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Assistant Provident Fund Commissioner Vs Mr. Sushil Kumar Gupta

Writ Petition (C) No. 2870 of 2010

Court: Jharkhand High Court

Date of Decision: Nov. 22, 2010

Acts Referred:
Employees Provident Funds and Miscellaneous Provisions Act, 1952 â€" Section 2, 7A, 7B

Citation: (2011) 128 FLR 718 : (2011) 1 JCR 389 : (2011) 2 LLJ 644 : (2011) LLR 305 : (2012) 2 SLJ 407

Hon'ble Judges: R.K. Merathia, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

R.K. Merathia, J.
This writ petition has been filed by the Assistant Provident Fund Commissioner, Ranchi for quashing the order dated

18.10.2007 passed by the Employees'' Provident Fund Appellate Tribunal, New Delhi in ATA No. 181(3)/2006.

2. Mr. P. P. N. Roy, learned senior counsel for the Petitioner submitted that an order was passed against Respondent u/s 7A and 7B of the E.P.F.

& M. P. Act, 1952 on 17.5.2004 by the Petitioner on the grounds that one Mr. M. K. Sinha was managing the accounts of the establishment

against the monthly payment of Rs. 2,000/-, and therefore, it can be construed that he is working in the establishment and gets his remuneration

directly from the employer. He further held that seven gold smiths (whose names are mentioned in the order) are also engaged by the establishment

on contract basis and they are executing their work for the establishment regularly and get their remuneration directly from the employer, but the

said order has been wrongly set aside by the Tribunal in the appeal filed by the establishment without appreciating the relevant aspects.

3. The relevant portion of the impugned order reads as follows:

Heard the representatives of both the parties. The sole issue involved in this appeal is whether the Accountant and the Goldsmiths are and can be

treated as employees of the Appellant establishment Section 2(f) of the Act provides as under:

Section 2(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

contractor in or in connection with the work of the establishment.

The above definition of the expression "employee" is wide enough to include not only the person employed directly by the employer, but also

persons employed otherwise in connection with the affairs of the employer. The above definition of the expression "employee" also postulates that

to become an "employee" u/s 2(f) of the Act, it is necessary that the relationship of master and servant must exist between the person and the

employer. In the instant matter, the principle question is whether such a relationship exists between the Appellant and the Accountant and

Goldsmiths. The Accountant is engaged to maintain the Account of the Appellant firm. He is not a regular employee of the Appellant but maintain

the acounts of the Appellant as per his convenience. While maintaining the Accounts, the Accountant is not supposed to be guided by the

Appellant nor he works under the supervision of the Appellant. Therefore, he cannot be considered to be an employee of the Appellant. Similarly,

the Goldsmiths are also not working under the control or supervision of the Appellant. these goldsmiths are not working exclusively for the

Appellant, but are also working for other jewellers. The Appellant is not paying any fixed salary to them but paid them as per work done by these

goldsmiths. Therefore, in the absence of any evidence to the contrary, I have no option but to hold that these goldsmiths are not paid wages in

accordance with the Act, therefore, such goldsmiths cannot be termed as employees of the Appellant.

4. It appears that the Tribunal has inter-alia taken into consideration that the Accountant is not a regular employee but maintains the accounts of the

establishment as per his convenience, and therefore, he cannot be said to be an employee and similarly the gold smiths are also working for other

jewellers also including the establishment in question, and for which they are not getting any fixed salary, but were paid as per the work done by

them.

5. In my opinion, the Tribunal has passed the impugned order after taking into consideration the relevant aspect of the matter. No grounds are

made out for interference with the impugned order by this Court under writ jurisdiction.

Accordingly, this writ petition is dismissed.