15.05.2025
SL 07 & 08 Ct. No.10
kaushik

WPA 15951 of 2024

L.I.C.I.
VS.
Union of India & Ors.

With

WPA 29481 of 2024

Union of India & Ors.
VS.
L.I.C.I.

Mr. Atish Dipankar Ray
Ms. Sanjukta Ray
…for the petitioners

Mr. Ajit Kumar Chaubey
….for the respondent No. 1

Ms. Aparna Banerjee
….for the respondent No. 2

By consent of the parties and in view of the common questions of law which arises for consideration both these petitions were heard analogously.

The grievance of the petitioner [Life Insurance Corporation of India (LICI)] is directed against an order dated 9th November, 2023 passed under Section 2(i) of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (the Act).

By the said order, the respondent no. 3 authority has dismissed an appeal in a proceeding under sections 14-B and 7-Q of the Act. By the said order, damages of Rs.1,66,26,124/- were assessed against the petitioner for delayed remittances to the Provident Fund Authorities of its employees for the period March, 2012 to November, 2016. The order further records that during the pendency of the proceeding before the respondent Authorities since the entire amount of damages had been recovered by the authority there was no dispute to be resolved between the parties. In this background, the appeal was dismissed.

The moot question which arises for consideration is whether Financial Service Executives (FSEs), are to be treated as employees of the petitioner or not?

This jurisdictional question which the petitioner espouses goes to the root of the proceedings initiated by the respondent no. 3 authority under the Act. In support of such contention, the petitioner relies on a decision of the Hon'ble High Court at Kerala in WP(C) No. 9608 of 2014 (*Financial Service Executives Welfare Association Vs. LICI*) in 2014 SCC OnLine Ker 23415 to contend that by the very nature, the relationship between FSEs and the petitioner is not of master and servant. On the contrary, there is a relationship of principal and agent and the FSEs do not fall within the definition of an employee under section 2(f) of the Act.

It is further submitted on behalf of the petitioner that in the past, due to inadvertence, the petitioner had accidentally and on an erroneous interpretation of the law, approached the respondent Provident Fund Authorities and deposited the share of provident fund dues in favour of the FSEs with the authorities. However, this was a mistake and the petitioner had taken appropriate steps once they realized such jurisdictional error. In any event, an error of such nature can and should be corrected by the respondent authorities.

On behalf of the respondent no. 2, it is submitted that the impugned order warrants no interference at all. The petitioner voluntarily approached the Provident Fund Authorities and were granted a Provident Fund Code. Subsequently, pursuant to an order passed by the Hon'ble Division Bench of the High Court at Kerala in *Financial Service Executives Welfare Association v. Life Insurance Corporation of India 2015 SCC OnLine Ker 877*, the petitioner was directed to deposit provident fund dues in respect of the FSEs with the authority. In support of such contention, the respondent relies on an order dated 9th March, 2015 passed by the Hon'ble High Court of Kerala in the above contempt proceeding. In such circumstances, the entire plea of the FSEs not being employees within the provisions of the Act is an afterthought and untenable. The fact of the petitioner having deposited an amount of Rs.7,34,24,017/- in respect of 2927 FSEs and also disbursement of the same warrants no interference with the impugned orders.

The challenge to the impugned order is primarily directed on a jurisdictional issue as to whether the FSEs fall within the provision of the Act or not. Significantly, this aspect of the matter has neither been dealt with nor considered nor adjudicated upon in the impugned order. Similarly, there has been no adjudication of this aspect in the initial order passed under section 14-B of the Act dated 9th November, 2023. None of the orders have considered nor decided this jurisdictional question before exercising any powers under the Act.

For convenience, Section 2(f) of the Act reads as follows:

> *(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;]*

A bare perusal of the above definition would demonstrate that whether the FSEs are employees or not requires a factual analysis and is a jurisdictional issue which goes to the root of the applicability of the Act or not?

There is nothing which the respondent authorities have been able to show which would suggest that the respondent authorities have gone into this issue and have adjudicated upon this jurisdictional aspect.

Prima facie, the nature of the duties and responsibilities of the FSEs would show that they are not employees within the meaning of the Act. The nature of engagement of the FSEs are purely contractual and for a limited period. Their continuance is dependent on performance. (*Financial Service Executives Welfare Association vs. Life Insurance Corporation 2014 SCC OnLine (Ker) 23415 at Para 14*).

There is no law which compells a party to carry on with a mistake or error in perpetuity. To this extent, the insistence and persistence of the respondent authorities is without basis.

In view of the above, the impugned proceedings initiated under Section 14-B of the Act are vitiated. The orders dated 22nd June, 2018 and 9th November, 2023 are quashed. There shall be an order in terms of prayers (a), (b) and (d) of the writ petition.

Liberty is granted to the petitioner to take appropriate steps in accordance with law insofar as recovery of the amount of Rs.1,66,26,124/- paid to the respondent Authority is concerned. Needless to mention, the respondent no.2 Authority will be at liberty to take all points available in its defence in accordance with law.

In case the respondent authorities decide to initiate any proceeding under the Act insofar as applicability of the Act *vis-a-vis* is the petitioner is concerned, they are bound to decide the question of jurisdiction and applicability of the Act in accordance with law and after giving a right of hearing to all the concerned parties.

In view of the above, the order dated 26th September, 2024 passed in EPFA No. 3 of 2019 also stands quashed and set aside. Consequently, WPA 29481 of 2024, challenging the orders dated 16 September 2019 and 26 September 2024 in EPFA No. 3 of 2019 stands allowed. The impugned orders stand quashed. There shall be an order in terms of prayer (a), (b) and (c) of the writ petition.

In view of the above, all connected interlocutory applications stands disposed of as infructuous.

(Ravi Krishan Kapur, J.)