



2024:DHC:4667



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of order: 29th May, 2024**

+ **W.P.(C) 5651/2010**

JDT ISLAM ORPHANAGE COMMITTEE Petitioner

Through: Appearance not given

versus

EMPLOYEES PF APPELLATE TRIBUNAL & ORS

..... Respondents

Through: Mr. Naresh Gupta, Advocate for R-2

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant petition has been filed by the petitioner seeking setting aside of the impugned order dated 26th April, 2010 passed by the Employees' Provident Fund Appellate Tribunal as well as seeking a direction to the respondent no. 2 shall be passed by this Court to not take any coercive steps against the petitioner.

2. The petitioner is a charitable institution which provides lodging, feeding, clothing, medical aid, education, and rehabilitation, free of cost, to the orphans and destitutes. The petitioner also runs a mess in its organization.



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3. The EPF Assistant Provident Commissioner, conducted an inquiry on the petitioner institution and held that the mess run by the petitioner institution falls under the purview of EPF Act, 1952 (hereinafter referred to as “Act”). Subsequently, an order dated 4th April, 1995 was passed against the petitioner institution stating that the petitioner institution has defaulted in the payment of the provident fund.
4. Aggrieved by the aforementioned order, the petitioner institution preferred an appeal before the Legal Advisor, Ministry of Labour, Government of India.
5. The Legal Advisor, Ministry of Labour, Government of India *vide* order dated 2nd January, 1996 remanded the case back to the EPF Assistant Provident Commissioner for reconsideration.
6. On 13th May, 1997, the EPF Assistant Provident Fund Commissioner passed an order and upheld the earlier order dated 4th April, 1995 which stated that the mess run by the petitioner institution is a separate entity and thus, comes under the purview of Act.
7. Aggrieved by the aforementioned order, the petitioner again preferred an appeal before the Legal Advisor, Ministry of Labour, Government of India through a registered post on 30th May, 1997 against the order dated 13th May, 1997.
8. On 23rd April, 1998, the EPF Assistant Provident Fund Commissioner initiated proceedings against the petitioner for default in the payment of the provident fund and imposed a fine amounting to Rs. 1,00,000/- to the petitioner institution.



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9. The EPF Appellate Tribunal Delhi/respondent no.2 *vide* letter dated 21st September, 1999, directed the Legal Advisor, Ministry of Labour, Government of India to urgently dispose of the appeal of the petitioner.
10. On 19th July, 2000, EPF Assistant Provident Fund Commissioner again conducted an enquiry and issued an order against the petitioner institution for default in the payment of the provident fund, along with the outstanding arrears amounting to Rs. 5,06,146.70/-.
11. The petitioner institution, on 30th January, 2002, preferred an appeal against the aforementioned order of the EPF Assistant Provident Fund Commissioner before the respondent no.2.
12. The respondent no.2 *vide* order dated 26th April, 2010, dismissed the appeal. Aggrieved by the impugned award dated 26th April, 2010, the petitioner institution has filed the instant petition seeking quashing of the same.
13. Learned counsel appearing on behalf of the petitioner institution submitted that the impugned award is unconstitutional, illegal, and bad in law since the same has been passed without taking into consideration the entire facts and circumstances of the case.
14. It is submitted that the respondent no.2 has failed to appreciate the fact that the petitioner institution, being a charitable institution, does not fall under the purview of Act. Consequently, the mess, being run by the petitioner, is not a separate or independent entity but an integral part of the institution run by the petitioner, hence, not covered under the Act.



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15. It is further submitted that the respondent no.2 did not take into consideration the fact that the mess run by the petitioner institution is not intended for any profitable purposes and is incidental to educational institution run by the petitioner.

16. It is contended that the mess run by the petitioner is incidental to the educational institution run by the petitioner and is integral part of the educational institute, therefore it does not fall within the ambit of Act.

17. It is submitted that the respondent no.2 failed to appreciate the fact that the judgement of the Hon'ble Supreme Court in ***Andhra University Vs. RPFC, (1985) 4 SCC 509*** is not applicable on the instant case as the facts of the same is entirely different. The counsel appearing on behalf of the petitioner has placed on the judgment of ***R.N. Shah and others Versus Regional Provident Fund Commissioner 1990 SCC OnLine Bom 211*** and ***Indian Institute of Technology, Madras v. Regional Provident Fund Commissioner [1979 II L.L.N. 161*** to buttress its contentions.

18. Therefore, in view of the foregoing submissions, it is submitted that the instant petition may be allowed, and the reliefs be granted as prayed for.

19. *Per Contra*, the learned counsel appearing on behalf of the respondent no. 2 vehemently opposed the instant petition submitting to the effect that the impugned order passed by the respondent no.2 is in accordance with law.

20. It is submitted that the petitioner institution, being a charitable establishment, not intended for any profitable purpose, falls under the purview of the Act, therefore, a mess/canteen employing more than 20



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person falls within the ambit of the Act and is duly covered under the Section 1(3)(b) of the Act.

21. It is submitted that as per Section 2(f) of the Act, any person who is employed for wages in any kind of work in connection with the work of an establishment is considered as an employee. In the instant case, the petitioner has employed more than 20 employees, who held specific positions and received their wages after signing in the Wage Register.

22. It is contended that the intention of the legislature while enacting the Act was to safeguard the interest and provide social security to the employees working in an establishment, hence the provisions of the act should be interpreted accordingly.

23. It is submitted that the messs has a separate building, its own utensils, furniture, pays wages to its employees as well as maintain wage register. Moreover, the employees are holding specific positions such as Warden, Chief Cook, Supervisor, Cook, Attendant, Helper, etc.

24. It is submitted that the mess run by the petitioner institution is covered under the notification GSR dated 24th March, 1973 issued by the Government of India and the notification no. GSR 346 dated 7th March, 1962, issued by the Government of India.

25. In view of the foregoing submissions, it is submitted that the instant petition may be dismissed.

26. Heard the learned counsel appearing on behalf of the parties and perused the record.



27. It is the case of the petitioner institution that being a charitable and non-profitable institution, it does not fall under the purview of Act. Further, the mess, being run by the petitioner institution, is not a separate or independent entity but an integral part of the institution and hence, shall not come within the ambit of Act.

28. In rival submission, the respondent no. 2 has contended that the mess run by the petitioner institution is a separate and independent entity and has employed more than 20 salaried employees, thereby, falling under the purview of Act.

29. Now the question which falls for adjudication before this Court is whether the impugned order suffers from illegality or any error apparent on the face of it.

30. Adverting to perusal of the impugned order, the same has been reproduced herein below:

“The appeal in this case is preferred against the order passed by the PF authority under Section 7A of the Employees’ Provident Fund and Miscellaneous Provisions Act, 1952 directing the appellant to deposit the dues.

2. The case of the appellant is that the appellant M/s JDT Islam Orphanage Committee is a charitable institution as it was running an Orphanage to provide the food to the children so it engaged the cooks and other staff. It is not a factory nor a profit making establishment. The PF authority covered the establishment without considering all these facts and the impugned order is an illegal one.

3. The case of the respondent is that the appellant was running a mess and employed more than 20 employees so it was rightly



covered under the ambit of the PF Act and the dues were correctly assessed.

4. It is contended that the appellant is a charitable institution and the mess is a separate entity and the order of the PF authority is illegal one.

5. The learned counsel for the respondent supported the impugned order.

6. The appointment of more than 20 persons in the mess is not disputed and the mess was brought under the ambit of the PF Act by the notification dated 15.3.1973. As per the notification the PF Act is applicable to all the mess excluding the mess run by military. The fact that the appellant was running a mess and appointed Cooks and other staff is not disputed the salary register produced by the appellant shows that the appellant was paying the salary to the persons employed. In the case of Andhra University Vs. RPFC reported in 1985 Vol. 4 SCC at page 509, the lordship held that, "the establishment which is a factory engaged an industry specified in schedule 1 and employed 20 or more persons will attract the provision of the Act even if the company was run by other organization carrying on other activities not covered by this Act." In the case in hand, the charitable institution which are not charging any fee for their service is not coverable under the Act but running a mess employing more than 20 persons comes within the ambit of the PF Act.

7. Thus in view of the discussion held above, no infirmity is noticed in the order of the PF authority. Hence ordered, the appeal is dismissed. Copy of order be sent to the parties. File be consigned to record room."

31. The respondent no.2 whilst passing the impugned order, relied on the fact that since the petitioner institution had employed more than twenty salaried employees in the mess, therefore, it comes within the ambit of EPF Act and as per the notification dated 15th March, 1973, the Act is applicable



to all the messes except mess run by military. Accordingly, it was held that that the charitable institution, being a non-profitable organisation, is not covered under the Act but running a mess which has employed more than twenty salaried employees comes under the purview of the Act.

32. Based on the facts and circumstances stated above, the learned Appellate Tribunal upheld the order dated 30th January, 2002 and dismissed the appeal.

33. With regard to the facts of the instant petition, it is an admitted fact the petitioner institution has employed more than 20 salaried employees.

34. At this juncture, this Court will peruse the notification relied upon by the respondent no. 2 i.e., notification no. G.S.R. 1039 dated 24th March, 1973 which reiterates that mess except for the mess run by military, shall come under the purview of Act and the same is reproduced herein below:

“ G.S.R. 1039. In exercise of the powers conferred by section 6 read with sub-section (1) of section 7 of Act, 1952 (19 of 1952), the Central Government hereby makes the following Scheme further to amend the Employees Provident Funds Scheme, 1952 namely:-

1. This Scheme may be called the Employees Provident Funds (Second Amendment) Scheme 1973.

2. In the Employees' Provident Funds Scheme, 1952 in clause (b) of sub-paragraph (3) of paragraph 1, sub-clause (LXXI) shall be renumbered as sub-clause (LXXXI) and before sub-clause (LXXII) as so renumbered, the following sub-clause shall be inserted, namely:-

(LXXXI) as respects messes other than military messes converted by the notification of the Government of India in the Ministry of Labour and Rehabilitation (Department of Labour



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and Employment) No. G.S.R. 299 dated the 24th March, 1973 come into force on 31st March, 1973.”

35. It is pertinent to mention that as per Section 1(3)(b) of the Act, an establishment which has employed more than 20 salaried employees shall come under the purview the Act.

36. It is further observed that the contention of the petitioner that it is a charitable organisation does not hold water since the determining factor is not whether the establishment/organisation is earning profit or not instead, it is whether twenty persons or more than twenty persons are being employed by the petitioner.

37. In view of the aforesaid discussions, this Court is of the view that the mess except for the military canteen which had employed more than 20 persons falls within the ambit of this Act. Hence, the learned Tribunal correctly held that the petitioner being a mess wherein admittedly more than 20 persons are employed falls within ambit of the Act.

38. This Court is of the view that the learned counsel appearing on behalf of the petitioner has placed on the judgment of ***R.N. Shah and others Versus Regional Provident Fund Commissioner (Supra)*** and ***Indian Institute of Technology, Madras (Supra)*** to buttress its contentions however, the aforesaid judgments are not applicable to facts of the instant petition since the petitioner organisation's mess has a separate building, its own utensils, furniture, pays wages to its employees as well as maintain wage register. Moreover, the employees are holding specific positions such as Warden, Chief Cook, Supervisor, Cook, Attendant, Helper, etc.



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Therefore, it has a separate and distinct entity from the orphanage run by the petitioner.

39. In view of the facts and circumstances of the case, this Court is of the view that there is no illegality in the impugned order dated 26th April, 2010 passed by the respondent no.2, therefore, it does not warrants interference of this Court and thus, the same is upheld.

40. Accordingly, the instant petition stands dismissedn alongwith pending applications, if any.

41. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

MAY 29, 2024
rk/db/ryp