

G.V. Joshi Vs. State of Mysore and ors.

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Court : Karnataka

Decided On : Feb-04-1969

Reported in : AIR1969Kant300; AIR1969Mys300; [1969(18)FLR387]; (1969)1MysLJ528

Judge : A. Narayana Pai and ;M. Santhosh, JJ.

Acts : Employees' Provident Funds Act, 1952 - Sections 1(3), 16, 16(1) and 16(3)

Appeal No. : Writ Petn. No. 2103 of 1966

Appellant : G.V. Joshi

Respondent : State of Mysore and ors.

Judgement :

ORDER

1. The petitioner G. V. Joshi, who is a medical practitioner, is running a medical clinic called the 'City Clinic' at Hubli. At an inspection of the said establishment by an officer under the Employees' Provident Funds Act. 1952, it was found that there were twenty employees working in that establishment on the 1st of April 1965. A notice was, therefore, issued to him on 28-7-1966 by the Regional Provident Fund Commissioner, Mysore, intimating that the provisions of the Employees' Provident Funds Act and the scheme framed thereunder would be applicable to his establishment with effect from 1-4-1965, that as his establishment came within the description of what is called 'discovered establishment' under the relevant rules,

he need not collect for the period 1-4-1965, to 30-6-1966 the employees' portion of the contribution to the provident fund, and that for the said period, however, he should make payment of the employer's portion of the contribution as well as administrative charges. By the said notice he was also called upon to furnish necessary returns for the period commencing from 1-7-1966. The petitioner contested the legality of the notice and claimed that his establishment could not be brought within the scope of the statute. Relying upon a decision of the High Court of Andhra Pradesh, he contended that the provisions of the Act could not be applied to any establishment unless the required number of twenty employees are in continuous service for a period of at least one year. The authorities functioning under the Act were, however, not willing to accept the said legal position.

2. Hence, this writ petition in which the petitioner prays for an order quashing the notice of the Regional Provident Fund Commissioner, Mysore dated 28-7-1966 mentioned above as well as subsequent endorsements by him dated 21-9-1966 and 3-10-1966 addressed in furtherance of original notice dated 28-7-1966.

3. Upon facts there is no dispute whatever. The petitioner states and the respondents do not contest that during the months of January to March, May to August and November and December of 1965 there were actually working in the petitioner's establishment only nineteen employees. During the month of April 1965 the petitioner had engaged the services of one additional employee on what he describes as trial basis. His services were not continued after the end of April. Similarly one additional employee was taken on trial basis by the petitioner and he worked during the months of September and October 1965. It follows, therefore that during the months of April, September and October the petitioner's establishment did employ twenty employees.

4. The case on behalf of the respondents is that on the 1st of April 1965 when the petitioner employed twenty persons, his establishment came within the purview of Section 1(3)(b) of the Act because establishments of medical practitioners and medical specialists in which twenty or more persons are employed, were declared to be establishments to which the Act shall apply by a notification No. G. E. R. 1398 issued by the Central Government under Clause (b) of sub-section (3) of

Section 1 of the Act (published in part II--Section 3(1) of the Gazette of India dated the 26th September 1964 at page 1546).

5. It is not disputed that if the establishment employs twenty employees it would come within the purview of the Act. But what is contended on behalf of the petitioner is contended on behalf of the petitioner is that the condition of employment of twenty employees necessary for attraction the provisions of the Act must be an employment for a continuous period of one year.

6. As already stated, the petitioner relies upon a ruling of the Andhra Pradesh High Court. It is reported in *Nazeena Traders (P) Ltd. v. Regional Provident Fund Commissioner, Hyderabad*, : AIR 1965 AP200 . The said decision dissented from a contrary view taken by Madras High Court in a decision which is referred to as unreported. The said Madras decision, however, is found reported : AIR1964 Mad371 , *East India Industries (Madras) Private Ltd. v. Regional Provident Fund Commissioner, Madras*.

7. Both the Courts were interpreting the relevant provisions of the Statute and both of them proceeded on the footing that the Employees' Provident Funds Act is an ameliorative measure intended to benefit the permanent workers of an establishment. But, whereas the Madras High Court for the said reason thought that actual employment of twenty employees on any one day is sufficient to attract the provision of the statute, the Andhra Pradesh High Court took the view that the language of the relevant sections read in the light of what they referred to as a general scheme of the statute, does not support such a construction.

8. The section which deals with the conditions for the application of the statute is the 1st section itself. Sub-sections (1) and (2) thereof contain short title and extent to the statute. The topic of application of the statute is dealt with in sub-Sections (3), (4) and (5). They read as follows:--

'(3) Subject to the provisions contained in Section 16, it applies--

(a) to every establishment which is a factory engaged in any industry specified in Schedule I and in which twenty or more persons are employed, and

(b) to any other establishment employing twenty or more persons or class or such establishments which the Central Government may, by notification in the Official Gazette, specify in this behalf.

Provided that the Central Government may, after giving not less than two months, notice of its intention so to do, by notification in the Official gazette, apply the provisions of this Act to any establishment employing such number of persons less than twenty as may be specified in the notification.

(4) Notwithstanding anything contained in sub-section (3) of this section or sub-section (1) of Section 16, where it appears to the Central Government, whether on an application made to it in this behalf or otherwise, that the employer and the majority of employees in relation to any establishment have agreed that the provisions of this Act should be made applicable to the establishment, it may, by notification in the Official Gazette, apply the provisions of this Act to that establishment.

(5) An establishment to which this Act applies shall continue to be governed by this Act notwithstanding that the number of persons employed therein at any time falls below twenty: Provided that where for a continuous period of not less than one year the number of persons employed therein has been less than fifteen, the employer in relation to such establishment may cease to give effect to the provisions of this Act and any Scheme framed thereunder, with effect from the beginning of the month following the expiry of the said period of one year, but he shall, within one month of the date of such cessation, intimate, by registered post, the fact thereof to such authority as may be specified by the appropriate Government in this behalf.'

In the case now before us, we are not concerned with the case dealt with in sub-section (4). But, the language of sub-section (5) is of assistance.

9. The expression 'establishment employing twenty or more persons' in Clause (b) of sub-section (3) in the context means no more than an 'establishment which employees twenty persons.' The length of the period of employment necessary for attracting the provisions of the statute is not mentioned therein. The term

'employee' is found defined in clause (f) of Section 2 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 employed by or through a contractor in or in connection with the work of the establishment.'

In this definition also, the period of employment necessary before a person employed can be regarded as an employee for the purpose of the statute, is not mentioned. What is necessary to make is (1) that he should be employed for wages, (2) that the employment must be in any kind of work which is in or in connection with the establishment, and (3) that he gets his wages either directly or indirectly from the employer.

10. If we exclude the idea of wages for the time being, what is of the essence of the matter is that a person to be an employee within this definition must be one who is 'employed in any kind of work' in or in connection with the establishment in question. The primary meaning of the word 'employ' according to the Oxford Dictionary is 'to use or put to use, fill with business or keep busy.' The word is mostly or normally used in connection with living persons; but its use is known in connection with not merely things but even faculties of man. Even thoughts are regarded as employed in any particular pursuit or idea if they are actually engaged in or occupied with the same. An instrument is employed when it is actually put to use for which it is intended. When one person employs another; what he does is to actually put to his own use the services of the said other person. In the case of the persons, however, there is the secondary meaning that a person engaged to serve or paid for the purpose of utilising his services when necessary may also be regarded as an employee.

11. Having regard to what we have referred to as the essential features of the definition of 'employee' in Section 2(f),--viz., that the person is one who is 'employed in any work,' it appears to us that the meaning of the word 'employ' in the definition is the primary meaning and not the secondary meaning.

12. The definition also, as already stated, makes to mention of any period of service or any length of such period as a necessary element or ingredient in the definition.

13. That the period is quite immaterial, is also clear from sub-section (5) of the 1st Section. According to it, if an establishment is one to which the Act applies, it shall not cease to be governed by the Act notwithstanding the fact that the number of persons employed therein falls below twenty at any time. 'At any time' in this sub-section would mean even one day. If the position is such that even if the number falls below twenty only for a single day the establishment will continue to be governed by the statute, it should prima facie follow that is necessary to bring an establishment within the purview of the statute is that at least for one day it must employ twenty persons. That once it comes within the purview of the statute, it can get out of it under the proviso only if for a continuous period of one year the number of its employees remains below fifteen, clearly postulates that the statute which gives the benefit thereof to permanent employees moment the total number reaches twenty, prevents their deprivation of the benefit except on strict conditions mentioned in the proviso. Another guidance found in the proviso is that where the statute does intend to refer to a continuous period, it does so in express terms. The absence, therefore, of any reference to a period or a continuous period either in sub-section (3) of Section 1 or in the definition of employee in Section 2(f) is very significant.

14. The idea of a continuous period of service for one year as a matter of relevancy appears to us to have been suggested by the provident fund scheme annexed to the statute under which an employee becomes entitled to the membership of the fund only if he had been in continuous service under the employer in question for a period of one year. It is to such employees that the term 'permanent employee' is ordinarily applied. It is those employees that are sought to be benefited by the statute.

15. The specification of minimum number of twenty for employment is a matter which has a bearing on the paying capacity of the employer. The statute assumed or proceeds upon the assumption that an employer who is in a position to employ

twenty employees, has a turnover or profit making capacity large enough to extend to his permanent employees the benefit of a provident fund. It is in this sense that the statute is regarded as an ameliorative piece of legislation, which idea gives the key for the interpretation of its operative provisions.

16. Examining the position, therefore, both from the point of view of the fact that the statute is an ameliorative statute intended to benefit permanent employees of the type described above and also from the point of view of the language employed in the 1st section and in the definition of employee in Section 2(f), we have no doubt in our mind that employment of twenty persons even for a single day will bring the establishment in question within the purview of the statute and that once it enters the field of the statute that way, it can get out of it only if the conditions mentioned in the proviso to sub-section (5) of Section 1 are satisfied.

17. It has been argued that such an interpretation might result in the application of the statute to cases to which it was never intended to apply, as for example, to establishment which employs only fifteen persons on a permanent basis, but which on account of absence on leave of five or more persons is obliged to employ substitute employees, and may therefore be regarded as employing twenty or more persons according to our decision although in actual effect the substitutes could not be regarded as adding to the number. We do not think any such difficulty can arise for the reasons already explained by us in detail. We have pointed out that the word 'employ' both in the definition given in Section 2(f) as well as in Section 1 means 'employ in work' that is to say, employed and actually working on the day relevant for ascertaining whether the establishment employs twenty persons. In the illustration given in the argument, the actual persons working will continue to be fifteen substitutes being counted as actually working in the place of the persons who are absent and not working.

18. We, therefore, think that the petitioner cannot contend that the position taken up by the respondents in regard to his establishment is wrong or illegal.

19. The writ petition is dismissed.

20. As the proposed enquiry by the 3rd respondent was stayed by an interim order made by this Court, he may now fix a fresh date for enquiry by issuing a fresh notice.

21. Petition dismissed.

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