

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4781 OF 2018

Central Board of Trustees, EPF

.. Petitioner

Vs.

Jagdamba Auto Component Ltd.

.. Respondent

Mr. Suresh Kumar a/w. Ms. Mohini Chougule for the Petitioner.

Mr. Manoj Gujar a/w. Mr. C. R. Naidu i/b.C. R. Naidu & Co. for the Respondent.

CORAM : A.K. MENON, J.

DATED : 4th FEBRUARY, 2019.

P.C. :

1. The challenge in this petition is to an order dated 18th May, 2016 passed by the Provident Fund Appellate Tribunal. It is the case of the respondent that the impugned order dated 9th July, 2012 could not be sustained. That out of 51 employees only 26 were traceable, 25 employees had left services of the respondent.

2. In paragraph 5 the tribunal holds that the controversy is restricted to 25 unidentified employees who were nameless and faceless and on whose behalf collection of contribution will not reach them. The second aspect that has been considered pertains to three drivers who are said to have been engaged by one M/s. Vijayraj Travels which is admittedly a transport

contractor. The tribunal concluded that as regards the said drivers they are not employees of the establishments and in relation to the 25 employees there was no obligation to pay any contribution especially since they were not in services of the respondent. It was case of the respondent before the Assistant Provident Fund Commissioner these 25 employees were engaged for a very short period and they left services of the respondent and that they have no obligation to make any contribution on their behalf.

4. At the hearing today, Mr. Suresh Kumar has pointed out that in the order impugned before the tribunal dated 9th July, 2012 the deposition of the Enforcement Officer has been adverted to who after taking inspection and verification of records during visits made by him found that the monthly salary paid to all employees included the amounts paid to the 25 employees along with their names. They were admittedly being engaged at the material time. Thus the basis on which the tribunal concludes that these persons are nameless and faceless cannot be appreciated.

5. As far as these three drivers are concerned these persons are named but are said to be engaged by M/s. Vijayraj Travels for providing transport facility to the establishment. Today it is the case of the Assistant Provident Fund Commissioner has treated them as contractor's employees. Therefore respondent is said to be held liable for their contribution as well. This is an

aspect which has already been gone into. It was open to the Provident Fund Commissioner, apropos the three drivers to verify their status on the basis of their identification. This does not appear to have been done as on date. The finding of the appellate tribunal as far as 25 employees are concerned is clearly unsustainable as the same run contrary to the factual finding as recorded by an Enforcement Officer and as observed in the order dated 9th July, 2012 .

6. In the circumstances in my view, it is appropriate that the proceedings are remanded to the tribunal for hearing afresh. It will be open for the parties to produce such material as they may be advised at the hearing of this appeal. In view of the above, I pass the following order :

- (i) The impugned order dated 18th May, 2016 in ATANo. 710(9) 2012 is remanded for fresh consideration to the CGIT (II) or such other authority competent to hear the appeal.
- (ii) Writ Petition disposed of in the above terms.

(A.K. MENON,J.)