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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 06.02.2025	Delivered on 20.02.2025
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CORAM:

THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR. JUSTICE G.ARUL MURUGAN

W.A.No.242 of 2025
and
C.M.P.No.1685 of 2025

Tamil Nadu Grama Bank
(Successor in title to Pallavan Grama Bank)
6 Yercaud Road, Hasthampatty,
Salem - 636 007.
Rep by its General Manager (Admin)

... Appellant

Vs.

1.The Regional Provident Fund Commissioner - II,
Employees' Provident Fund Organisation,
Regional Office Steel Plant Road,
Thalavaipatti, Salem - 636 302.

2.The General Secretary,
Tamil Nadu Grama Bank Workers Union,
Regn. No.457/VDR, 3/12 M K Nagar,
Seelanaickenpatti, Salem - 635 201.

...Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent, praying to
set aside the order dated 25.09.2024 in W.P.No.21205 of 2022.

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For Appellant : Mr.P.Raghunathan
for M/s.T.S.Gopalan and Co.
For Respondents : Mrs.R.Meenakshi for R1
Mrs.D.Geetha for R2

J U D G M E N T

(Judgment of the Court was delivered by **R.SUBRAMANIAN, J.**)

The appellant which is a creature of the statute viz., Regional Rural Banks Act, 1976 is aggrieved by the order of the writ Court affirming the demand made by the Employees' Provident Fund Organisation to the tune of Rs.10,29,26,330/- as the contribution payable by it.

2. The Employees' Provident Fund Commissioner/ 1st respondent by his order dated 06.06.2022 passed under Section 7-A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 concluding that the appellant is liable to pay the employees provident fund contribution for some of the employees, who were not covered by any pension scheme.

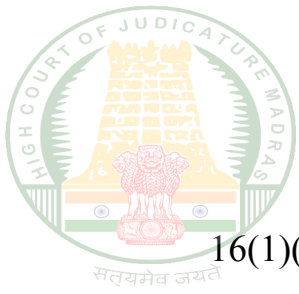


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3. This order was put in issue before the writ Court and the main contention of the appellant before the writ Court was that the Employees' Provident Funds and Miscellaneous Provisions Act will not apply in view of Section 16(1)(c) of the said Act, which makes it inapplicable to an establishment set up under any Central, Provincial or State Act and whose employees are entitled to the benefits of contributory provident fund or old age pension in accordance with any Scheme or Rule framed under that Act governing such benefits. It was the contention of the appellant before the writ Court that since a Scheme exists for regulation of provident fund of the employees of the appellant, framed in terms of Section 30 of the Regional Rural Banks Act, 1976, the provision of Section 16(1)(c) of the Employees' Provident Funds and Miscellaneous Provisions Act would operate and therefore, the order of the Provident Fund Commissioner directing payment of provident fund contribution cannot be sustained.

4. The contention was countered by the Provident Fund Organisation mainly contending that even where an Institution falling under Section



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16(1)(c) has a Scheme and if that Scheme covers only a group of employees of that Organisation or Institution, the Institution or Organisation would be liable for employees provident fund contribution in respect of the employees, who are not covered by the Scheme.

5. On behalf of the employees' Union it was contended before the writ Court that Regulation 71 of the Regulations framed by the erstwhile Pallavan Gram Bank would continue to apply as the appellant is only a new avatar of Pallavan Gram Bank and the said Pallavan Grama Bank has under Regulation 71 accepted that it is liable to pay the employees provident fund contribution.

6. The question regarding maintainability of the Writ Petition was also raised, since appeal is provided under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 against the order made under Section 7-A of the Act.

7. The writ Court overruled the objection regarding maintainability

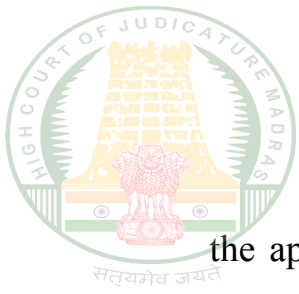


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following the principle of law that no inflexible Rule should be applied with rigidity to the cases which come to Court under Article 226 of the Constitution of India. Since a legal plea regarding the applicability of the enactment itself is raised in the Writ Petition, the appellant Bank should not be driven to the appellate remedy provided under the enactment concerned.

8. In answer to the submission based on the amendment notification issued in the year 2000, the writ Court held that since the amendment notification itself was quashed by the Division Bench of this Court, the situation that prevailed before the amendment stood restored and not the notification of the year 1966, which was sought to be amended by the notification dated 15.02.2000. All Banks which are doing business in one State or Union Territory with no branches or Department outside the State or Union Territory will continue to be covered under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

9. On the claim that the appellant Bank itself has a pension scheme and therefore, in terms of Section 16(1)(c), the Act itself will not apply to



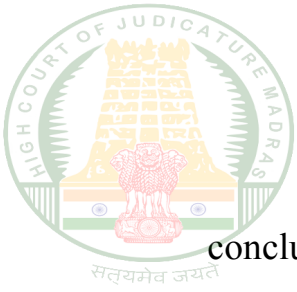
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the appellant Bank, the writ Court found that if a group of employees are not covered by the pension scheme or the provident fund scheme of the establishment, then the Act would apply to such of those employees who are not covered. The writ Court relied upon the judgment of the Hon'ble Supreme Court in *Pawan Hans Limited and others Vs. Aviation Karmachari Sanghatana* reported in (2020) 13 SCC 506. On the above conclusion the writ Court dismissed the Writ Petition. Aggrieved the Bank has come up with this appeal.

10. We have heard Mr.P.Raghunathan, learned counsel appearing for M/s.T.S.Gopalan and Co., for the appellant, Mr.R.Meenakshi, learned counsel for the 1st respondent and Mrs.D.Geetha, learned counsel for the 2nd respondent.

11. Mr.P.Raghunathan, learned counsel appearing for the appellant would vehemently contend that the writ Court was wrong in its interpretation of Section 16(1)(c) of the Act and he would also contend that once the Act itself cannot be applied to the Institution, as such, the

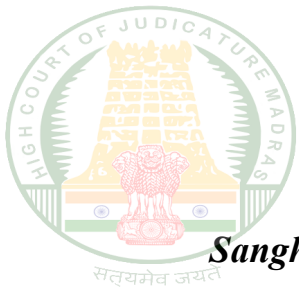


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conclusion of the writ Court to the effect that exclusion would apply only in respect of employees covered by the Pension scheme and not in respect of others is not correct. The learned counsel also sought to contend that these 625 employees who are covered by the order impugned in the Writ Petition dated 06.06.2022 were not regular employees, but, they are casual employees of the Bank.

12. Contending contra, Mrs.R.Meenakshi, learned counsel appearing for the 1st respondent and Mrs.D.Geetha, learned counsel appearing for the 2nd respondent would submit that 'exemption' and 'exclusion' have different connotations. A fair reading of Section 16(1)(c) of the Act, according to the learned counsel, would only lead to the conclusion that the exclusion is limited only to employees who are covered by the provident fund scheme. If some of the employees are not covered by the scheme, the Act would automatically kick in.

13. Reliance is also placed on the decision of the Hon'ble Supreme Court in *Pawan Hans Limited and others Vs. Aviation Karmachari*



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Sanghatana referred to *supra*. The Hon'ble Supreme Court considered the

scope of Section 16(1)(b) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. Section 16 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, which deals with exclusions reads as follows:-

16. Act not to apply to certain establishments.— [(1) *This Act shall not apply—*

(a) *to any establishment registered under the Co-operative Societies Act, 1912 (2 of 1912), or under any other law for the time being in force in any State relating to co-operative societies, employing less than fifty persons and working without the aid of power; or*

[(b) *to any other establishment belonging to or under the control of the Central Government or a State Government and whose employees are entitled to the benefit of contributory provident fund or old age pension in accordance with any scheme or rule framed by the Central Government or the State Government governing such benefits; or*

(c) *to any other establishment set up under any Central, Provincial or State Act and whose employees are entitled to the benefits of contributory provident fund or old age pension in accordance with any scheme or rule framed under that Act governing such benefits;*



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(2) If the Central Government is of opinion that having regard to the financial position of any class of 9 [establishments] or other circumstances of the case, it is necessary or expedient so to do, it may, by notification in the Official Gazette, and subject to such conditions as may be specified in the notification, exempt 10[whether prospectively or retrospectively] that class of 9 [establishments] from the operation of this Act for such period as may be specified in the notification.]

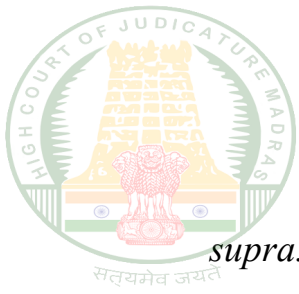
14. Both the Sections 16(1)(b) and 16(1)(c) lay down twin criteria.

The first criteria being that the establishment should have been set up under the Central, Provincial or State Act. The second condition is that the employees of such establishments should be entitled to benefits of a contributory provident fund or old age pension scheme. The establishments falling under both clauses (b) and (c) of Section 16(1) should satisfy the twin tests to enable them to avail of the exclusion under Section 16.

15. This very question was considered by the Hon'ble Supreme Court

in ***Pawan Hans Limited and others Vs. Aviation Karmachari Sanghatana***

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supra. Though the Hon'ble Supreme Court had dealt with clause (b) of sub-Section (1) of Section 16, the principles laid down would apply to the case on hand also, inasmuch as the provision of Sections 16(1)(b) and 16(1)(c) are *pari materia*.

16. Mr.P.Raghunathan, learned counsel appearing for the appellant would place reliance on the judgment in ***Yeshwant Gramin Shikshan Sanstha Vs. Assistant Provident Fund Commissioner and others*** reported in **(2017) 5 SCC 579** and contend that the fact that the part time employees are not covered by the contributory provident fund scheme framed by the State Government will not operate to nullify exclusion under Section 16(1)(b) of the Act.

17. The Hon'ble Supreme Court held that since the 16 employees were part time employees and the definition of 'Employees' under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 is not wide enough to take in part time employees, concluded that once the Institution has got a Scheme by which substantial portion of its employees



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are covered by the Contributory Provident Fund Scheme, a Central Act would not apply and the same cannot be invoked for part time employees.

18. However, in *Pawan Hans Limited and others Vs. Aviation Karmachari Sanghatana supra* while considering the similar question where exclusion was sought for, the Hon'ble Supreme Court after referring to the definition of the term 'employee' under Section 2(f) of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 held that even contractual employees would come within the definition and therefore, if the old age pension scheme or contributory provident fund scheme of the Institution did not cover certain clause of employees, then the exclusion would not be available and those employees, who are not covered by the pension scheme would be entitled to the cover. In doing so, the Hon'ble Supreme Court held as follows:-

10.3.This Court in Provident Fund Commr. v. Sanatan Dharam Girls Secondary School[Provident Fund Commr. v. Sanatan Dharam Girls Secondary School, (2007) 1 SCC 268 : (2007) 1 SCC (L&S) 167] laid down a twin-test for an establishment to seek exemption from the provisions of the EPF Act, 1952. The twin conditions are:

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10.3.1. *First, the establishment must be either “belonging to” or “under the control of” the Central or the State Government. The phrase “belonging to” would signify “ownership” of the Government, whereas the phrase “under the control of” would imply superintendence, management or authority to direct, restrict or regulate. [Shamrao Vithal Coop. Bank Ltd.v. Kasargod Pandhuranga Mallya, (1972) 4 SCC 600]*

10.3.2. *Second, the employees of such an establishment should be entitled to the benefit of contributory provident fund or old age pension in accordance with any scheme or rule framed by the Central Government or the State Government governing such benefits.*

10.3.3. *If both tests are satisfied, an establishment can claim exemption/exclusion under Section 16(1)(b) of the EPF Act.*

10.4. *Applying the first test to the instant case, the Central Government has a 51% ownership in the appellant Company, while the balance 49% is owned by ONGC, a Central Government PSU. As per Section 2(45) of the Companies Act, 2013, a “government company” means any company in which not less than 51% of the paid-up share capital is held by the Central Government. Since 51% of the shares of the appellant Company are owned by the Central*



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Government, the first test is satisfied as the appellant Company can be termed as a government company under Section 2(45) of the Companies Act, 2013.

10.5. With respect to the second test, it is relevant to note that the Company had its own Scheme viz. the Pawan Hans Employees Provident Fund Trust Regulations in force. The Company however restricted the application of the PF Trust Regulations to only the “regular” employees. The PF Trust Regulations of the Company were not framed by the Central or the State Government, nor were they applicable to all the employees of the Company, so as to satisfy the second test.

10.6. The Regional Provident Fund Commissioner, Bandra issued letter dated 24-5-2017 addressed to the Company wherein it was stated that the benefit of contributory provident fund was not being provided to contractual/casual employees of the Company; and was directed to implement the provisions of the EPF Act. The relevant extract from the letter is set out hereinbelow:

“approximately 370-400 employees have been engaged by M/s Pawan Hans Ltd. on contract basis in various cadres. But no social security benefit is being extended to them. The EPF & MP Act, 1952 under Section 2(f) lays down that any



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person employed for wages in any kind of work in or in connection with the work of the establishment and includes a worker engaged by or through a contractor. There is no distinction between a person employed on permanent, temporary, contractual or casual basis under Section 2(f) of the EPF & MP Act, 1952.

You are, therefore, requested to implement the provisions of the EPF & MP Act, 1952 in respect of all the contractual/causal employees engaged by M/s Pawan Hans Ltd. who are still not getting benefits of PF and pension.”

(emphasis supplied)

10.7. In our view, the Company does not satisfy the second test, since the members of the respondent Union and other similarly situated contractual workers were not getting the benefits of contributory provident fund under the PF Trust Regulations framed by the Company, or under any scheme or any rule framed by the Central Government or the State Government. Consequentially, the exemption under Section 16 of the EPF Act would not be applicable to the appellant Company.



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10.8. In view of the above discussion, we hold that the Company has failed to make out a case of exclusion from the applicability of the provisions of the EPF Act.

19. In view of the aforesaid categorical pronouncement of the Hon'ble Supreme Court, which has been followed by the writ Court, we see no reason to interfere with the pronouncement of the writ Court.

20. The Writ Appeal therefore, fails and it is accordingly **dismissed**.
No costs. Consequently, the connected miscellaneous petition is closed.

(R.SUBRAMANIAN, J.) (G.ARUL MURUGAN, J.)
20.02.2025

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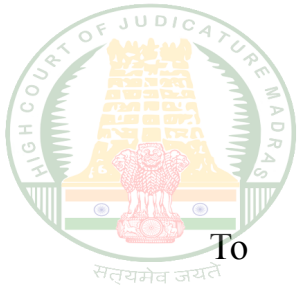
Index : Yes

Internet : Yes

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Speaking order

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To

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- 1.The General Manager (Admin),
Tamil Nadu Grama Bank
(Successor in title to Pallavan Grama Bank)
6 Yercaud Road, Hasthampatty,
Salem - 636 007.
- 2.The Regional Provident Fund Commissioner - II,
Employees' Provident Fund Organisation,
Regional Office Steel Plant Road,
Thalavaipatti, Salem - 636 302.
- 3.The General Secretary,
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