2019 INSC 805

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5821 OF 2019

(Arising out of SLP (Civil) No. 22243 of 2015)

The Officer In-Charge, Sub-Regional Provident Fund Office & Anr. ...Appellants

versus

M/s Godavari Garments Limited ...Respondent

J U D G M E N T

INDU MALHOTRA, J.

Delay condoned.

Leave granted.

1. The present Civil Appeal has been filed to challenge the Order dated 27.04.2012 passed in W.P. No. 1615 of 1993 by the Bombay High Court, Aurangabad Bench.

2. The background facts in which the present Civil Appeal has been filed are briefly stated as under:

2.1. The Respondent Company is a subsidiary of the Marathwada Development Corporation, which is an undertaking of the Government of Maharashtra. It was covered under the provisions of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as "the EPF Act") with effect from 01.01.1979.

2.2. The main objective of the Respondent Company, as per its Memorandum of Association, was to encourage, promote, develop, set-up or cause to be set-up a readymade garments industry in the Marathwada Region, with a view to provide gainful employment to people possessing skills in stitching, tailoring, and allied activities, especially to women from the economically weaker sections of the Society.

2.3. The Respondent Company engaged women workers who were provided with cut fabric, thread, buttons, etc. to be made into garments at their own homes. The sewing

machines used by the women workers were owned by them, and not provided by the Respondent Company.

2.4. On 12.03.1991, Appellant No. 1 – Officer In-Charge, Sub-Regional Provident Fund Office, issued a Show Cause Notice to the Respondent Company calling upon it to pay the Provident Fund contributions for the women workers. The Balance Sheet of the Respondent Company for the year 1988 – 89, revealed large debits towards salary and wages for direct and indirect workers, but the Respondent Company made a false statement that it had only 41 employees.

2.5. On 30.11.1992, Appellant No. 1 issued summons to the Respondent Company for personal hearing under Section 7-A of the EPF Act.

2.6. The representative of the Respondent Company appeared before Appellant No. 1, and contended that the women workers who were fabricating garments for the Respondent Company, were not their employees, and hence not covered by Section 2(f) of the EPF Act. Therefore, even though wages were paid to those women

workers, the Respondent Company was not liable to pay Provident Fund contribution in respect of them.

2.7. The Provident Fund Officer – Appellant No. 1 *vide* Order dated 19.04.1993 held that the women workers engaged for stitching garments were covered by the definition of "employee" under Section 2(f) of the EPF Act. An amount of Rs. 15,97,087/- was assessed towards Provident Fund dues of the Respondent Company for the period from November, 1979 to February, 1991. The Respondent Company was directed to pay the said amount within 7 days.

2.8. The Respondent Company challenged the aforesaid Order by filing W.P. No. 1615 of 1993 before the Bombay High Court.

The Bombay High Court, Aurangabad bench *vide* Final Judgment and Order dated 27.04.2012 allowed the Writ Petition filed by the Respondent Company, and set aside the Order dated 19.04.1993 passed by the Appellant No. 1. It was held that the Respondent Company had no direct or indirect control over the

women workers. The conversion of cloth into garment could be done by any person on behalf of the women workers. Hence, the Respondent Company did not exercise any supervisory control over the women workers.

2.9. Aggrieved by the aforesaid Judgment, the present Civil Appeal has been filed by the Provident Fund Office.

3. We have heard the learned Counsel for the parties, and perused the pleadings and written submissions filed by the parties.

4. Mr. R.R. Rajesh, learned Counsel appearing on behalf of the Appellants, submitted that the women workers employed by the Respondent Company fall within the definition of "employee" under Section 2(f) of the EPF Act.

Reliance was placed on this Court's decision in *M/s P.M. Patel & Sons and Ors.* v. *Union of India and Ors.*[1] to contend that the women workers employed by the Respondent Company were covered by the definition of "employee" under Section 2(f) of the EPF Act. Hence, the Respondent Company

1 (1986) 1 SCC 32.

is liable to pay Provident Fund contribution in respect of those women workers.

5. Mr. Anoop Kandari, learned Counsel appearing on behalf of the Respondent Company, submitted that there was no employer-employee relationship between the Respondent Company and the women workers. The women workers were not employees under Section 2(f) of the EPF Act. They were independent contractors.

It was further submitted that the sewing machines used by the women workers were owned by them, and not provided by the Respondent Company. The women workers worked from their homes, and not at the production centers of the Respondent Company. Hence, the work performed by them, could be done by their relatives, or any other person on their behalf. Furthermore, the women workers were not bound to report to the production centers regularly, nor were they required to work at the production centers. The Respondent Company exercised no supervisory control over the women workers.

6. The short issue which arises for consideration is whether the women workers employed by the Respondent Company are covered by the definition of "employee" under Section 2(f) of the EPF Act or not.

Section 2(f) of the EPF Act is set-out hereinbelow for ready reference:

> *"(f) "employee" means <u>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</u>, 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;"*
>
> (emphasis supplied)

6.1. The definition of "employee" under Section 2(f) of the EPF Act is an inclusive definition, and is widely worded to include any person engaged either directly or indirectly in connection with the work of an establishment.

6.2. In the present case, the women workers employed by the Respondent Company were provided all the raw

materials, such as the fabric, thread, buttons, etc. from the Respondent – Employer. With this material, the women workers were required to stitch the garments as per the specifications given by the Respondent Company. The women workers could stitch the garments at their homes, and provide them to the Respondent Company. The Respondent Company had the absolute right to reject the finished product i.e. the garments, in case of any defects.

6.3. The mere fact that the women workers stitched the garments at home, would make no difference. It is the admitted position that the women workers were paid wages directly by the Respondent Company on a per-piece basis for every garment stitched.

6.4. The issue in the present case is squarely covered by the decision of this Court in *Silver Jubilee Tailoring House and Ors.* v. *Chief Inspector of Shops and Establishments and Ors.*[2] The appellants therein were engaged in the business of producing garments. They employed

2 (1974) 3 SCC 498.

workers who were provided with the cloth, and were instructed by the appellants how to stitch it. The workers were paid on piece-rate basis. If a worker failed to stitch a garment as per the instructions, the appellants rejected the work, and asked the worker to re-stitch the garment. This Court held that such workers fell within the definition of "person employed" under Section 2(14) of the Andhra Pradesh (Telangana Area) Shops and Establishments Act, 1956. It was held that:

> *"35. Quite apart from all these circumstances, as the employer has the right to reject the end product if it does not conform to the instruction of the employer and direct the worker to restitch it, the element of control and supervision as formulated in the decisions of this Court is also present."*
>
> (emphasis supplied)

6.5. On the issue where payment is made by piece-rate to the workers, would they be covered by the definition of "employee", this Court in *Shining Tailors* v. *Industrial Tribunal II, U.P., Lucknow and Ors.*,[3] held that:

> *"5. We have gone through the record and especially the evidence recorded by the Tribunal. The Tribunal has committed a glaring error apparent on record that whenever payment is*

3 (1983) 4 SCC 464.

made by piece rate, there is no relationship of master and the servant and that such relationship can only be as between principal and principal and therefore, the respondents were independent contractors. Frankly, we must say that the Tribunal has not clearly grasped the meaning of what is the piece rate. If every piece rated workmen is an independent contractor, lakhs and lakhs of workmen in various industries where payment is correlated to production would be carved out of the expression 'workmen' as defined in the Industrial Disputes Act. In the past the test to determine the relationship of employer and the workmen was the test of control and not the method of payment. Piece rate payment meaning thereby payment correlated to production is a well-recognised mode of payment to industrial workmen. In fact, wherever possible that method of payment has to be encouraged so that there is utmost sincerity, efficiency and single minded devotion to increase production which would be beneficial both to the employer, the workmen and the nation at large. But the test employed in the past was one of determining the degree of control that the employer wielded over the workmen. However, in the identical situation in Silver Jubilee Tailoring House and Ors. v. Chief Inspector of Shops and Establishments and Anr. (1973) IILLJ 495 SC Methew, J. speaking for the Court observed that the control idea was more suited to the agricultural society prior to Industrial Revolution and during the last two decades the emphasis in the field is shifted from and no longer rests exclusively or strongly upon the question of control. It was further observed that a search for a formula in the nature of a single test will not serve the useful purpose, and all factors that have been referred to in the cases on topics, should be considered to tell a contract of service. Approaching the matter from this angle, the Court observed that the employer's right to reject the end product if it does not conform to the instructions of the employer

speaks for the element of control and supervision. So also the right of removal of the workman or not to give the work has the element of control and supervision. If these aspects are considered decisive, they are amply satisfied in the facts of this case. The Tribunal ignored the well laid test in law and completely misdirected itself by showing that piece rate itself indicates a relationship of independent contractor and error apparent on the record disclosing a total lack of knowledge of the method of payment in various occupations in different industries. The right of rejection coupled with the right to refuse work would certainly establish master servant relationship and both these tests are amply satisfied in the facts of this case. Viewed from this angle, the respondents were the workmen of the employer and the preliminary objection therefore, raised on behalf of the appellant-employer was untenable and ought to have been overruled and we hereby overrule it."

(emphasis supplied)

6.6. In *M/s P.M. Patel & Sons and Ors.* v. *Union of India and Ors.*,[4] the appellants therein were engaged in the manufacture and sale of *bidis*. The appellants engaged contractors, and the contractors engaged workers who rolled the *bidis* at their own homes after obtaining the raw materials either directly from the appellants, or through the contractors. The appellants contended that those workers were not covered by the definition of "employee" under Section 2(f) of the EPF Act. This Court

4 (1986) 1 SCC 32.

rejected the contentions raised by the appellants therein, and held that:

> *"8. … Clause (f) of Section 2 of that Act defines an "employee" to mean "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 employed by or through a contractor in or in connection with the work of the establishment." It will be noticed that the terms of the definition are wide. They include not only persons employed directly by the employer but also persons employed through a contractor. Moreover, they include not only persons employed in the factory but also persons employed in connection with the work of the factory. It seems to us that a home worker, by virtue of the fact that he rolls beedis, is involved in an activity connected with the work of the factory. We are unable to accept the narrow construction sought by the petitioners that the words "in connection with" in the definition of "employee" must be confined to work performed in the factory itself as a part of the total process of the manufacture.*
>
> *…*
>
> *10. In the context of the conditions and the circumstances set out earlier in which the home workers of a single manufacturer go about their work, including the receiving of raw material, rolling the beedis at home and delivering them to the manufacturer subject to the right of rejection there is sufficient evidence of the requisite degree of control and supervision for establishing the relationship of master and servant between the manufacturer and the home worker. It must be remembered that the work of rolling beedis is not of a sophisticated nature, requiring control and supervision at the time when the work is done. It is a simple operation*

> *which, as practice has shown, has been performed satisfactorily by thousands of illiterate workers. It is a task which can be performed by young and old, men and women, with equal facility and it does not require a high order of skill. In the circumstances, the right of rejection can constitute in itself an effective degree of supervision and control. We may point out that there is evidence to show that the rejection takes place in the presence of the home worker. That factor, however, plays a merely supportive role in determining the existence of the relationship of the master and servant. The petitioners point out that there is no element of personal service in beedi rolling and that it is open to a home worker to get the work done by one or the other member of his family at home. The element of personal service, it seems to us, is of little significance when the test of control and supervision lies in the right of rejection."*
>
> (emphasis supplied)

6.7. The aforesaid judgments make it abundantly clear that the women workers employed by the Respondent Company are covered by the definition of "employee" under Section 2(f) of the EPF Act.

6.8. The EPF Act is a beneficial social welfare legislation which was enacted by the Legislature for the benefit of the workmen.[5] This Court in *The Daily Partap* v. *The Regional Provident Fund Commissioner, Punjab,*

5 *Regional Provident Fund Commissioner* v. *The Hooghly Mills Company Ltd. and Ors.*, 2012 (1) SCALE 422.

Haryana, Himachal Pradesh and Union Territory, Chandigarh,[6] held that:

> *"9. … It has to be kept in view that the Act in question, is a beneficial social welfare legislation meant for the protection of weaker sections of society, namely, workmen who had to eke out their livelihood from the meagre wages they receive after toiling hard for the same."*

Hence, the provisions under the EPF Act have to be interpreted in a manner which is beneficial to the workmen.

6.9. In the present case, the women workers were certainly employed for wages in connection with the work of the Respondent Company. The definition of "employee" under Section 2(f) is an inclusive definition, and includes workers who are engaged either directly or indirectly in connection with the work of the establishment, and are paid wages.

In the present case, the women workers were directly engaged by the Management in connection with the

6 (1998) 8 SCC 90.

work of the Respondent Company, which was set up as a ready-made garments industry in Marathwada. The women workers were paid wages on per-piece basis for the services rendered. Merely because the women workers were permitted to do the work off site, would not take away their status as employees of the Respondent Company.

7. The Respondent Company placed reliance on this Court's decision in *C.E.S.C. Limited and Ors.* v. *Subhash Chandra Bose and Ors.*,[7] wherein it was held that:

> *"14. ... In the textual sense 'supervision' of the principal employer or his agent is on 'work' at the places envisaged and the word 'work' can neither he construed so broadly to be the final act of acceptance or rejection of work, nor so narrowly so as to be supervision at all limes and at each and every step of the work. A harmonious construction alone would help carry out the purpose of the Act, which would mean moderating the two extremes. When the employee is put to work under the eye and gaze of the principal employer, or his agent, where he can be watched secretly, accidentally, or occasionally, while the work is in progress, so as to scrutinise the quality thereof and to detect faults therein, as also put to timely remedial measures by directions given, finally leading to the satisfactory completion and acceptance of the work, that would in our view be supervision for the purposes of Section 2(9) of the Act."*

7 (1992) 1 SCC 441.

The decision in *C.E.S.C. Limited (supra)* however, is not applicable to the facts of the present case. In that case, this Court interpreted the meaning of the term "supervision" as used in the definition of "employee" Section 2(9) of the Employees' State Insurance Act, 1948. However, the term "supervision" is nowhere used in the definition of "employee" under Section 2(f) of the EPF Act. The decision in *P.M. Patel (supra)* could not be used to interpret the word "supervision" under the Employees' State Insurance Act, 1948 because the said word has not been used in Section 2(f) of the EPF Act.

8. In view of the aforesaid discussion, the judgment passed by the Bombay High Court *vide* the Impugned Order dated 27.04.2012, being contrary to settled law, is set aside.

The Order dated 19.04.1993 passed by the Appellant No. 1 is restored. The Respondent Company is directed to deposit the amount assessed by Appellant No. 1 towards Provident Fund dues of the women workers within 1 month from the date of this Judgment.

The Civil Appeal is allowed in the aforesaid terms. All pending Applications, if any, are accordingly disposed of.

Ordered accordingly.

.....J.
(ABHAY MANOHAR SAPRE)

.....J.
(INDU MALHOTRA)

New Delhi,
July 24, 2019