
**Employees Provident Fund Organisation Vs Mahila Griha Udyog Lijjat
Papad**

Special Civil Application No. 13117 of 2013

Court: GUJARAT HIGH COURT

Date of Decision: Aug. 22, 2016

Acts Referred:

Constitution of India, 1950 – Article 226#Employees Provident Funds and Miscellaneous Provisions Act, 1952 – Section 7(I), 7A

Citation: (2017) 1 CLR 1047 : (2016) 151 FLR 313 : (2016) LabLR 1263

Hon'ble Judges: Mr. K.M. Thaker, J.

Bench: Single Bench

Advocate: Ms. E. Shailaja, Advocate, for the Petitioner No. 1; Mr. Devang Vyas and Mr. Nirzar S. Desai, Advocates, for the Respondent No. 2; Mr. NV. Gandhi, Advocate, for the Respondent No. 1; Rule Served, for the Respondent No. 1; Unserved-Want Of Tim, for the Res

Final Decision: Disposed Off

Judgement

Mr. K.M. Thaker, J.(Oral) – Heard Ms. Shailaja, learned advocate for the petitioner - Provident Fund Organization, and Mr. Gandhi, learned

advocate for the respondent.

2. In this petition, the petitioner has prayed, inter alia, that:-

10(A) That the Hon'ble Court be pleased to issue a writ of Mandamus or certiorari or any other appropriate writ, order or direction to quash and

set aside the order dated 15/02/2013 passed by the Employees Provident Fund Appellate Tribunal, New Delhi in the ATA No.738(5)2012.

2.1 The order under challenge is passed by the learned Provident Fund Appellate Tribunal on 15.2.2013 in Appeal (ATA) No.738(5)2012

whereby the learned Tribunal allowed the appeal filed by present respondent.

3. As such, the central issue which is in dispute between the parties to this petition is as to whether the members of the respondent, trust, which is

registered under the Bombay Public Trust Act, would be covered within purview of the term ""employees"" defined under Section 2(f) of the Act

and whether the amounts received by the said members can be termed as basic wage as defined under the Act, or not.

4. So far as present case is concerned, the adjudicating authority, while deciding the proceedings under Section 7A of the Act, decided the said

issues against present respondent.

4.1 Therefore, upon feeling aggrieved by the decision of the adjudicating authority, the respondent herein filed appeal under Section 7(l) of the

Employees Provident Fund & Miscellaneous Provisions Act, 1952 before the learned Tribunal.

4.2 The learned Tribunal heard present respondent and present petitioner and set aside the order passed by the adjudicating authority, i.e. present

petitioner and accepted the case of present respondent.

4.3 The learned Tribunal, while passing the impugned order dated 15.2.2013, referred to and relied on the decision by the learned Tribunal in

other case i.e. in Appeal (ATA) No.509(9)2009 wherein the learned Tribunal held that the respondent society/trust and its activities are not

covered under the provisions of the Act.

4.4 Relying upon the said decision and also after considering the facts of the case on hand and the evidence available on record, learned Tribunal,

in present case, also held that the respondent herein and its activities are not covered under the provisions of the Act.

5. From the submissions by learned counsel for the petitioner department and respondent establishment, it has emerged that the above mentioned

issue has remained major bone of contention between the department and various branches/centres of the respondent society/trust which are

spread over in different States.

It has also emerged from the submissions by learned counsel for the parties that rounds of litigations with regard to the same issue have ensued

between the petitioner department and the branches/centres of the respondent establishment in different States.

One of such litigations was above mentioned proceedings i.e. Appeal ATA No.509(9)2009 which came to be decided by learned Tribunal in

favour of the respondent establishment.

5.1 According to the submission by learned counsel for the petitioner department, in one other case, a similar decision by the learned Tribunal was

carried before Madhya Pradesh High Court and the Madhya Pradesh High Court vide judgment Shri Mahila Griha Udhog Lijjat v. Union of

India (Uoi) & Anr. [1994 (68) FLR 1129] decided the issue in favour of the Provident Fund Department and rejected the petition which was

filed by Shri Mahila Griha Udhog Lijjat Papad. The learned counsel for the petitioner department would also submit that the society (the petitioner

before the Madhya Pradesh High Court) had carried the appeal before Hon"ble Apex Court, however, the Special Leave Petition before Hon"ble

Apex Court was withdrawn. So as to support and justify her submission, learned counsel for the petitioner department relied on the order passed

by Hon"ble Apex Court on 18.3.1999 (a copy whereof is placed on record at page-51A of the petition).

5.2 Ms. Shailaja, learned counsel for the petitioner department, submitted that at the time of hearing of the appeal filed by present respondent, i.e.

at the time of hearing of the appeal ATA No.738(5)2012 wherein the learned Tribunal passed the impugned order dated 15.2.2013, the

department had relied on the judgment dated 16.4.1993 by Madhya Pradesh High Court between Shri Mahila Griha Udhog Lijjat Papad (supra)

as well as the order passed by Hon"ble Apex Court in the Special Leave Petition which was filed by the petitioner before Madhya Pradesh High

Court.

However, the learned Tribunal, according to learned counsel for the department, has not made any reference of the submissions by the petitioner

department on the strength of the said judgment dated 16.4.1993. She also submitted that present petitioner had raised specific contention in its

affidavit filed before the learned Tribunal on the strength of the said judgment dated 16.4.1993, however, the learned Tribunal has not dealt with

and decided the said contention and has not even made any reference in the impugned order.

When the impugned order passed by the learned Tribunal is examined, it comes out from the order that there is no reference of any submission by

the department on the strength of the said judgment dated 16.4.1993.

The learned counsel for the respondent did not respond to the said allegation and claim by learned counsel for the petitioner. He refrained from

giving specific reply, either confirming or objecting, the claim of the learned counsel for the department. Learned counsel for the respondent

submitted that he did not appear before the learned Tribunal and that therefore, he does not have any idea as to whether such contention was

actually raised at the time of hearing of the appeal and whether the said contention was actually pressed in service by the department before the

learned Tribunal, or not. It is pertinent that the learned Tribunal has made reference of the decision by High Court of Bombay, Nagpur Branch in

writ petition No.5983 of 2005, which appears to have been relied on by the department before the learned Tribunal), however, there is no

reference in the impugned order about the judgment dated 16.4.1993 by Madhya Pradesh High Court in the case between Shri Mahila Griha

Udyog Lijjat v. Union of India (Uoi) & Anr., which is relied on by the learned counsel for the petitioner department.

6. In view of the fact that in the order passed by the learned Tribunal, there is no reference or mention about the contention of the department and

there is also no reference or mention about the decision dated 16.4.1993 by Madhya Pradesh High Court. When the learned Tribunal made

reference of one of the orders on which the department relied at the time of hearing of the appeal, there is no reason or justification for the learned

Tribunal to not refer to or make reference of another decision (i.e. the decision by Madhya Pradesh High Court), if it had been specifically and

expressly and actually relied on and cited by the department at the time of hearing of the appeal.

The learned counsel for the department submitted that the reference of the judgment is made in the reply affidavit of the department. Merely

because the department has made reference of the judgment in its reply affidavit filed before the learned Tribunal, it cannot be inferred that specific

contention at the time of hearing on the basis of said judgment was raised before the learned Tribunal.

If the petitioner wants to contend that though a specific contention was raised at the time of hearing before the learned Tribunal, the said contention

is not dealt with and not even referred to in the order, then, the petitioner department must, in first instance, approach the learned Tribunal with

appropriate clarificatory application and seek observations and order by the learned Tribunal clarifying in the order that the contention was raised

and it is, inadvertently, not mentioned or dealt with in final order.

7. In this view of the matter, Ms. Shailaja, learned advocate for the petitioner department, submitted that an opportunity may be given to the

petitioner department to approach the learned Tribunal with such appropriate clarificatory application so as to seek necessary clarification with

regard to the order from the learned Tribunal.

8. In view of the said submission and request by learned counsel for the petitioner department, present petition is disposed of at the request by

learned advocate for the petitioner department with liberty to the petitioner department to file appropriate application and seek necessary

clarification and order from the learned Tribunal with regard to its claim that the department had relied on the decision dated 16.4.1993 by

Madhya Pradesh High Court in case of Shri Mahila Griha Udhayog Lijjat Papad v. Union of India (Uoi) & Anr., however, inadvertently, the said

aspect is not mentioned in the order and the said contention is not dealt with by the learned Tribunal.

8.1 It is clarified that if the learned Tribunal passes any order on the application (which may be filed by the petitioner department) and if the

petitioner department or the respondent establishment has any reason or cause to take out appropriate proceedings against the said order of the

learned Tribunal, then, the parties would be at liberty to take out appropriate proceeding and present order will not stand in way of either party to

take out appropriate proceedings after learned Tribunal's order on petitioner department's application.

9. With aforesaid observations, directions and clarifications, present petition stands disposed of. Rule is discharged.