



2024 : DHC : 3339



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Date of order: 29th April, 2024**
+ **W.P.(C) 5712/2010**
VIVEKANAND SCHOOL Petitioner
Through: **Mr. S. K. Khanna, Advocate**
(Through VC)
versus
GNCT AND ANR Respondents
Through: **Mr. Rajesh Kumar and Mr. Shivam,**
Advocates for R-2 (Through VC)

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The petitioner has filed the instant petition under Article 226 of the Constitution of India seeking following reliefs:

“a. issue a writ of certiorari against the respondents quashing the order dated 07.11.2009 and 16.10.2008

b. issue any other writ/order or direction which may be deem fit and proper in the facts and circumstances”

2. The brief facts leading to the filing of the instant petition are as follows:

- a. On 8th January 2007, a special squad from PF (hereinafter “Provident Fund”) was deployed to inspect the petitioner and it was reported by the said squad that the PF benefits were not extended to all the eligible employees in accordance with the provisions of Employees Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter “Act”).
- b. Thereafter, an enquiry under Section 7A of the Act, was initiated by



the APFC (hereinafter “PF Commissioner”) and the petitioner was given an opportunity to present its case.

- c. Pursuant to the above, the PF Commissioner passed an order dated 16th October 2008, holding that the petitioner was liable to pay Rs.9,91,113/- towards PF dues.
 - d. Assailing the said order, the petitioner filed a review petition which was dismissed vide order dated 24th December 2008 on the ground that it was not filed in accordance with Form- 9.
 - e. Pursuant to the same, the petitioner filed an appeal before the Employees Provident Fund Appellate Tribunal (hereinafter “Appellate Tribunal”). The learned Appellate Tribunal vide order dated 7th November, 2009 dismissed the petitioner’s appeal. Aggrieved by the same, the petitioner has filed the instant petition.
3. Learned counsel for the petitioner submitted that the impugned order is bad in law since the same has been passed without supplying the petitioner with a copy of the report of the learned PF Commissioner which formed the basis of assessment, thereby, depriving the petitioner with an opportunity to cross- examine as well as advance submissions on the findings of the learned PF Commissioner.
4. It is submitted that learned PF Commissioner assessed dues in respect of employees of the transporter without considering that such employees are not the “employees” of the petitioner as per Section 2(f) of the Act since the bus was engaged on trip basis at the rate of per kilometer, therefore, the



petitioner is not liable for payment of PF dues for them.

5. It is submitted that learned PF Commissioner erred in holding that the petitioner did not produce records as the petitioner had duly produced the relevant records/books of accounts, and the said factum has also been recorded in the minutes of meetings of the proceedings held on 13th March, 2008 as well as on 17th April 2008.

6. It is contended that the review application filed by the petitioner was wrongly dismissed on technical grounds as the authority concerned failed to venture into the merits of the case.

7. It is submitted that the Assessing Authority failed to summon the contractor, who was the best witness to prove the contention of the petitioner that it was the transporter who was the employer of the drivers/ conductors of the bus and not the petitioner.

8. It is submitted that the learned Appellate Tribunal whilst passing the impugned appeal order failed to take into consideration the submissions and the judgments relied upon by the petitioner.

9. It is further submitted that the learned Appellate Tribunal has wrongly placed reliance upon the judgment passed by the Calcutta High Court in ***Bengal Ingot Company Limited v. Regional Provident Fund Commissioner and Ors***, MANU/WB/0110/1995, which is in a different context and is not applicable to the facts of the case of the petitioner.

10. It is submitted that the impugned order passed by the learned PF Commissioner is a non-speaking, cryptic and unreasoned order as well as



passed in violation of the principles of natural justice.

11. In view of the aforesaid submissions, the learned counsel for the petitioner prayed that the instant petition may be allowed and the reliefs as sought may be granted.

12. *Per Contra*, learned counsel appearing on behalf of the respondent vehemently opposed the contentions averred by the petitioner and submitted that the impugned order as well as impugned appeal order does not suffer from any legal infirmity and they have been passed in accordance with the provisions of the Act.

13. It is submitted that the petitioner did not produce the documents for verification before the learned PF Commissioner despite various direction issued for the production of records to support its contentions.

14. It is further submitted that the learned PF Commissioner calculated the dues on the basis of the special squad report as well as the seized attendance register from the petitioner's office premises.

15. It is further submitted that the petitioner disputed the date of joining of the 7 employees regarding which the enquiry authority summoned the concerned employees before it and considered the date of joining of the aforesaid 7 employees on the basis of the affidavit filed by them regarding their date of joining as well as the statement given by the aforesaid employees before the enquiry authority.

16. It is submitted that the petitioner had failed to produce any document on record to prove the fact that buses used for transportation of the school



children were hired from a transporter on composite rate, i.e., per kilometre/per day basis, and the buses are available on the same terms to other schools as well as for the general public. Therefore, the drivers/conductors engaged by the petitioner through contractor falls within the definition of “employees” as defined in section 2(f) of the Act and the petitioner is liable to pay the PF contribution on behalf of employees engaged through the contractor.

17. In view of the aforesaid submissions, the learned counsel for the respondent prayed that the instant petition is devoid of merits and may be dismissed.

18. Heard learned counsel for the parties as well as perused the material on record.

19. It is the case of the petitioner being an educational institution it was complying with the provisions of the Act and all its employees were getting the benefits under the Act. However, the respondent wrongly initiated the proceedings under Section 7A of the Act and determined the petitioner’s liability by taking into account the factum that the employees employed through a contractor to run the buses as drivers/conductors having been engaged by the petitioner on composite basis alongwith the bus.

20. It is further averred by the petitioner that the impugned order as well as the impugned appeal order are contrary to the law. Moreover, the review application filed by the petitioner was wrongly rejected on technical grounds without venturing into merits of the case.



21. In rival submissions, the respondent has contended that the employees of the contractor who were receiving the wages indirectly from the petitioner through the contractors are also the employees of the petitioner. Moreover, the petitioner had failed to produce any document to show that the buses used for transportation of the school children from a transporter were hired on composite rate per kilometer/per day basis and the said buses were also available on the same terms to other schools as well as used for the general public.

22. Therefore, the short question which falls for adjudication in the instant petition is whether the impugned order as well as the impugned appeal order suffer from illegality and merit intervention of this Court under Article 226 of the Constitution of India.

23. Now advertng to the impugned order dated 16th October 2008 which has been reproduced herein below:

"Whereas M/S VIVEKANAND SCHOOL, D-BLOCK, ANAND VIHAR, DELHI-110092 (hereinafter called as the "Establishment") was covered under the provisions of Employees Provident Funds & Miscellaneous Provisions Act-1952 (hereinafter referred to as the "Act") under the code no DL/6702. Whereas a special squad from the side of Department inspected the establishment and reported that PF benefits were not being extended to all eligible employees in accordance with the provisions of Employees Provident Fund & Miscellaneous Provisions Act-1952, Employees Provident Fund Scheme-1952, Employees Pension Scheme-1995 and Employees Deposit Linked Insurance Scheme-1976.

And whereas for the purpose of determining the dues in respect of all eligible employees from their respective date of eligibility,



an inquiry under Section 7-A was initiated vide Summons dated 26.02.2007 and the establishment was afforded an opportunity to represent the case on 15.03.2007 either in person or through an authorized representative. The proceedings were held on 12.04.2007, 26.04.2007, 17.05.2007, 07.06.2007, 28.06.2007, 12.07.2007, 26.07.2007, 16.08.2007, 30.08.2007, 13.09.2007, 19.09.2007, 11.10.2007, 25.10.2007, 15.11.2007, 29.11.2007, 13.12.2007, 20.12.2007, 10.01.2008, 31.1.2008, 21.2.2008, 13.3.2008, 27.3.2008, 3.4.2008, 10.04.2008, 17.4.2008, 24.4.2008, 8.5.2008, 15.5.2008, 29.5.2008, 5.6.2008, 19.6.2008, 3.7.2008, 24.7.2008, 31.7.2008, 7.8.2008, 21.8.2008, 11.9.2008, 25.9.2008 & 16.10.2008. The case was finally reserved for order on 16.10.2008. During the proceeding Shri Uday Raj, Shri Shiv Kumar, Shri Raj Kumar appeared on behalf of the establishment on various dates.

Whereas during the course of proceedings, the representative of the establishment was directed to produce the relevant record/books of account for verification and Presenting officer/Enforcement Officer from the side of Department was directed to go through the case file and other records of the establishment and submit his detailed report. But the establishment did not produce any record for verification. The presenting officer worked out the dues payable on the basis of report of special squad and attendance register seized by it. The presenting officer submitted that out of 52 employees who were found not enrolled as PF member by the special squad, two employees Mr. Dheeraj & Mr. Deepak were already member under the PF code No. DL/6702/263 & DL/6702/264. He also submitted that 4 more employees were found as non- enrolled as PF member in the register of casual employees. Regarding the date of joining of 7 employees, the establishment had raised an objection for which the concerned employees were summoned to appear before the enquiry authority. The presenting officer had taken the date of joining of these employees on the basis of affidavit and the statements of the



employees recorded in the enquiry. Regarding the transporter employee the representative of establishment submitted that the buses used for transportation of the school children were engaged by the establishment from a transporter which was hired on composite per kilometre per day basis and these buses were available on the same day to other schools as well as for general public. So, the drivers/conductors engaged by the transport company on these buses do not fall within the definition of employees of their establishment. But the representative of establishment failed to prove his version that the contractor employees of transporter also served other school establishment etc.

Now therefore, I.A.K. SANSI, Assistant Provident Fund Commissioner in exercise of the powers conferred on me under section 7-A of the Employees Provident Funds & Miscellaneous Provisions Act-1952 having gone through the case file and on consideration of the facts, the submissions made and evidence adduced before me, hereby determine an amount of Rs. 9,91,113/- (Rupees Nine Lakh Ninety-One Thousand One Hundred Thirteen Only) as per details given below due from M/S VIVEKANAND SCHOOL, D-BLOCK, ANAND VIHAR, DELHI-110092 on account of Provident Fund, Pension Fund, Insurance Fund contributions and administrative charges towards Provident Fund and Insurance Fund for the period from 01/01/1992 to 31/01/2007 in respect of casual employees, security guards and transporter employees. The dues worked out as under

Amount Assessed U/S 7-A of the ACT for the period from 01/01/1992 to 31/01/2007						
	AC/I	AC/II	AC/ X	AC/ C XXI	A/C XXII	TOTAL
Casual employees-20	4,11,118	28,860	2,18,545	13,117	263	6,71,903
Security	17,400	1,221	9,250	555	6	28,432



gaurds-9						
Transporter Employees-26	1,77,981	12,494	94,613	5,679	11	2,90,776
Total Dues	6,06,499	42,575	3,22,408	19,351	280	9,91,113
(Rupees Nine Lakh Ninety One Thousand One Hundred Thirteen Only)						

I further order that the aforesaid amount shall be paid by the establishment in respective accounts within a period of fifteen days from the date of receipt of this order and the receipted copy of the challan be produced in support thereof falling which the same shall be recovered in the manner prescribed in section 8B to 8G of the Act. This is without prejudice to any other action that may be initiated under the provisions of law for which the establishment has rendered itself liable.

It is however added that in case the establishment have concealed any facts which subsequently came to the notice the department would be at liberty to initiate fresh actions.

The establishment is also liable to pay the amount of interest @ 12% as provided under section 7-Q from the date of due till the date of payment. This is without prejudice to Section 70, 7Q & 14B of the Act.

This issues under my signature and seal on this 16 day of October 2008."

24. Upon perusal of the impugned order, it is evident that the learned PF Commissioner had directed to produce the relevant record/books of accounts for verification to show that the petitioner was paying the contribution towards the PF of its employees. However, the petitioner failed to produce any record and accordingly, the learned PF Commissioner went on to assess



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the PF dues payable on the basis of the report of special squad and attendance register seized by it.

25. The learned PF Commissioner held that out of 52 employees who were not found enrolled as PF member by the special squad, two employees Mr. Dheeraj & Mr. Deepak were already member under the PF code no. DL/6702/263 & DL/6702/264 respectively and 4 more employees were found to be not-enrolled as PF member in the register of casual employees.

26. The petitioner had raised an objection regarding the date of joining of 7 employees so the enquiry authority summoned the said employees before it and the date of joining of these employees were considered in accordance with their affidavit and the statements of the employees recorded in the enquiry.

27. The petitioner contended that the buses used for transportation of the school children were engaged by it from a transporter on composite basis, i.e. per kilometre/per day basis, and these buses were available on the same day to other schools as well as for the general public. Therefore, the drivers/conductors engaged by the transport company on these buses do not fall within the definition of employees of their establishment. The learned PF Commissioner held that the petitioner's representative failed to prove his version that the contractual employees of transporter also served other school establishment etc.

28. Accordingly, the learned PF Commissioner assessed the liability of the petitioner to the tune of Rs.9,91,113/- on account of PF, Pension Fund,



Insurance Fund contributions and administrative charges towards PF and Insurance Fund for the period from 1st January 1992 to 31st January 2007 in respect of casual employees, security guards and transporter employees.

29. This Court is of the view that the learned PF Commissioner has correctly held that the onus to prove that the drivers/conductors of the bus were not hired on composite basis along with the bus on the basis of per km/per day was on the petitioner and it failed to discharge the same.

30. It is observed by this Court that the petitioner had raised an objection pertaining to the date of joining of 7 employees before the learned PF Commissioner and the same was duly taken into consideration by the learned PF Commissioner, by summoning the aforesaid employees before it and scrutinizing their date of joining in accordance with their affidavits and the statements of the employees recorded during the enquiry.

31. Accordingly, in accordance with the material on record the learned PF Commissioner held that the conductors/ drivers of the bus i.e., the employees of the contractor were working indirectly with the petitioner, hence, they are entitled to PF.

32. In view of the above discussions, this Court is of the view that the impugned order dated 16th October 2008 does not suffer from any illegality.

33. Now adverting to the impugned appeal order dated 7th November 2009. Relevant extracts of the same are reproduced herein below:

“The order passed by the PF Commissioner directing the appellant to pay Rs. 991, 113/- is in challenge in this appeal.



The case of the appellant is that it is an educational institution and it was complying with the provisions of the EPF Act and all its employees were getting the benefits under the Act but the respondent initiated proceedings under Section 7A and fixed the liability on the appellant by taking into account the employees employed through contractor to run the bus. The order of the commissioner is contrary to the law.

The case of the respondent is that employees of contractor who were receiving the wages indirectly from the appellant are also the employees of the appellant. The appellant in spite of several adjournments failed to participate and the matter was decided by records available and the order passed by the Commissioner is legal.

It is contended by the learned advocate of the appellant that the employees engaged by the contractor is not the employees and in spite of requests the Commissioner had not summoned the contractor, so the order is barred in law. The learned advocate for the respondent supported the order.

The application of the Act to the Appellant is not at all disputed. It is true that the onus lies on the respondent to prove the number of persons employed by the contractor but no contractor was examined. The order of the APFC reveals that the appellant disputed regarding the date of appointing of 7 employees so they are examined. This reveals that the appellant has not requested the authority to summon the contractor. The appellant admitted that he had engaged the contractor employees who were running the bus. So he had admitted the engagement of contractors and as per Section 58 of Evidence Act the fact admitted need not be proved and as per Section 106 of the Evidence Act when the fact is within the special knowledge of a person, the onus lies on him to prove the same. The next question remains to be considered is whether the employees engaged to run the bus by contractor can be treated as the employees of the appellant. Section 2(f) of the EPF Act defines the employees as follows:



"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];*

In the case of Regional Director ESIC Vs. Baby Franchise reported in 2008 Vol. 2 LLJ page 805, the Hon'ble High Court of Karnataka held that employees employed by or through a contractor is also covered if whether employed inside the factory or working outside the premises but under the control or supervision of the principal employer. In the decision of Bengal Ingot Co. Ltd. Vs. RPFC, the Hon'ble High Court of Kolkata held that in the PF Act no distinction was made between the part time and the whole time employees and it cannot be held that the MV Act does not apply in respect of the part time employees. The perusal of the decision of the High Court makes it clear that the part time employees employed through the contractor who were working for the principal employer is also the employee of the principal employer. As such, the principal employer is liable to pay the EPF Contribution. Therefore, no infirmity is noticed in the order of the Commissioner. Hence the appeal stands dismissed. Copy of order be served to both the parties. File be consigned to record room.

34. Upon a perusal of the above extracts, it is made out that the appeal concerns a dispute over an order issued by the learned PF Commissioner instructing the petitioner to pay a sum of Rs.9,91,113/-. The petitioner, an educational institution, contended that it complied with the provisions of the



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Act, however, the learned PF Commissioner had erroneously held it liable for the employees paid indirectly by the contractor. The respondent contended that the said contractor-employed individuals are effectively employees of the petitioner and despite the petitioner's claim, it failed to participate effectively in the proceedings as well as produce documents in support of its averments.

35. The learned Appellate Authority held that there is no dispute pertaining to the applicability of the Act on the petitioner. It further observed that the petitioner disputed the employment of 7 employees, which were summoned and examined by the learned PF Commissioner and on the basis of the affidavits of these employees as well as their statements, the assessment of PF pertaining to the aforesaid employees was made. The learned Appellate Tribunal noted that the petitioner had himself admitted the fact that the petitioner had engaged these contractual employees for running the buses.

36. It was further held by the learned Appellate Tribunal that the contractual employees engaged by the petitioner are entitled to PF in accordance with the definition of Section 2 (f) of the Act and on the basis of the said observations, it upheld the order passed under Section 7A of the Act holding that the petitioner was liable to pay the PF dues. Accordingly, the appeal was dismissed by the learned Appellate Tribunal.

37. Before advertng on the merits of the impugned appeal order, this Court will reiterate the meaning of employee defined under the Act.



38. Section 2(f) of the Act defines the “employees” as follows:

"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];”*

39. Upon perusal of the above provision, it is evident that the aforesaid definition includes workers who are engaged either directly or indirectly in connection with the work of an establishment and also includes the employees who are paid wages directly or indirectly by the employer.

40. The Hon’ble Supreme Court in the judgment of ***M/s. Pawan Hans Limited & Ors. Vs. Aviation Karmachari Sanghatana & Ors.*** Civil appeal no. 353 of 2020 (arising out of SLP (C) No. 381 of 2019) dated 17th January 2020 has held that the contractual employees engaged by the employer directly or indirectly are also entitled to PF benefits.

41. In light of the aforesaid provisions, it is crystal clear that under the Act, the definition of employees includes those employees which have been indirectly paid by the employer through a contractor.

42. It is held that the learned Appellate Tribunal held that the petitioner's assertion that the contractor's employees are not their employees is not a legally tenable argument as it had admitted to engaging these contractual workers and this Court is inclined to affirm the said view in light of the



aforesaid observations *qua* the definition of the employees under the Act and the liability of the employees engaged either directly or indirectly.

43. It is further observed by this Court that the petitioner has failed to produce on record any evidence/material in support of its contentions, thereby, at this stage, it cannot claim that its objections were not taken into consideration by the learned PF Commissioner as well as the learned Appellate Tribunal.

44. Accordingly, this Court is of the view that the impugned appeal order does not suffer from any illegality and merits no interference of this Court.

45. In view of the aforesaid discussions of facts as well as law, this Court is of the view that the impugned orders dated 7th November 2009 and 16th October 2008 do not suffer from any illegality.

46. Accordingly, the instant petition is dismissed along with pending applications, if any.

47. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

APRIL 29, 2024
gs/db/ryp

Click here to check corrigendum, if any