raised the present controversy. The rules framed by the Punjab Government in 1965 were adopted by UT Administration. However, the 1952 Act, which is a Central Act, was applied w.e.f. March 06, 1982. Therefore, the rules cannot override the 1952 Act. He refers to the decision of this Court in CWP No.1588 of 1994 decided on August 18, 2017 in similar circumstances and in that case the school had applied for exemption under the provisions of the State Government law and had not applied under the provisions of the 1952 Act, it was held that: *"The petitioner's contention that he is bound by guidelines and rules framed by the State Government in respect of Contributory Provident Fund; how it is to be maintained and who has to maintain is concerned, the said contention cannot be accepted for the reasons that EPF and MP Act, 1952 is a Central Act and the petitioner is bound by the Central Act. State guidelines or Rules cannot override Central Act like EPF and MP Act, 1952"*.

27. Mr. Hooda further contends that the establishment itself admits in paragraph 15 (a) of the review application (pg.93 of the paper-book) that PF accounts of the non-teaching staff are maintained by the DAV College Managing Committee, New Delhi and an affidavit was filed by the Principal of the establishment on January 27, 2016 in this case regarding deposit of

dues qua 16 non-teaching staff and in para.6 at p.236 of the paper-book it has been admitted that PF dues were maintained by DAV College Trust at New Delhi. In para.11 at p.239 it was further admitted that no amount qua non-teaching staff was deposited with the UT Administration. Even in para.1 of the affidavit dated September 19, 2016 at p.245 of the paper-book called by this Court, it has been stated that PF of the establishment was being maintained in DAV College Trust at New Delhi. In the latest affidavit dated October 25, 2018 also in para.4 at internal p.8 of the affidavit it has again been admitted that EPF account of non-teaching staff employees was being deposited in DAV College Trust at New Delhi since the beginning till November 30, 2011 and thereafter the same is being deposited with the RPFC, Chandigarh. Therefore, Mr. Hooda vigorously argues that once it is the specific case of the establishment and it has been pleaded throughout by it that PF of non-teaching staff was being deposited with the DAV College Trust at New Delhi, the question of the establishment being exempted under Section 16 (2) does not arise at all because it is the admitted case of both the parties that the DAV College Trust at New Delhi is exempted under Section 17 of the 1952 Act and not under Section 16 (2) of the 1952 Act. An establishment cannot claim exemption under both the sections.

28. Even otherwise, it is contended that under Section 16 (2) of the 1952 Act, there is no unconditional exemption granted to an educational institution; rather the same is preceded by specific conditions mentioned therein. For claiming exemption under Section 16 (2) the establishment is under obligation to establish that: (i) the establishment is under the control of the State Government/UT Administration; (ii) their employees are in

receipt of Contributory Provident Fund or Old Age Pension in accordance with the rules framed by the State Governments/UT Administration.

29. Mr. Hooda points out to a dichotomy urging that for teaching staff the establishment follows the rules of Chandigarh Administration and seeks exemption under Section 16 (2), but for non-teaching staff it is following the scheme framed by its Trust at New Delhi which is exempted under Section 17 of the 1952 Act. Even if it is admitted for the sake of arguments that the establishment is complying with the scheme framed by the Trust, which Trust is exempted under Section 17 of the 1952 Act, then as per the provisions Section 17 of the 1952 Act, the scheme to be followed by the establishment could not be less beneficial than the scheme framed under the 1952 Act. Admittedly, in the DAV Trust scheme, the contributions by the establishment and its employees is much less than the contributions under the scheme framed under the 1952 Act and there is no pension provision admissible to the non-teaching staff. In similar circumstances, this Court by judgment dated March 05, 2009 in CWP 13075 of 1993, disposed of a bunch of 17 petitions. The petitioners in the writ petitions were also Govt. aided schools and colleges claiming that they receive 95% grant-in-aid from the State Government and its employees are governed by the Provident Fund Scheme of the State Government in terms whereof necessary 10% deductions are made from the employees' salary with matching contribution by the Management. The petitioner's grievance was that the Educational Institutes, including the Universities/Colleges/Schools were for the first time brought within the ambit of the 1952 Act by Government of India w.e.f. March 06, 1982. Soon

thereafter the Government of India issued another notification dated August 21, 1984 in exercise of its power under Section 16 (2) of the 1952 Act, exempting the education institutions from the operation of the 1952 Act, initially for a period of three years which was later on extended from time to time. Relying upon the said notifications, the petitioners questioned the demand raised by the respondents. The Court after going through the notifications and provisions of Section 16(2) of the 1952 Act did not agree with the contentions of the petitioners and held that it is obligatory on them to produce the material/evidence to prove that they fulfil the conditions of exemption issued by the Govt. under the provisions of Section 16(2) of the Act. The relevant part of the order is as under:-

*“After hearing learned counsel for the parties at some length and on perusal of the records including impugned notification, I am of the considered view that its imperative upon the respondents to consider each petitioner's claim for exemption in terms of notification dated 21.08.1984. **Similarly, the petitioners are also under obligation to produce the material/ evidence to prove that they fulfill the pre-requisite conditions laid down in Clause 2 and 3 of the above-stated notification.** In other words, an adjudicatory process is required to be undertaken by the statutorily Prescribed Authority who alone shall, on consideration of the material on record, be in a position to determine as to whether or not a particular educational institute or a society is entitled to the exemption granted vide notification dated 21.08.1984 as extended from time to time till 19.03.1996.*

Consequently, these writ petitions are disposed of with the following directions :

1(i) The petitioners shall within a period of two months

from the date of receipt of certified copy of this order, submit reply-cum-objections to the Assessing Authority under the 1952 Act, along with the documents/material in support of their claim for exemption under the notification dated 21.08.1984. On receipt of their reply-cum-objections, the Assessing Authority is directed to specifically consider the claim for exemption in terms of paras 2 and 3 of the aforesaid notification and determine as to whether or not these educational institutions are entitled to such exemption;

(ii) In those cases where the assessment orders under Section 7-A of the 1952 Act have been passed, the petitioners, shall be entitled to file a statutory appeal under Section 7-I of the 1952 Act within two months from the date of receipt of certified copy of this order along with the material/documents in support of their claim for exemption in terms of notification dated 21.08.1984 and the Appellate Authority shall be obligated to consider and dispose of their claim regarding exemption in the same manner as the Assessing Authority is required to do as per direction (i) above;

(iii) Till the petitioners' claim is decided by the Assessing Authority or the Appellate Authority, as the case may be, no recovery shall be effected from them till then. In case the Authorities hold that the petitioners are entitled to the exemption granted vide notification dated 21.08.1984 as extended from time to time, the impugned notices shall be rendered infructuous. However, if the Assessing Authority or the Appellate Authority declines the exemption, the petitioners shall be granted three months period to deposit the arrears under the 1952 Act which, shall, however, not preclude them to impugn those orders before the Appellate Forum or otherwise if permissible in law. Wherever the petitioners have taken a plea that

they have already deposited the contributory provident fund including the employees' share with the State Government, it would be desirable for the Assessing Authority or the Appellate Authority to issue a notice to the State Government and adjust such payments so that the petitioners are not burdened with additional liability.

30. Next, Mr. Hooda places reliance on a Division Bench judgment of the Andhra Pradesh High Court in Writ Petition No.25623 of 1998 decided on March 29, 2016 in case titled *RPFC v. EPFAT & Ors.* The question before the Court was “Whether the private educational institutions are excluded from the coverage of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 under section 16(2) of the Act”. The Division Bench after going through the provisions of Section 16(2) of the 1952 Act held that to seek exemption from the application of the EPF Act, the educational institution must satisfy the twin conditions i.e. “(i) *such establishment either should 'belong to' or 'under the control of' the Central Government or State Government or setup under any Central or Provincial or State Act; and (ii) there must exist a scheme or rule framed by the respective governments governing such benefits and such scheme is extended to employees of the institution. Thus, unless these conditions are satisfied, educational institutions cannot ask for grant of exemption.*” The Court in paras.24, 25 and 28 observed as under:-

“24. On a reading of the provisions in Section 1(3) read with Section 16(1)(b), it is clear that only if the conditions mentioned in Section 16 (1) (b) are satisfied, educational institution is exempted and the burden lies on the individual educational institution to satisfy the competent authority that it is exempted. The second

respondent miserably failed in substantiating that its members answer the second limb of Section 16 (1) (b) of EPF Act.

25. If an educational institution seeks to claim that it need not comply with the obligations under the EPF Act, in addition to the institution being under the control of the State Government, it must also satisfy that there is a similar or more beneficial scheme made under the A.P. Education Act and employees are enrolled into the fund. Merely because the private educational institutions are governed by the A.P. Education Act, 1982, is not sufficient to contend that the EPF Act is not attracted. The burden lies on the individual educational institution to satisfy that his organization has enrolled its employees under a scheme formulated by the State Government and, therefore, is exempted from the provisions of the Act. It is not clear from the reading of the grounds of appeal before the Appellate Tribunal and in the counter-affidavit filed in this writ petition, whether the scheme is formulated comprehensively covering all the employees of the educational institutions who are members of respondent no.2 Association and whether the educational institutions have enrolled their employees in the scheme. No material is placed on record to show that deductions are made from the salaries of the teachers of these institutions or existence of a scheme for old aged pension or opening of accounts towards contribution of provident fund for the benefit of teachers and other employees. In paragraph 3 of the counter affidavit, though it is averred that Government formulated separate Teachers Provident Fund Scheme, no such scheme is placed on record. It is not stated that the Educational Institutions who are members of respondent Association have extended the scheme to their

teachers, the teachers are enrolled; separate accounts are opened and contributions are made.

“28. Thus, to claim exemption under Section 16(1)(b) of the EPF Act, the burden lies on the individual institution to satisfy the competent authority under the EPF Act, as and when called upon to make the contributions, that in accordance with the provisions contained in A.P. Education Act, 1982 and the Rules made there under, separate scheme is formulated and the employees of the concerned educational institution are enrolled in the said scheme and contributions are made. Whether there exists a scheme and the educational institution has enrolled its employees in the scheme and the institution is making contributions to the said scheme is a matter for consideration by the Regional Provident Fund Commissioner, in a given case as and when such a plea is raised. Association cannot seek general declaration against the authorities under the EPF Act not to enforce the provisions of the Act to its members.”

31. Mr. Hooda submits that in the present case, the establishment has not produced any evidence on record to show as to how it is entitled to exemption u/s 16(2) of the 1952 Act. How would it satisfy the twin tests mentioned in Section 16 of the 1952 Act. Whereas, the pleadings show that the establishment is under the control of DAV Managing Committee and it is depositing the EPF dues of its non-teaching staff with the DAV Trust Managing Committee, New Delhi, which is exempted u/s 17 of the 1952 Act but not u/s 16 of the 1952 Act. It is also clarified here by Mr. Hooda that the assessment in the present case has been made by the assessing authority only qua 16 non-teaching staff members. Therefore, the present petition deserves to be dismissed.

32. Mr. Hooda would then refer to a short order passed by the Supreme Court in the case of M/s D.A.V. College and others v. Regional Provident Fund Commissioner and others, 1988 (Supp) SCC 518. The full order is reproduced below:-

“1. Shri S.K. Bagga, learned Counsel appears for the petitioners. We do not find any substance in the contention of the petitioners in these cases that the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as 'the Act') has no application to the educational institutions who are petitioners in these cases. We, therefore, dismiss all these cases.

2. We direct that the petitioners shall comply with the Act and the schemes framed there under regularly with effect from February 1, 1988. Whatever arrears they have to pay under the Act and the schemes in respect of the period between March 1, 1982 and February 1, 1988 shall be paid by each of the petitioners within such time as may be granted by the Regional Provident Fund Commissioner. If the petitioners pay all the arrears payable from March , 1982 up to February 1, 1988 in accordance with the directions of the Regional Provident Fund Commissioner he shall not levy any damages for the delay in payment of the arrears. Having regard to the special facts of these cases the subscribers (the employees) shall not be entitled to any interest on the arrears. The Writ Petitions are disposed of accordingly. No costs.”

33. This paved the way for coverage under the 1952 Act.
The stand of the UT Administration.

34. The UT Administration has filed a separate reply and contested the petition. The administration admits that the establishment is an aided school of the Education Department and is governed by the rules and

regulations made/adopted by the State Government i.e. Chandigarh Administration. It is nevertheless, the stand of the UT Administration in para.5 in the written statement that the “1965 Rules” are applicable to only teaching employees of the seven aided schools run in the territory within the Chandigarh Administration, working against sanctioned aided posts. Non-teaching staff of these schools working against sanctioned aided posts are not covered under this scheme/rules. It is the teaching staff of aided schools of UT Administration alone working against sanctioned posts that are exempted from Provident Fund contributions as they are covered under the Triple Benefit Scheme introduced by the Government of India and 3.33% share is being deducted from their salary towards pensionary benefits. The clarification issued by the EPF Organization by its letter dated June 02, 2011 addressed to the UT Administration settles the issue that it is only teaching staff of private aided schools of UT Chandigarh who are covered under the Triple Benefit Scheme and are, therefore, exempted from the operation of the 1952 Act. The stand of the State is apparently against the case set up by the establishment.

35. The complaint which formed the basis of the assessment proceedings was that the establishment was required to submit monthly returns to the RPFC office in revised Form 12-A from March 1982 onwards to meet compliances under para.38 (2) of the Employees' Provident Fund Scheme, 1952 (“PF Scheme”) and para.15 (4) of the Employee's Family Pension Fund Scheme, 1971 (“Family Pension Scheme”). The demand of the non-teaching staff for deposit of employer share of provident fund contributions and employee's share of the same fund which the

establishment was liable to pay under the PF scheme and the Family Pension Scheme is not an empty request but a substantive right. Still further, the demand by EPF Organisation for deposit of contributions towards Deposit Linked Insurance Fund together with the amount of administrative charges for the relevant period with reference to the complaint and for deposit of administration charges to the fund for the period under reference which the establishment was liable to and bound to pay under para.38 (1) of the PF Scheme.

36. Coming to the impugned order of the Tribunal, what it is reasons is that to attract Section 16(b) the establishment has to prove that its affairs are controlled by the State or it was set up by the State and its employees are members of Contributory Provident Fund or Old Age Pension Scheme but there is no material to hold so. The Tribunal has relied on a decision of the Bombay High Court in RV.P.R.T. Ayurved Mahavidyalaya V. Assistant Provident Fund Commissioner, 2007 (3) LLJ 561=2007 (15) S.C.T. 16. The petitioner institution was receiving cent per cent grant-in-aid from the Maharashtra Government towards salaries of both teaching and non-teaching staff. APFC made an order under Section 7A of the Act directing deposit of determined amount for the period October 1997 to February 2003 towards difference of PF amount. The order was confirmed in appeal to the Tribunal. In a petition treated under Art 227 it was urged by the establishment that grant-in-aid included payment of contribution of the employer at the rate of 8.33% along with salary which was enhanced to 10% and 12% from time to time. The enhanced rate was not disbursed by the State and it continued to pay at old rate. The State was

liable to pay and satisfy the amount projected by the Organization. The Organization argued that employer was under statutory duty to pay the difference of enhanced rates of contributions. There was no ground to shift the liability of the employer created by a Central Act. The petition deserved to be dismissed. Taking up the matter the Court found that grant-in-aid was for payment of salary to the employees “and there is absolutely no component of payment of employer's contribution under the grant-in-aid scheme” then it proceeded to hold “I fail to understand when the Central legislation obligates the employer to make payment of employer's contribution towards provident fund and no responsibility is cast on the State Government still the Government of Maharashtra took the responsibility of paying 8.33% of the petitioner/employer's contribution.” The Court applied the provisions of Section 6 of the Act which provides that “Contribution...shall be paid by the employer to the Fund”. Court held that “neither the Central Act nor the State Act nor the Constitution of India and in particular Article 337 of the Constitution provide for any such obligation”. The Court adverted to paragraph 141 of T.M.A Pai Foundation & Ors v. State of Karnataka & Ors, AIR 2003 SC 355=(2002) 8 SCC 481 holding that grant of aid is not a constitutional imperative. Furthermore, grant-in-aid cannot be claimed as of right. In the light of this, the petition was dismissed. Reliance placed by the Tribunal on the Bombay judgment was not, in my view, wide off the mark.

37. I have considered the arguments of the learned Senior counsel and Mr. Hooda, for the respondent EPF Organisation and also the learned counsel for the UT Administration and have perused the record on file, the

provisions of the Act, rules and regulations cited at the Bar and have reached the following conclusions in the facts and circumstances:-

(i) The Union Territories Government Aided Schools Teachers Contributory Fund-cum-Insurance-cum-Pension Rules, 1965 relied upon by the petitioner are applicable to only teaching employees but not the non-teaching staff. The Triple Benefit Scheme is available only to teachers working against aided posts. The 1952 Act does not apply to teachers. The petitioner is exempt under Section 17 of the 1952 Act as far as its teaching staff is concerned.

(ii) The minimum demand for exemption must carry an obligation that non-teaching staff are entitled to benefits of Provident Fund and Pension and it is only then can they be excluded from the purview of the Act provided those benefits provided by the employer are not less beneficial than the provisions of the 1952 Act and the schemes framed thereunder. If one part is missing then there cannot be any part exclusion. This is what the EPF organization circular Annexure P-10 purports to do on the subject of compliance by aided schools in Chandigarh.

(iii) For claiming exemption under Section 16 (2) the establishment is under obligation to establish that: (i) the establishment is under the control of the State

Government/UT Administration; (ii) their employees are in receipt of Contributory Provident Fund or Old Age Pension in accordance with the rules framed by the State Governments/UT Administration. The twin test is not satisfied in this case.

(iv) Claim for exemption under Section 16(1)(b) by the establishment that it functions under the control of the UT Administration does not arise pointedly for determination in this case as it is restricted to the rights of non-teaching staff to be covered under the provisions of the 1952 Act. Therefore, the judgments cited by the establishment are distinguishable on facts.

Accordingly, the petition is dismissed.

(RAJIV NARAIN RAINA)
JUDGE

20.12.2018
manju/Vimal

Whether speaking/reasoned Yes

Whether reportable Yes