

## Aviation Karmachari Sanghatana Vs M/S. Pawan Hans Ltd. And Ors

**Court:** Bombay High Court (Goa Bench)

**Date of Decision:** Sept. 14, 2018

**Acts Referred:** Employees Provident Fund and Miscellaneous Provisions Act 1952 " Section 1(3)(b), 2(f), 16, 16(1)(b), 16(1)(c), 17 Constitution of India, 1950 " Article 226

**Hon'ble Judges:** R. M. Savant, J; K.K.Sonawane, J

**Bench:** Division Bench

**Advocate:** S.C. Naidu, G. R. Naik , Ashok Kumar Singh, Suresh Kumar, Abhay Kulkarni, T. R. Yadav

**Final Decision:** Allowed

### Judgement

R. M. SAVANT J

1 Rule.Ā, With the consent of the Learned Counsel for the parties made returnable forthwith and heard.

2 The above Writ Petition has been filed under Article 226 of the Constitution of India for a declaration that the members of the Petitioner and other

similarly situated employees, employed on contract basis by the Respondent No.1 are entitled to the benefit of Provident Fund as per the Act and the

statutory scheme and that the Respondent No.1 be directed to forthwith enroll all such eligible contract employees under the statutory scheme and

deposit their contribution with the Respondent No.3 from the date they are eligible till remittance and thereafter till they are in the employment of the

Respondent No.1.Ā, The Petitioner in the alternative has sought the relief that the Respondent No.1 be forthwith directed to suitably amend the

Provident Fund Trust Regulations to permit the enrollment of contract workers as members of the Provident Fund Scheme instituted by the

Respondent No.1 and to make all eligible contract employees members of the Provident Fund Scheme from their respective dates of entitlement and

continue to contribute amounts to the Provident Fund Trust in respect of contract employees as per the regulation.

3 The factual matrix involved in the above Petition can in brief be stated thus:Ā,

The Respondent No.1 is registered under the Companies Act.Ā, The shareholding of the Government of India in the Respondent No.1 is 51% and the

balance 49% is held by Oil and Natural Gas Corporation.Ā, The Respondent No.1 in that sense is a Central Public Sector undertaking registered

under the Companies Act 1956.Ã, Since the majority of the shareholding is that of the Government of India, Central Government can be stated to

have stake in the affairs of the Respondent No.1.Ã, The Respondent No.1 was incorporated with the primary objective of providing helicopter support

services to the oil sector for its offÃ,shore exploration operations, services in remote and hilly areas and charter services for promotion of

tourism.Ã, Ã, The Respondent No.1 has a total work force of 840 employees working in the Western and Eastern Region.Ã, Out of the said 840

employees, 570 employees have issued appointment letters on regular basis and 270 employees are appointed on contract basis.Ã, Out of the said 270

employees who are employed on contract basis, 139 employees are members of the Petitioner union and all are working in the Western and Eastern

Region.

4 In so far as the Provident Fund is concerned, the Respondent No.1 has framed rules and has instituted the Pawan Hans Employees Provident Fund

Trust Regulations for the benefit of employees engaged by the Respondent No.1.Ã, There is a provision in the said regulations for deduction of

subscription as the contribution to the said Provident Fund or any other fund sponsored or approved by the Respondent No.1 or to comply with any

statutory requirement as per Rule 17(iv)(b) benefits on premature retirement. In so far as the Respondent No.1 is concerned, it did not come within

the purview of the Employees Provident Fund and Miscellaneous Provisions Act 1952 (for short the PF Act) until 22Ã,3Ã,2001 when the Central

Government in exercise of powers conferred by clause (b) of subÃ,Section 3 of Section 1 of the PF Act, specified that the establishment employing 20

or more persons as the class of the establishment, to which the said Act shall apply w.e.f. 1Ã,4Ã,2001 namely (i) an establishment engaged in

rendering courier services,Ã, (ii) an establishment of aircraft or airline other than the aircraft or airlines owned or controlled by the Central or State

Government and (iii) an establishment engaged in rendering cleaning and sweeping services.Ã, However, as indicated above the Respondent No.1 has

framed the Pawan Hans Employees Provident Fund Trust Regulations on 1Ã,4Ã,1986 and therefore the employees of the Respondent No.1 were

enjoying the benefits of Provident Fund under the said trust scheme. The said scheme was made applicable to the permanent employees of the

Respondent No.1 from whom deductions are made from their salary as a result of which the said employees are enjoying the benefits of the Provident

Fund Scheme of the Respondent No.1.Ã, The benefits of the said scheme however has not been extended to the employees who have been engaged

on contract basis.Ã, In terms of the aforesaid Notification which has been brought into force on 1Ã,4Ã,2001, the employees of the Respondent No.1

came within the purview of the PF Act, however, since the Provident Fund Trust Regulations of the Respondent No.1 were applicable and the Act

does not provide for the application of the dual Provident Fund Schemes, the said Act was not made applicable to the employees of the Respondent

No.1 as a result of which the contract employees though covered by the provisions of the PF Act stood to lose on both the counts namely that the

scheme under the Trust Regulations was not extended to them and nor the provisions of the PF Act were made applicable in view of the fact that

there was a Provident Fund Scheme under the Regulations. This was in the teeth of the fact that the definition of an employee under the PF Act is

wide so as to cover even the employees who were engaged on contract basis. It is on account of the denial of Provident Fund to the employees of

the Respondent No.1 who were appointed on contract basis that the case for filing the above Petition has arisen.

5 Submissions on behalf of the Petitioner by the Learned Counsel Mr. S. C. Naidu

(i) That there is a failure on the part of the Respondent Nos.2 and 3

in enforcing the provisions of the PF Act in respect of the employees who have been working for years together and have been shown as contract

workmen.

(ii) That the Respondent No.1 is an establishment which has been notified by the Central Government and as per the provisions of the Provident Funds

Act, and is required to extend coverage under the said Act to 270 workmen which include the members of the Petitioner Union.

(iii) That the objection of the Respondent No.1 that the Notification dated 22.3.2001 does not apply to the Respondent No.1 is misconceived and

misfounded.

(iv) That the Respondent No.1 is not controlled by the Central Government but its affairs are managed and controlled by its Board of Directors. The

Board of Directors exercise powers conferred upon them in terms of the Memorandum of Articles and Articles of Association of the

Respondent No.1. The Directors of the Respondent No.1 are not agents or servants of the Central Government but act pursuant to the authority

which is derived from the Memorandum and Articles of Association. The Respondent No.1 therefore cannot be said to be a company controlled by

the Central Government. In view thereof the Respondent No.1 does not come within the ambit of the phrase "aircraft or airline owned or

controlled by the Central Government" as mentioned in the Notification dated 22.3.2001.

(v) That the Respondent No.1 is engaged in commercial activities as per its charter / policies adopted by the Board of Directors and not as an agent of

the Central Government. The Respondent No.1 is classified as a non scheduled operator by the Director of Civil Aviation under the Rule 134 of

Aircraft Rule 1937.Ã, The said classification permits the Respondent No.1 to operate an air transfer services to within and from India.Ã, The permit

does not specify the Central Government or its nominee as an operator.Ã, The day to day affairs of the Respondent No.1 are managed as is the case

with any other entity registered under the Companies Act.

(vi) That the reliance placed on Section 16 of the PF Act is misplaced so as to deny benefits under the PF Act to contract workmen, for the reason

that the Respondent No.1 is not an establishment belonging to or under the control of the Central Government.Ã, Secondly the Act would not be

applicable in respect of employees who are entitled to the benefit of the Provident Fund or old age pension Scheme.Ã, In the instant case it is not in

dispute that the benefits of a Provident Fund or Pension Scheme are not available to the employees concerned in the above Petition. Reliance is

sought to be placed on the judgment of the Apex Court reported in the matter of Hindustan Steel Works Construction Ltd. Vs. State of Kerala and

Ors 1997(5) SCC 171.

(vii) That the provisions of the said Act are required to be made applicable to the members of the Petitioner union and other similarly situated, as the

same becomes clear from the letter dated 24Ã,5Ã,2017 addressed by the Regional Provident Fund Commissioner, Bandra to the Joint General

Manager (HR & Admin) of the Respondent No.1.Ã,

6 Submissions on behalf of the Respondent No.1 by the Learned Counsel Mr. Abhay Kulkarni

(i) That the Petitioner itself has admitted in the above Petition that the Central Government has control over the affairs of the Respondent No.1 in

view of the fact that the majority shareholding is of the Government of India and hence the Respondent No.1 is an airline owned or controlled by the

Central Government.

(ii) In view of the fact that the Respondent No.1 is an airline owned or controlled by the Central Government the Notification dated 22Ã,3Ã,2001 is

issued under Sub Section 3(b) of Section 1 of the PF Act, would have no application in so far as the Respondent No.1 is concerned as the airline

owned or controlled by the Central or State Government are specifically excluded from the application of the said notification.

(iii) That the Provident Fund Scheme which is in existence in the Respondent No.1 would not be applicable to the members of the Petitioner Union as

they are admittedly contract workmen and therefore not covered by the said scheme.

(iv) That the judgment of the Apex Court in Hindustan Steel Works Construction Ltd. would have no application as the said judgment has been

rendered in the context of the Kerala Construction Worker Welfare Fund Act which indicate that the Government Companies or the Statutory

Corporations were not excluded from the purview of the said Welfare Fund Act. Hence the reliance placed on the said Judgment is misfounded.

## 7 CONSIDERATION

Having heard the Learned Counsel for the parties we have considered the rival contentions. The issue that arises for consideration is whether the

members of the Petitioner Union are entitled to Provident Fund either under the provisions of the PF Act or under the Scheme applicable to the

employees of the Respondent No.1 under the Regulations. To address the said issue, the relevant provisions of the PF Act would have to be

referred to. The said provisions are Section 1(3)(b), Section 2(f), Section 16 and Section 17 of the said Act, which are reproduced hereinunder

for the sake of ready reference:

1. Short title, extent and application: (1) This Act may be called the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

2. \*\*\*\*\*

3. \*\*\*\*\*

(a)\*\*\*\*\*

(b) To any other establishment employing twenty or more persons or class of such establishments which the Central Government may, by

notification in the Official Gazette, specify in this behalf.

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

employer 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.

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

(a) to any establishment registered under the Cooperative 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;

(2) If the Central Government is of opinion that having regard to the financial position of any class of [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 [whether prospectively or retrospectively,] that class of [establishments] from the operation of this Act for such period as may be

specified in the notification.

[17. Power to exempt.Ã¢â¬âÃ¢â¬â,

(1) The appropriate Government may, by notification in the Official Gazette, and subject to such conditions as may be specified in the notification,

[exempt, whether prospectively or retrospectively, from the operation] of all or any of the provisions of any SchemeÃ¢â¬â,

(a) any [establishment] to which this Act applies if, in the opinion of the appropriate Government, the rules of its provident fund with respect to the

rates of contribution are not less favourable than those specified in section 6 and the employees are also in enjoyment of other provident fund benefits

which on the whole are not less favourable to the employees than the benefits provided under this Act or any Scheme in relation to the employees in

any other [establishment] of a similar character; or

(b) any [establishment] if the employees of such [establishment] are in enjoyment of benefits in the nature of provident fund, pension or gratuity and

the appropriate Government is of opinion that such benefits, separately or jointly, are on the whole not less favourable to such employees than the

benefits provided under this Act or any Scheme in relation to employees in any other [establishment] of a similar character:Ã¢â¬â,

A reading of Section 1(3)(b) therefore discloses that the PF Act is applicable to an establishment employing 20 or more persons or class of such

establishment which the Central Government may by NotificationÃ¢â¬â, in the official gazette specify in that behalf.Ã¢â¬â,

In so far as Section 2(f) is concerned, it spells out the definition of an employee it takes within its sweep an employee who gets wages directly or

indirectly from the employer and includes any person employed by or through the contractor or in connection with the work of the establishment.

Now coming to Section 16 of the PF Act the said provision spells out the establishment to which the Act does not apply.Ã¢â¬â, Clause (b) of Section 16

mentions the establishment belonging to or under the control of the Central or State Government and whose employees are entitled to the benefit of a

contributory Provident Fund Scheme or old age pension in accordance with any scheme.Ã¢â¬â,

In so far as Section 17 is concerned, it confers power on the appropriate Act to exempt an establishment from the provisions of the scheme and one

of the eventualities in which the exemption can be granted is when the employees of an establishment are in enjoyment of a scheme which is not less

favourable than the one under the PF Act.Ã,

8 Hence a conjoint reading of Sections 16 and 17 of the PF Act discloses that the provisions of the Act do not apply to an establishment which is

belonging to or under the control of the Central or State Government and whose employees are entitled to the benefit of a contributory Provident Fund

or old age pension in accordance with the scheme.Ã, An establishment can be exempted by the appropriate Government if the employees of the said

establishment are in enjoyment of a Provident Fund Scheme which is not less favourable than the one under the PF Act.Ã,

Since much store has been laid by the Respondent No.1 on the Notification dated 22Ã,3Ã,2001, it would be necessary at this stage to refer to the said

Notification.Ã, The said Notification is reproduced hereinunder for the sake of ready reference:

S.O.Ã,746Ã, In exercise of the powers conferred by clause (b) of section (3) of Section 1 of the Employees' Provident Funds and Miscellaneous

Provisions Act, 1952 (19 of 1952), the Central Government hereby specifies the following establishments employing 20 or more persons as the class of

establishments to which the said Act shall apply with effect from 1st April 2001, namely:Ã,â€

(i) an establishment engaged in rendering courierservices;

(ii) an establishment of aircraft or airlines otherthan the aircraft or airlines owned or controlled by the Central or State Government.

(iii) as establishment engaged in renderingcleaning and sweeping services.Ã, Ã,

Hence the notification provides that the same would not apply to an aircraft or airline owned by the Central or State Government.Ã, It is in the context

of the provisions of the said Act and read with the notification that the facts in the instant case would have to be

considered.Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã,

9 In the instant case, it is required to be noted that the shareholding to the extent of 51% is that of the Central Government and to the extent of 49% is

that of the ONGC.Ã, The affairs of the Respondent No.1 are regulated and controlled by its MemorandumÃ, and Articles of Association.Ã, The

affairs of the Respondent No.1 are managed by the Board of Directors and that the BoardÃ, ofÃ, DirectorsÃ, functions independently and not at the

behest or directions or control of the Central Government.Ã, It is also required to be noted that the Respondent No.1 is engaged in commercial

activities as per its policies, framed by the Board of Directors and not as an agent of the Central Government.Ã, The Respondent No.1 is not a

department of the Central Government like the Railways, Posts and Telegraph etc. The Respondent No.1 is also classified as non scheduled

operator. The said classification permits the Respondent No.1 to operate an air transport service within and from India. The permit does not specify

the Central Government or its nominee as the operator, hence the aforesaid facts disclose that the Central Government does not come in the picture in

respect of the day to day functioning of the Respondent No.1 and the Respondent No.1 is like any other company which has been registered under the

Companies Act. It is therefore questionable whether the Respondent No.1 would classify as an airline owned or controlled by the Central

Government. In the matter of application of the PF Act which is undoubtedly a social welfare legislation, a liberal interpretation is required to be

adopted so as not to deprive the benefit of the said social welfare legislation to the employees like the members of the Petitioner Union.

10 It is required to be noted that the Government of India in the Ministry of Labour addressed a letter dated 8.1.1989 to the Central Provident Fund

Commissioner, New Delhi. The said letter was addressed in the context of the grant of exemption to the departmental undertakings under the

control of the Central / State Government of the statutory bodies. The Central Government directed the Provident Fund Commissioner to instruct

the Regional Provident Fund Commissioner to carefully review the cases of the departmental undertakings and statutory bodies which fall in the

category specified in Section 16(1)(b) and Section 16(1)(c) and to take further action as indicated in the said letter. In the context of the present

Petition clause (4) of the action that could be taken is relevant. The said clause is therefore reproduced hereinunder for the sake for ready

reference:

(iv) There may be establishments which employ large member of casual / contingent staff, who are not entitled to the benefit of provident fund or

pension. The casual / contingent staff of such establishment will continue to be covered under the Act, but their regular employees who are entitled

to the benefit of provident fund or pension should be excluded from the purview of the Act.

11 Another letter which assumes importance is the letter dated 24.5.2017 addressed by the Regional Provident Fund Commissioner, Bandra to the

Joint General Manager (HR and Admin) of the Respondent No.1. The said letter was addressed in the context of the Employees Enrolment

Campaign 2017 launched by the Central Government. The said letter adverts to the fact that approximately 370,400 employees have been engaged

by the Respondent No.1 on contract basis but no social security benefits are being extended to them. It is stated in the said letter that social security



benefits must be provided to the workers who are engaged on contractual / casual / daily wages basis. The letter calls upon the Respondent No.1 to

implement the provisions of the EPF and MP Act 1952 in respect of all the contractual / casual employees engaged by M/s Pawan Hans Ltd. who are

still not getting benefits of the Provident Fund and Pension. The letter lastly states that Central Government declared a scheme of Enrollment

Campaign for non-enrolled eligible employees engaged by any establishment during the period of 1 April 2009 to 31 March 2016 and having regard to the

grand success of the scheme, the same was extended up to 30 March 2017.

12 Hence the aforesaid letters unequivocally are a pointer to the thinking of the Central Government and the Provident Fund Commissioner that the

benefits of the PF Act are to be made available to the contract / casual employees of the Respondent No.1. Hence the affidavit filed in the above

Petition on behalf of the Regional Provident Fund Commissioner has been filed oblivious of the aforesaid correspondence. This is in so far as the

applicability of the PF Act is concerned.

13 In so far as the scheme which is applicable to the regular employees of the Respondent No.1 is concerned, the same is comprised in what is known

as Pawan Hans Employees Provident Fund Trust Regulations. The definition of an employee under the said Trust Regulation is in clause (2.5), the

same is reproduced hereinunder for the sake of ready reference:

2.5 "Employee" means any person who is employed for wages / salary in any kind of work, monthly or otherwise, in or in connection with the

work of the Corporation and who gets his wages / salary directly or indirectly from the Corporation, and excludes any person employed by or through

a contractor in or in connection with the work of the Corporation but does not include any person employed as an apprentice or trainee.

14 Hence under the Trust Regulations an employee receiving salary directly or indirectly from the Corporation is covered by the said Regulations.

The sample payslip which is annexed to the above Petition of one of the members of the Petitioner Union one Mr. M Elangovan, indicates that the

said member is being paid directly by the Respondent No.1 and therefore the employees of the Respondent No.1 who are engaged on contract basis

since last 20 years can be said to be covered by the definition of employee and would therefore be entitled to the benefits of the scheme. However,

they are sought to be denied the benefit of the scheme under the Trust Regulations on the ground that they are contract employees.

15 In our view, since Section 16(1)(b) excludes an employee who has the benefit of a Provident Fund Scheme whose terms and conditions are not

less favourable than the one available under the PF Act. The contract employees of the Respondent No.1 cannot be denied the benefits of the

Provident Fund on both counts i.e. on the ground that they are ineligible as they are the employees of the airline controlled by the Central Government

and to the benefits of the Scheme under the Trust Regulations, on the ground that they are contract employees. In our view, such an

interpretation would result in, gross injustice to the members of the Petitioner Union and other similarly situated as them who are working in the

Respondent No.1 and who as indicated above have put in more than 20 years of service with the Respondent No.1.

16 In so far as the judgment of the Apex Court in Hindustan Steel Works Construction Ltd. (supra) is concerned, though in our view the said judgment

would have no application having regard to the provisions of the Welfare Fund Act concerned, therein, the same would not make any difference in so

far as the entitlement of the members of the Petitioner Union under the PF Act is concerned. In our view, the members of the Petitioner Union for

the reasons stated in the instant judgment would be covered by the provisions of the PF Act which fact is also fortified by the letters of the Central

Government addressed to the Central Provident Fund Commissioner dated 8.1.1989 and the letter dated 24.5.2017 of the Regional Provident

Fund Commissioner addressed to the Respondent No.1 which correspondence unequivocally indicates that the provisions of the PF Act would have to

be made applicable to the contract / casual employees of the Respondent No.1. This we find in consonance with the fact that in extending the social

security benefits which the Provident Fund confers, a liberal view, has to be taken.

17 For the view that we have taken the above Petition is required to be allowed and is accordingly allowed. Rule is accordingly made absolute in

terms of prayer clause (a) with a direction that the benefits under the PF Act be extended to the members of the Petitioner Union who are working on

contract basis with the Respondent No.1 and other similarly situated be extended latest by 31st December 2018. , ,

After pronouncement , Date: 12th , September, 2018 At this stage the Learned Counsel for the Respondent No.1 seeks stay to the application of

the P.F. Act to the members of the Petitioner and other similarly situated as directed by the instant judgment. , Having regard to the fact that we have

fixed the outer limit of 31st December 2018 for extending the benefits, we do not find the necessity of granting stay.