



WEB COPY



W.P.Nos.27966 to 27972 of 2011 & 14875 to 14899 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.08.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.Nos.27966 to 27972 of 2011 & 14875 to 14899 of 2012
and M.P.No. 1 of 2012 (32 Nos.)

W.P.No.27966 of 2011 :-

M/s.Gudiyatham Jeeva Handloom
Weavers Co-operative Production
and Sales Society Ltd.,

Gudiyatham,
Rep. by its Special Officer,
Gudiyatham.

...Petitioner

-Vs-

1. The Employees' Provident Fund
Appellate Tribunal,
Scope Minar,
Core-II, 4th Floor,
Laxmi Nagar District Centre,
Laxmi Nagar,
New Delhi – 110 092.

2. The Assistant Provident Fund Commission
(The APFC)
EPFO, Sub Regional Officer,
31, Filter Bed Road,
Vellore – 632 001.

3. The Employees' Provident Fund Organization,
No.31, Filter Bed Road,
Vellore – 632 001.

... Respondents



W.P.Nos.27966 to 27972 of 2011 & 14875 to 14899 of 2012

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records pertaining to the impugned order dated 23.07.2010 of the first respondent Employees' Providence Fund Appellate Tribunal passed in A.T.A.No.174(13) 2003 and quash the said order by issue of a Writ of Certiorari.

In all W.Ps.

For Petitioner : Mr.A.R.Gokulnath
For Respondents
R1 : Tribunal
For R2 & R3 : Mr.P.K.Panneer Selvam

COMMON ORDER

These Writ Petitions have been filed challenging the order passed by the first respondent dated 23.07.2010, thereby dismissing the appeal filed by the petitioners as against the order passed by the third respondent under Section 7(A) of the Employees Provident Fund and Miscellaneous Provisions Act, thereby directing the petitioners societies to comply with the provisions of the Employees Provident Fund and Miscellaneous Provisions Act (herein after referred to as “the EPF & MP Act”).

2. The petitioner in all the writ petitions (herein after called as “the petitioner/society”) is a society registered under the Tamil Nadu Co-



W.P.Nos.27966 to 27972 of 2011 & 14875 to 14899 of 2012

operative Societies Act. The members of the petitioner/society are the handloom weavers residing at the place where the society is situated.

They are the shareholders of the petitioner/society. The petitioner/society has less than 50 employees on its roll and is working without any aid of power. The principal object of the petitioner/society is to improve the handloom industry and the economic conditions of the weavers residing in the area of operation. It is an establishment under the control of the State Government. Formerly, it was being managed by a board of management whose members used to be elected from among the members of the society. By the government order in G.O.Ms.No.204, Co-operation, Food & Consumer Protection dated 25.05.2001, the Government of Tamil Nadu superseded the board of management of all the societies, including the petitioner/society.

3. Section 23 of the Tamil Nadu Co-operative Societies Act specifically prohibits a paid officer or servant (employee) of the registered society being admitted as its member and it also disqualifies a member from being a member, if he becomes a paid officer or servant (employee) of the registered society. Thus, it is clear that if the weaver



W.P.Nos.27966 to 27972 of 2011 & 14875 to 14899 of 2012

members of the petitioner/society become its employees for any reason whatsoever, they will cease to be its members and the society in turn will cease to exist both as a matter of fact and in law.

4. The main object of the petitioner/society is to encourage thrift, self help and mutual aid among the persons with common socio-economic needs. The weaver members of the petitioner/society have received yarn from it, without making any payment for its, convert them into cloths with the help of their family members and supply the same to the petitioner/society at their convenience. In fact, the members have liberty to sell the finished materials and remit the actual cost of the raw materials to the petitioner/society and keep the profit to themselves. The society cannot take any disciplinary action because, it has no jurisdiction to do so unlike as in the case of its employees. In the case of default in remittance, the society can initiate arbitration proceedings to recover the money from its members.

5. The members have installed handlooms of their own at home. The operation of handloom only by hands and they are not using



W.P.Nos.27966 to 27972 of 2011 & 14875 to 14899 of 2012

electricity to weave the cloths. Further, the petitioner/society is not maintaining any attendance register of its members and they have no fixed working hours for its members. The weavers did not get monthly wages or daily wages from the petitioner/society as it is in the case of the employees. Therefore, there is no employer and employee relationship between the petitioner/society and its weavers members. That apart, the petitioner/society cannot take any disciplinary action as against its weaver members.

6. The handloom weavers are receiving substantial amount yearly by way of dividend from the petitioner/society under various beneficial scheme as follows:-

(i) The Co-operative Handloom Weavers Savings and Security Scheme (8% of the weaving charges is recovered and remitted to the government treasure and the State and Central Government contribute 4% each)

(ii) Thrift Fund Scheme and Group Insurance Scheme

(iii) The Tamil Nadu Co-operative Handloom Weavers Family Pension Scheme

(iv) Central assistance under Thrift Fund Scheme

(v) The Tamil Nadu Co-operative Handloom



W.P.Nos.27966 to 27972 of 2011 & 14875 to 14899 of 2012

Weavers Old Age Pension Scheme

(vi) Health Package Scheme for Handloom

Weavers under Central Plan Scheme.

(vii) House construction with handloom scheme.

(viii) Dr.M.G.R. Handloom Weavers Welfare Trust

Scholarship.

(ix) Welfare Fund for legal heirs of weavers.

(x) Insurance amount to legal heirs of weaver members.

Therefore, the petitioner/society cannot be sought to be covered by the provisions under the EPF & MP Act, 1952.

7. Further, the second respondent passed common order dated 24.12.2002, holding that the weaver members of the society are the employees and that the provisions of EPF & MP Act are applicable to the petitioner/society. The second respondent conducted enquiry and the petitioner filed several documents pertaining to its members by way of documentary and oral evidence. It revealed that the weaver members have liberty to sell the finished goods and even the raw materials and remit the actual cost to the petitioner/society and keep the profit themselves. Therefore, it was challenged by way of appeal by the petitioner/society before the first respondent. However, the first



W.P.Nos.27966 to 27972 of 2011 & 14875 to 14899 of 2012

respondent dismissed the appeal and confirmed the order passed by the second respondent. Therefore, the petitioner/society filed the present writ petitions with the above said prayer.

8. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

9. Similar issues were already settled by the Hon'ble Division Bench of this Court in the judgment reported in **2003 (3) LLJ 795-Q-793** in the case of ***Madathupatti Weavers Co-operative Production and Sales Society Ltd., Vs. Regional Provident Fund Commissioner, Madurai & ors.***, holding that the members of the co-operative society cannot be construed as workmen. Further held that the society employed persons as their staff to maintain the records and other connected work. All the members of the society are the shareholders and they formed the Board of Management. They elected the President and Vice-President among themselves. They share the profits, if any among themselves. It is stated that all the shareholders who are members do not get yarn regularly and weave the cloth, nor is there any time frame work. The



W.P.Nos.27966 to 27972 of 2011 & 14875 to 14899 of 2012

society does not exercise any supervising control over them. Therefore, those members cannot be construed as employees of the society. In fact, the said order was challenged before the Hon'ble Supreme Court of India and the same was also dismissed by the judgment reported in **2008 (3) LLN 507 (SC)** in the case of ***Regional Provident Fund Commissioner, Madurai & ors., Vs. Madathupatti Weavers Co-operative Production and Sales Society Ltd.***

10. The above judgment was followed by the Hon'ble Division Bench of this Court in the judgment reported in **2010 (2) CWC 878** in the case of ***the Management, Dindigul ladies Polythene Workers' Industrial Co-operative Society Ltd., Vs. The Controlling Authority under the Minimum Wages Act and ors.***, and held that the petitioner, in that case, has 32 persons as members who elected the Directors, Vice-President and President and they manage and administer the affairs of the society. They enjoy the dividends and share the profits and also take policy decision with regard to the affairs of the society. Therefore, they are not workmen.



W.P.Nos.27966 to 27972 of 2011 & 14875 to 14899 of 2012

11. These judgments were followed by the learned Single Judge of this Court in ***W.P.Nos.1069 to 1077 of 2012***, by an order dated ***06.02.2012***, in the case of ***M/s. The Ponnur Handloom weavers Co-operative Production and Sales Society Ltd., Vs. Employees' Provident Fund Appellate Tribunal and ors.***, thereby setting aside the order passed by the Tribunal and remitted back to the Tribunal to decide the matter afresh after given notice to the parties, in accordance with law. Aggrieved by the same, the society filed writ appeal in ***W.A.Nos.845 to 862 of 2012*** and the Hon'ble Division Bench of this Court by an order dated ***09.08.2021***, set aside the order passed by the learned Single Judge insofar as the remitting back the matter for fresh consideration by the Appellate Tribunal holding that the relationship of employer and employee doesn't arise. Further held that to bring the society under the EPF & MP Act is far from acceptance and untenable in law.

12. In fact, in the judgment cited by the learned counsel appearing for the respondents reported in ***AIR 2019 SC 3528*** in the case of ***the Officer in-charge, Sub Regional Provident Fund Officer and ors Vs. Godavari Garments Limited.***, the Hon'ble Supreme Court of India



W.P.Nos.27966 to 27972 of 2011 & 14875 to 14899 of 2012

held that the company has engaged the workmen who were provided cut fabric, thread, buttons, etc., to be made into garments at their own homes.

The sewing machines used by the workmen were owned by them and not provided by the respondent company. Therefore it has been held that they are employees under Section 2(f) of the EPF & MP Act. As per Section 2(f) of the EPF & MP Act, the 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. Therefore, it is held in ***Godavari Garments case***, that the workers were employed by the respondent company and they were provided all the raw materials such as the fabric, thread, button etc., from the respondent company.

13. Whereas in the case on hand, as stated supra, the members of the petitioner/society used to get raw materials from the petitioner/society and take them to their home for making them as final cloths. Further, they have liberty to sell the finished goods and even the raw materials and remit the actual cost to the petitioner/society and keep the profit themselves. Therefore, the judgment cited by the learned



W.P.Nos.27966 to 27972 of 2011 & 14875 to 14899 of 2012

counsel appearing for the respondents is not applicable to the case on hand.

14. Further, the issue has already been settled by the Division Bench of this Court in the judgment reported in **2003 (3) LLJ 795-Q-793** in the case of ***Madathupatti Weavers Co-operative Production and Sales Society Ltd., Vs. Regional Provident Fund Commissioner, Madurai & ors.***, and the relevant portion is extracted hereunder :-

“13. All these things are pre-conditions before issuing notices or proceedings under Section 7-A of the Act. Inasmuch as the determination takes form of a suit, the consequence of coverability of the Act as well as determination and payment of amount follows on the basis of the determination, the Act has provided for sufficient requirements being satisfied before the initiation of an enquiry under Section 7-A of the Act. Even after initiation under Section 7-A of the Act, the employer should be given sufficient opportunity, as set out under Sub-section (3) of Section 7-A of the Act.

14. In the light of these proceedings, we are unable to find any material as to the notice or sufficient materials so as to enable the authority to come to a decision for applicability of the Act and for the



WEB COPY



W.P.Nos.27966 to 27972 of 2011 & 14875 to 14899 of 2012

subsequent proceedings, dated August 13, 1996, which is impugned herein, it is seen that an order is passed under Section 7-A of the Act on the basis of a show-cause notice issued for appearance on June 14, 1994 and on the basis of receipt and charge statement of 1993-94 wherein he is said to have found wages head of account and that issue already examined by the then Regional Provident Fund Commissioner and therefore "the liability for payment of provident fund for weaver workers lies on the society." The order further says that the dues are assessed on the basis of the Enforcement Officer's report and directs the employer to remit the said amount. This proceeding hardly satisfied the barest minimum requirement, as set out above. The following information are noticed.

(a) There is no independent determination under Section 7-A of the Act. It is based on a prior proceedings.

(b) No enquiry contemplated preceded by inspection and notice conducted.

(c) The society was not called upon to furnish the required materials to determine the coverability.

(d) The determination of dues has not been explained.

Therefore, we have no hesitation in our mind to come to the conclusion holding that the illegality of the order is apparent on the face of the records.



WEB COPY

18. *On merits, it is submitted that the appellant weavers co-operative society Yormed on the basis of one for all and all for one as a co-operative movement for the purpose of producing and selling the finished cloth. The members of the co-operative society cannot be construed as "employees" and the society also in turn cannot be construed as an "employer" and there is no such relationship between them. In the affidavit, it is stated that the society do not have looms of their own. The members, who are weaving through their own looms in their respective houses, are provided with yarn and they take yarn to their houses and they weave in their looms and bring it to the society as finished cloth. According to them, amount is paid for the cloth. According to them, amount is paid for the cloth produced by them and there is no employer and employee or master and servant relationship between the members and the society. The society employed eight persons as their staff to maintain their records and other connected work. All the members of the society are shareholders and they formed the Board of Management. They elect the President and Vice President among themselves. They share the profits, if any, among themselves. Besides, it is stated that all shareholders, who are members do not get yarn regularly and weave the cloth, nor is there any time*



W.P.Nos.27966 to 27972 of 2011 & 14875 to 14899 of 2012

frame work. The society also does not exercise any supervising control over them.”

WEB COPY

The above judgment is squarely applicable to the case on hand.

15. As stated supra there is no employer and employee relationship between the petitioner/society and its members. The members of the petitioner/society is not running the handloom with the aid of any power. Further there being less than 50 employees in the petitioner/society and the Act itself states that the provisions thereof are not applicable and Section 16(1)(a) of the EPF & MP Act is very clear in that regard. Therefore, The members of the Weavers' Co-operative Production and Sales Society Ltd., are not employees of the society. There are absolutely no materials such as attendance register, wages register and wage bills in order to prove that the members of the society are the employees of the petitioner/society. Therefore, the orders passed by the first and second respondents are illegal and this Court has no hesitation to interfere with the impugned orders.

16. In view of the above discussions, the orders passed by the



W.P.Nos.27966 to 27972 of 2011 & 14875 to 14899 of 2012

first respondent dated 23.07.2010 and the common order dated 24.12.2002 passed by the second respondent, are hereby quashed and all the Writ Petitions are allowed. Consequently, connected miscellaneous petitions are closed. There shall be no order as to cost.

18.08.2023

Internet: Yes

Index : Yes/No

Speaking/Non Speaking order

rts

To

1. The Employees' Provident Fund

Appellate Tribunal,

Scope Minar,

Core-II, 4th Floor,

Laxmi Nagar District Centre,

Laxmi Nagar,

New Delhi – 110 092.

2. The Assistant Provident Fund Commissioner,

(The APFC)

EPFO, Sub Regional Officer,

31, Filter Bed Road,

Vellore – 632 001.

3. The Employees' Provident Fund Organization,

No.31, Filter Bed Road,

Vellore – 632 001.



WEB COPY



W.P.Nos.27966 to 27972 of 2011 & 14875 to 14899 of 2012

G.K.ILANTHIRAIYAN. J.

rts

W.P.Nos.27966 to 27972 of 2011
& 14875 to 14899 of 2012
and M.P.No. 1 of 2012 (32 Nos.)

18.08.2023