$~20

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Date of Decision: 01st September, 2026***

\# **CNR No. DLHC010419662014**

\+ **W.P.(C) 1915/2014**

REGIONAL PF COMMSSIONER BY AND ON BEHALF OF EMPLOYEES PF ORGANISATION .....Petitioner

Through: Mr. Rajesh Kumar, SC with Mr. Yash Narain, Adv.

versus

M/S CREATIVE EXPORT .....Respondent

Through: Mr. Harvinder Singh, Adv.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

AMIT MAHAJAN, J. *(Oral)*

1. The present writ petition has been filed assailing the Impugned Orders dated 23.08.2011 passed by the learned Presiding Officer, Employees' Provident Fund Appellate Tribunal, New Delhi in ATA No. 814(4)/2009, whereby the Appeal preferred by the Respondent/establishment against the Original Order dated 03.09.2009 passed under Section 7-A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 ("**the EPFMP Act**") was allowed and the Assessment of provident fund dues was set aside. The Petitioner also assails the subsequent order dated 20.08.2013, whereby the learned Tribunal directed refund of the pre-deposit made by the Respondent.

2. Succinctly stated, the Respondent was covered under the provisions of the EPFMP Act and was allotted PF Code No. DL/11645. Proceedings under Section 7-A were initiated *vide* summons dated 20.10.2008 for determination of statutory dues for the period from May 2005 to April 2007.

3. Upon consideration of the material on record *inter alia* the report of the Enforcement Officer, the Assistant Provident Fund Commissioner, *vide* Original Order dated 03.09.2009, determined a sum of Rs.3,52,492/- as provident fund dues for the period from May 2005 to March 2007.

4. Aggrieved by the said determination, the Respondent preferred a statutory appeal under Section 7-I of the Act before the EPFAT.

5. A pre-deposit of Rs.1,41,000/- was made by the Respondent pursuant to the order passed by the learned Tribunal as a condition for interim protection.

6. Upon hearing the parties, the learned Tribunal, *vide* Impugned Order dated 23.08.2011, allowed the appeal and set aside the Original Order passed under Section 7-A. The learned Tribunal, after considering the definition of "*basic wages*" under Section 2(b) of the Act, held that the order under Section 7-A did not record any finding as to whether the dealing, dyeing and fabrication charges were paid to employees for carrying out the work. It was further held that payment of charges to an outside agency for doing the job did not, in itself, amount to basic wages.

7. Thereafter, *vide* order dated 20.08.2013, the learned Tribunal, noting that the Appeal had been decided in favour of the respondent,

directed refund of the pre-deposit amount without interest, subject to no appeal being preferred.

8. Consequently, the present writ petition has been filed.

9. The principal submission of the Petitioner is that the learned Tribunal failed to appreciate the scope of Section 2(f) of the Act, which includes within the definition of "*employee*" a person employed through a contractor in or in connection with the work of the establishment. It has been contended that the Respondent/establishment had engaged various parties for carrying out dealing, dyeing and fabrication work and, consequently, the persons engaged by such parties were liable to be treated as employees for the purposes of the EPFMP Act.

10. It has also been urged that the Respondent had failed to produce records evidencing compliance in respect of such workers and that the assessment made under Section 7-A was, therefore, justified.

11. *Per contra*, learned Counsel appearing for the Respondent-establishment submits that the writ petition is wholly misconceived and seeks, in substance, a re-appreciation of the factual material already considered by the statutory appellate authority.

12. It is submitted that the order dated 03.09.2009 passed under Section 7-A did not determine that any identified employee of the respondent had been paid the amounts which were treated as the basis of the assessment. Rather, the order merely noticed payments made to various outside parties under the heads of dealing, dyeing and fabrication charges.

13. It is also contended that the Petitioner is only attempting to

establish foundational facts which were never placed before the learned Tribunal. Petitioner had never challenged the Order dated 23.08.2011 for 2 years and only when the Order for refund has been passed, the order has been assailed.

14. Having considered the submissions and examined the order passed under Section 7-A, this Court is unable to find any error in the approach adopted by the learned Tribunal warranting interference in exercise of jurisdiction under Articles 226 and 227 of the Constitution of India.

15. The Original Order dated 03.09.2009 itself records that, during the course of the proceedings under Section 7-A, the Area Enforcement Officer examined the books of account and balance sheet of the Respondent. It was noticed therein that the establishment had engaged various parties for carrying out work under the heads of "*Dealing Charges*", "*Dyeing Charges*" and "*Fabrication Charges*". The order proceeds to name several such parties, including M/s Sania Zari Arts, M/s Shiva Enterprises, M/s Warsi Zari Art, M/s Wazri Art, M/s Paras Jri Arts and M/s Imtyaz Ahmad, amongst others. The order further records that the establishment had failed to produce relevant records regarding provident fund compliance in respect of the workers allegedly engaged through such parties. The Area Enforcement Officer also noticed that certain other establishments, namely M/s Waison Services and M/s Operrose Manpower & Security Services, were themselves complying with their provident fund obligations under separate PF codes and recorded that compliance in respect of those establishments was to be secured through their respective codes.

16. However, as rightly noted by the learned Tribunal, the mere fact that certain amounts/charges were reflected in the books of account under the heads of dealing, dyeing and fabrication charges, and that such amounts were paid to various outside parties, does not by itself establish that the said amounts constituted "*basic wages*" *paid* or *payable* to employees of the Respondent within the meaning of the EPFMP Act.

17. The definition of "*basic wages*" contained in Section 2(b) of the Act proceeds upon the existence of emoluments earned by an employee in accordance with the terms of his employment and paid or payable to him in cash. Thus, before an amount can be treated as *basic wages* for the purposes of computation of provident fund contribution, the necessary factual foundation has to exist to establish that the *amount represents wages paid or payable to an employee* covered by the Act.

18. In the present case, the Original Order under Section 7-A does not record any finding identifying the individual workers in respect of whom the assessment was made. There is no determination as to which of the persons engaged in the dealing, dyeing or fabrication work were employees within the meaning of Section 2(f) of the Act. Equally, there is no finding determining the *wages paid or payable* to any such identified employee. Most importantly, there is no finding establishing that the amounts paid by the Respondent to the various outside parties represented, in whole or in part, wages paid or payable to employees so covered.

19. An amount debited in the books of an establishment as a charge

paid to an outside party for carrying out a particular job or activity cannot, without further determination, be equated with wages paid to an employee. The existence of an expenditure incurred by the establishment and the existence of wages earned by an employee are distinct factual concepts. The necessary nexus between the two had to be established before the expenditure could constitute the basis for determination of provident fund dues.

20. It is in this context that the reasoning of the learned Tribunal assumes significance. On that basis, the learned Tribunal concluded that payment of charges to an outside agency for doing the job could not, without more, be treated as basic wages.

21. This Court finds no perversity in the aforesaid conclusion. On the contrary, the finding proceeds directly from the contents of the Original Order under Section 7-A itself. The learned Tribunal did not hold that persons engaged through contractors or outside agencies can, in no circumstances, fall within the definition of "employee" under Section 2(f). Such a proposition is neither necessary nor discernible from the order under challenge. The learned Tribunal merely found that, in the assessment before it, the necessary factual determination had not been made.

22. The Petitioner has proceeded substantially on the premise that because the Respondent had incurred expenditure for work connected with its establishment, the entire expenditure could be treated as wages of employees for the purposes of the Act. Such a proposition cannot be accepted without the necessary factual determination. Further, even where an establishment fails to produce records, the

statutory authority must determine the basis upon which the liability is being fastened and establish the nexus between the material relied upon and the statutory liability sought to be imposed.

23. It is equally significant that the Petitioner does not demonstrate what material, if considered by the learned Tribunal, would have supplied the missing factual determination. The Petitioner essentially seeks to rely upon the same material which was before the Section 7-A authority and requests this Court to draw further factual inferences from it. Such an exercise would amount to substituting a fresh factual determination for the determination made by the statutory appellate authority.

24. More importantly, the jurisdiction of this Court under Articles 226 and 227 is supervisory and not that of a regular appellate court. This Court is not required to undertake a fresh factual exercise to ascertain whether persons allegedly engaged through different outside parties ought to be treated as employees, identify such persons, determine their wages and thereafter reconstruct the provident fund liability. Such an exercise would effectively amount to making a fresh assessment, rather than reviewing the legality of the order passed by the learned Tribunal.

25. The Petitioner has also relied upon authorities concerning the applicability of the Act to persons engaged through contractors. There can be no quarrel with the general proposition that an employee engaged through a contractor may fall within the ambit of Section 2(f). However, the proposition does not answer the defect identified by the learned Tribunal in the present case. Reliance placed by the

Petitioner upon ***S.K. Nasiruddin Beedi Merchant Ltd. v. CPFC and Anr.* 2001 2 SCC 612** is also misplaced. The judgment was passed in an entirely different factual context where beedi workers engaged through independent contractors for manufacturing beedis. However, in the present case, the issue before the Tribunal was not whether contract labour can ever be covered by the Act; it was whether, on the material placed before the Section 7-A authority, the particular payments under the head of "*Dealing Charges*", "*Dyeing Charges*" and *"Fabrication Charges"* to the third parties forming the basis of the assessment had been established to be wages paid or payable to employees covered by the Act.

26. Though it has also been urged by the Petitioner that the identification of the workers/employers could have been done subsequent to the assessment, this Court cannot turn a blind eye to the significant delay in the institution of the present writ petition. The substantive Order was passed on 23.08.2011, whereas the present petition came to be instituted only in or about February 2014. The subsequent Order dated 20.08.2013 directing refund of the pre-deposit appears to have preceded the filing of the writ petition. Thus, the petitioner did not approach this Court with reasonable dispatch against the substantive order setting aside the Section 7-A assessment. The Petitioner has not placed on record any satisfactory explanation for this prolonged inaction. This is not a case where the Petitioner was unaware of the impugned order, was prevented from obtaining a copy thereof, or was awaiting adjudication of any issue which remained pending before the Tribunal. The Department was itself a party to the

proceedings and was therefore fully aware of the decision against it. The failure to challenge the order for nearly two years is consequently unexplained.

27. Even though this is a classic case of abuse of process of law by the Regional Provident Fund Commissioner, which merits imposition of exemplary cost, however, this Court is refraining from imposing cost on the request made by Mr. Rajesh Kumar, learned Standing Counsel.

28. In the circumstances, this Court finds no ground to interfere with the Orders dated 23.08.2011 and 20.08.2013 passed by the learned Tribunal.

29. The writ petition is accordingly dismissed. The pending applications, if any, also stand disposed of.

AMIT MAHAJAN, J

SEPTEMBER 1, 2026
"SS"