BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.10.2024

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

WP(MD)No.12976 of 2016
and
WMP(MD)No.9774 of 2016

The Assistant Provident Fund Commissioner,
Employees Provident Fund Organization,
P.B.No.588, Sree Complex, 'D' Block,
No.18, Madurai Road, Tiruchirappalli.

... Petitioner

v.

1.The Presiding Officer,
Employees Provident Fund Appellate Tribunal,
Scope Minor, Core II, 4th Floor,
Lakshmi Nagar District Centre,
Lakshmi Nagar, New Delhi.

2.M/s.Rane Engine Valve Ltd.,
Kasavanur Village,
Viralimalai PO,
Pudukottai District.
Through its Vice President.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of Certiorarified Mandamus to call for the records relating to the order passed by the first respondent in ATA.No. 443(13)2011, dated 30.03.2012, quash the same and consequently, direct the second respondent to pay the contribution amount of Rs.15,12,369/- as proceedings No.Enf.B2/TN/TR/76386/SRO-TRY/2011-12 dated 26.04.2011.

For Petitioner : Mr.N.Dilip Kumar
For Respondents : Mr.R.Rajaram for R.2

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ORDER

The Assistant Commissioner / PF Authority has initiated proceedings u/s.7A of the EPF Act as against the second respondent / establishment, based on the inspection report and arrived at a conclusion that the second respondent has failed to pay the contribution for some employees, as per their wages. Therefore, the PF Authority has arrived at a contribution, which is liable to be paid by the second respondent, u/s. 7A of the EPF Act, by proceedings dated 26.04.2011.

2.This proceedings of the PF Authority was challenged by the second respondent / establishment before the first respondent /

Appellate Tribunal that the amount arrived by the Authority was as against those staff, who were working at the relevant point of time as Apprentices and that the Apprentices will not come under the category of employees. This contention of the second respondent was accepted by the Tribunal, by the order impugned in this writ petition and the Tribunal has set aside the order passed by the petitioner / PF Authority dated 26.04.2011, by holding as under:-

- The details of the Enforcement Officer's report have not been discussed in the order.
- The PF Authority has held that the Apprentices engaged in the establishment from the year 2007 were considered to be the employees, since the apprentice scheme framed by the Corporate Office was not certified by the Competent Authority. This reasoning itself is not sufficient to hold so and that the PF Authority has failed to physically examine the trainees and ascertain as to whether they are drawing stipend / training allowance or wages.
- A person can be termed as an employee, only when he was

employed for the works of a factory or establishment and was receiving the wages as per Section 2(b) of the EPF Act. In this case, the persons, who are referred, are only Apprentice Trainees and they are not employees and they have not been provided with any wages. Therefore, they are not employees, within the meaning of Section 2(f) of the EPF Act and that the allowance or stipend received by them would not be subject to PF contribution.

3.Learned Counsel for the petitioner submitted that the second respondent is registered under the EPF Act and that for the disputed employees, the second respondent has also paid the contribution, however, at the rate of Rs.1000/-, ie, the basic stipend for those employees. During the inspection, it was found that they have been engaged in the regular work and they have been paid consolidated amount of stipend, as per the establishment's Trainee Scheme. He has also placed the Trainee Scheme submitted by the second respondent before the Authority.

4.Learned Counsel further submitted that it is not the case of the second respondent / establishment that these employees are not covered under the EPF Act. Even as per the scheme, they are covered under the EPF Act and the second respondent has also paid the contribution by fixing the basic stipend as Rs.1000/-. As per the scheme, they have been paid with a consolidated amount of Rs.4500/- per month during the first year; Rs.5000/- per month during the second year and Rs.5500/- per month during the third year. It is also reflected in the establishment's balance sheets for the year 2007-08, 2008-09, as the payments made to such Trainees as salaries, wages and bonus. Therefore, the Authority is justified in arriving the amount of contribution liable to be paid by the second respondent, as per Section 7A of the EPF Act.

5.Learned Counsel has also submitted that these Trainees are also coming under the category of employees as defined u/s.2(f) of the EPF Act. As per Section 2(f)(ii) of the Act, the person who has been engaged as an Apprentice, not being an Apprentice engaged under the

Apprentices Act or under the standing order of the establishment, is an employee of the establishment.

6.Learned Counsel for the second respondent / establishment submitted that the scheme is formulated to impart training to individuals. The individuals were imparted with training for the purpose of future employment, not only in the second respondent establishment, but also in any other establishment. The Trainees do not come under the definition of workmen. They do not come under the provisions of the Act. The scheme is formulated as Company Operators Training Scheme. It is a private scheme, which do not come under the purview of the Act. If at all, a scheme under the Act is implemented by the establishment and if no contributions are made under the Act, then the Authority under the EPF Act is entitled to determine the contribution to be made. In the present case, since the scheme does not fall under the EPF Act, the Authority lacks jurisdiction to pass the impugned order dated 26.04.2011.

7.Moreover, the scheme formulated by the establishment was not authorised by the competent authority. Therefore, it cannot be weighed much. He has also relied on the definition u/s.2b of the EPF Act and submitted that this stipend would not come under the category of basic wages as defined under the Act.

8.This Court considered the rival submissions made and also perused the materials placed on record.

9.The issue to be decided in this writ petition is as to whether the Trainees employed by the second respondent are covered the EPF Act or not.

10.The term employee has been defined u/s.2(f) of the EPF Act as under:-

> *"2.Definition*
>
> *... (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;"

11.Admittedly, the second respondent has not obtained any permission for engaging these Trainees as Apprentices, as per the Apprenticeship Act, 1961, however, they have been engaged as per the Standing Order of their establishment. The Training Scheme, based on which, these Apprentices have been engaged was also placed before the EPF Authority by the second respondent.

12.Clauses 2.3 & 5.0 of the Scheme are relevant and the same is extracted as under:-

"2.3. The Company engages 'Company Operator Trainees', who will be given hands on Industrial training in Machine Operation, Maintenance, Tooling, Quality assurance and Manufacturing systems & Quality systems using latest technology

and machinery.

...

5.0. Stipend

5.1. During the period of Traineeship, every Trainee will be paid stipend as below

5.1.1. Rs.4500/- per month during 1st year;

Rs.5000/- during 2nd year;

Rs.5500/- during 3rd year;

5.1.2. ESI & PF schemes are made applicable.

5.1.3. No other benefits will be extended."

13.As rightly pointed out by the learned Standing Counsel for the petitioner / PF Authority, it is not the case of the second respondent that these Trainees are not liable under the EPF Act. In fact, they have paid the contribution for these Trainees, as per Section 6 of the EPF Act, however, at the rate of Rs.1000/- claiming to be the stipend amount per month. But, as per the scheme, this stipend amount is Rs.4500/- per month for the first year Trainees; Rs.5000/- per month for the second year Trainees; and Rs.5500/- per month for the third year Trainees.

14.Learned Counsel for the second respondent took a plea that this stipend has not been defined under 'basic wages' as per Section 2b of the Act. But, in this case, the Authority has established its case from the balance sheet of the second respondent for the year 2007-08, 2008-09 that a sum of Rs.4000/-, Rs.5000/- and Rs.5500/- were paid to these trainees as salary, wages and bonus. Therefore, this Court is of the view that the PF Authority has passed the order in accordance with the EPF Act, as per Section 7A. This Court is not inclined to accept the reasonings given by the Tribunal to set aside the order passed by the PF Authority.

15.Accordingly, the writ petition is allowed and the order of the Tribunal dated 30.03.2012 is set aside. The order passed by the petitioner / PF Authority dated 26.04.2011 is restored. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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Internet : Yes / No
Index : Yes / No
NCC : Yes / No
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B.PUGALENDHI.J.,

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