



**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM**

Present: Shri.V.Vijaya Kumar, B.Sc., LLM, Presiding Officer.

(Thursday the 18th day of March, 2021)

Appeal No. 608/2019

(Old No.ATA-282(7)2013)

Appellant

K.A Davis
Proprietor, Vanitha Jewellery
Broadway, Ernakulam.

By Adv. P. Ramakrishnan

Respondent

The Assistant PF Commissioner
EPFO, Sub Regional Office
Kaloor, Kochi- 682017.

By Adv. Sajeev Kumar K. Gopal

This case coming up for hearing on 12.01.2021 and this Industrial Tribunal-cum-Labour Court issued the following order on 18/03/2021.

ORDER

Present appeal is filed from order No.KR/KC/13655/ Enf-1(4) / 2013 / 14492 dt. 07/3/2013 deciding the coverage of appellant establishment under the provision of EPF & MP Act, 1952 (hereinafter referred to as 'the Act') from 30/05/1992.

2. The appellant is dealer in gold ornaments and is running jewellery in the name and style of Vanitha Jewellery. In the year 1993 the respondent initiated action to cover the appellant establishment under the provision of the Act though the appellant employed only 12 employees at that point of time. The respondent took a view that goldsmiths who supply ornaments are also employees within the definition of Sec 2(f) of the Act. Goldsmith work on their own and the appellant had no control over the goldsmiths and there was no master and servant relationship. The goldsmiths worked on their own premises. They worked for other jewellery establishments also. They worked independently using their own materials. There was no qualifying period of employment or remuneration payable. In OP No. 4989/96 the Hon'ble High Court of Kerala upheld the findings of the Industrial Tribunal, Alleppey that goldsmiths are not workmen and that there cannot be any master and servant relation between goldsmiths and the jewellers. In an industrial dispute between Chamber of Commerce Trichur referred U/s 10A (3) of Industrial Dispute Act, a Board of Arbitration rejected the claim of the unions representing goldsmiths including that of membership of ESIC Scheme. The appellant also raised a contention that "an employee to become a member of provident

fund requires a continued employment for a minimum period of 30 days. The decision of the respondent that the goldsmiths also will fall under the definition of employee U/s 2(f) of the Act was challenged before the Hon'ble High Court of Kerala in OP No. 5866/1994 and the Hon'ble High Court of Kerala vide order dt. 27/01/2004 directed the appellant to approach the Tribunal. The appellant therefore approached EPF Appellate Tribunal. The EPF Appellate Tribunal vide order dt.21/02/2005 held that goldsmiths are hired on contract basis and fall within the definition of Sec 2f (1) of the Act. The order of EPF Appellate Tribunal was challenged before the Hon'ble High Court of Kerala in W.P.C No. 15952/2005. The Hon'ble High Court of Kerala vide judgment dt.27/09/2011 quashed the order of the Tribunal and same was remitted back to the respondent for fresh decision. Pursuant to the direction of the Hon'ble High Court two goldsmiths, Sri. A.P.Yohannan and Sri. Santhosh M.D were examined before the respondent to substantiate their contentions that goldsmiths are not their employees and there was no master servant relationship. The witnesses stated that they do not receive any wages from the appellant and none of the goldsmiths who supplied gold ornaments to the appellant are their employees. Without considering the submissions and evidence

adduced by the appellant the respondent issued the impugned order stating that the appellant establishment is coverable under the provision of the Act. The respondent completely ignored the evidence of Sri. K.P Yohannan and Sri.Santhosh M.D goldsmiths. They are self employed persons and undertakes work of other jewelleryes also.

3. The respondent filed counter denying the above allegations. The appellant establishment was served with coverage notice dt. 10/11/1993 intimating that the appellant establishment was brought under the purview of the Act w.e.f 30/05/1992. The appellant engaged 12 regular employees as per the muster roll for the month of May 1992 and in addition to that engaged 15 persons as Goldsmiths as on May 1992 as per the GS 13 register. A copy of the muster roll and GS 13 register for May 1992 is produced and marked as Exbt R1. It is also seen from the cash book and vouchers that the appellant establishment is paying, making charges to these goldsmiths in cash. The coverage memo issued to the appellant establishment was disputed by the appellant on the ground that they never employed 20 persons. In view of the dispute, an enquiry U/s 7A of the Act was initiated. During the course of hearing the appellant also submitted the details of the goldsmiths who were

engaged by the appellant. According to the appellant, the goldsmith worked for other jewelleries also. Respondent issued the final order holding that goldsmith engaged by the appellant are employees for the purpose of coverage under the Act. The appellant challenged the order in OP No. 5866/1994. The Hon'ble High Court did not interfere with the impugned order and directed the appellant to approach EPF Appellate Tribunal U/s 7(I) of the Act. The appellant filed an appeal before the Tribunal and the Tribunal dismissed the appeal vide order dt.21/02/2005. The copy of the order of the EPF Appellate Tribunal is produced and marked as Exbt. R2. The appellant again approached the Hon'ble High Court in W.P (C) No.15952/2005. The Hon'ble High Court vide order dt. 27/09/2011 remitted the case back to the respondent to re-examine the matter afresh in accordance with law after affording sufficient opportunity of hearing to the appellant. The enquiry U/s 7A was revived by the respondent by issuing a notice dt.29/02/2012. A representative of the appellant attended the hearing and examined two goldsmiths Shri.Yohannan and Shri. Santhosh M.D. The witness filed affidavit dt.14/08/2012, both the witness stated that they are making ornaments for other jewellers apart from the appellant. According to Shri.Yohannan, he is having 200 gms of gold in his

custody which he used for jewellery. When the ornaments are given to jewellers they gave him fresh gold metal which includes the making charges also. Shri.Yohannan also stated that he started making gold ornaments for the appellant for the last 23 years and that he used to get making charges. The contention of the appellant that goldsmith who supplied gold ornaments do not receive any wages from the appellant establishment is not correct. The amounts paid to goldsmiths are shown as making charges and not as wages. They are entered in vouchers and stamped acquittance is obtained on each occasion. The definition of basic wages as per the Act means all emoluments who are earned by an employee in accordance with terms of contract which are paid or payable in cash to him. Therefore the amount received by goldsmiths for making charges from the appellant is in terms of contract and very well come under the definition of basic wages. The term employee as defined U/s 2 (f) takes into its fold any individual or person engaged in or in connection with the establishment and who gets his wages directly or indirectly from the employer. In **Silver Jubilee Tailoring House & others Vs Chief Inspector of Shops and Establishment**, 1974(1) SCR 747 the Hon'ble Supreme Court held that the emphasis in deciding the question of relationship of employer and employee

had changed that while control is an important factor it was wrong to say that in every case it would be a decisive factor. The Hon'ble Supreme Court also held that working with more than one employer did not mitigate against being the employee of the proprietor where he attended the work and that a servant need not be in the exclusive control of one master. The Hon'ble Supreme Court also clarified that workers were not obliged to work whole day was also not very material and that what was necessary was that workman was principally employed by the employer. In **PM Patel and Sons Vs Union of India**, 1986 (2) LLJ 88 the Hon'ble Supreme Court held that even home workers are entitled to be enrolled to provident fund. In the present case the appellant exercised effective supervision and control over the works of goldsmiths through acceptance and rejections of ornaments made by them. The appellant is also dependent on the goldsmith to a certain extent for its business. The appellant also pointed out that 30 days continuous employment was necessary for eligibility of membership. Para 26 of EPF Scheme regarding the eligibility was amended w.e.f 01/11/1990 and therefore no eligibility is required for membership under the provision of the Act and Schemes w.e.f 01/11/1990. The affidavits filed by two goldsmiths has no

relevance, as the same is against the provision of the statute. During the deposition of Shri.Yohannan it was stated on record that he started making ornaments for the appellant establishment for the last 23 years and he used to get making charges as cash. However the name of Shri.Yohannan is not reflected in the list of goldsmiths furnished under the signature of appellant vide letter dt. 08/03/1994. With regard to the decisions relied on by the appellant it is pointed out that the issues involved and the law laid down in those cases are entirely different from that of the present appeal. In that case the goldsmith working in different establishment prayed for permanent absorption in such establishments and in that contest it was held that goldsmiths are not regular employee of the establishment in which they were working. It was upto the appellant to produce the evidence before the 7A authority with regard to the non applicability of the Act. The appellant being the custodian of the records failed to substantiate their claim that the provisions of the Act are not applicable to the appellant establishment.

5. As pleaded by the parties it can be seen that this is the third round of litigation starting in 1992 when the appellant establishment was covered by the respondent under the provision

of the Act. The only dispute pending is whether the goldsmiths working for the appellant establishment can be treated as employees for the purpose of coverage under the provisions of the Act. The respondent in the first instance covered the establishment w.e.f 30/05/1992 vide coverage memo dt.10/11/1993. The appellant raised the dispute U/s 7A and the respondent vide order dt.15/03/1994 held that goldsmiths engaged by the appellant can be treated as employees for the purpose of coverage under the provision of the Act. The order was challenged before the Hon'ble High Court and the Hon'ble High Court by order dt. 27/01/2004 directed the appellant to approach EPF Appellate Tribunal. The EPF Appellate Tribunal upheld the coverage which was again challenged before the Hon'ble High Court in WP (C) No. 15952/2005. The Hon'ble High Court vide order dt.27/09/2011 remitted the matter back to the respondent to re-decide the matter after providing sufficient opportunity to the appellant. The matter was again considered by the respondent authority. The appellant examined two witnesses in the enquiry and after considering all the evidence the respondent authority held that the appellant establishment is coverable under the provision of the Act w.e.f 30/05/1992.

6. Basically the issue to be decided is the coverage of the appellant establishment under the provisions of the Act. As per Sec 1(3) (b) subject to the provision contained in Sec 16 the Act applies

a)

b) To any other establishment employing 20 or more persons or class of such establishment which the Central Government may, by notification in the official gazette specify in this behalf. From the above it is clear that the provision of the Act applies to **any establishment employing 20 or more persons**. It may be noted that the words used is “employing 20 or more persons” and not 20 or more employees. Hence the issue is whether the goldsmiths in this case can be treated as a person employed in the appellant establishment. In this context it may be relevant to examine the decision of the Hon’ble Supreme Court in **PM Patel and Sons Vs Union of India**, 1986(1) LLJ 88. In the above case the Hon’ble Supreme Court considered whether the home workers engaged by the Beedi establishments directly or through contractors can be treated as employees for the purpose of provident fund. After elaborate consideration the Hon’ble Supreme Court held that the test of control and

supervision lies in the right of rejection and held that the home workers are employees within the definition contained in Sec 2(f) of Provident Fund Act. So the test applied by the Hon'ble Supreme Court is the right of rejection which is squarely applicable to the present appeal also. In **Silver Jubilee Tailoring Vs Chief Inspector Shops and Establishment**, 1974(1) SCR 747 the Hon'ble Supreme Court examined how far and to what extent the control tests can be applied for deciding the questions of employer-employee relationship. In this case the issue involved was whether the tailors who stitch the garments from their establishment or from home can be treated as employees of M/s. Silver Jubilee Tailoring House. The Hon'ble Supreme Court examined all the existing tests and finally held that the degree of control and supervision will be different in different types of business. If an ultimate authority over the worker in the performance of his work reside in the employer so that he was subject to the latters direction, that would be sufficient to hold that there is a degree of control and supervision by the employer. The Hon'ble Supreme Court held that "Para 37: "A person can be a servant of more than one employer. The servant need not be under the exclusive control of one master. He can be employed under more than one employer". The Hon'ble Supreme Court also

held that even if an employee accepts some work from other tailoring establishments or do work more time in a particular establishment, that would not in any way derogate from being employee in the shop where he is principally employed. Applying the above tests to the present context it is very clear that the goldsmiths engaged by the appellant can be treated as persons employed by the appellant establishment, for the purpose of coverage under the Act.

7. The learned Counsel for the appellant relied on the decision of the Hon'ble High Court of Kerala in **General Secretary, The Gold and Silver Workers Union Vs the Industrial Tribunal, Alleppey**, OP No. 4989/76. It is seen that the above cited case, is filed by the union against various jewelers claiming regularization in the jewellery where they were working, under the provision of Industrial Dispute Act. The Labour Court as well as the Hon'ble High Court held that the relation of master and servant has not been established and therefore the goldsmiths cannot be treated as workman. It may be seen that the definition of workmen, Industrial Dispute Act and the definition of employee in EPF and MP Act, are entirely different.

The definition of employee under EPF & MP Act is interpreted in a liberal way so that the social security benefits are extended to the maximum employees. The learned Counsel for the appellant also pointed out that the goldsmiths and the gold workers are having their own Welfare Fund and they are entitled to certain benefits as per the provision of the Welfare Fund for Kerala Gold Workers. Even assuming for arguments sake that goldsmiths are entitled to certain benefits under the welfare fund and the goldsmiths involved in the present case are members of the fund, it will not in any way change the legal position that they are persons employed by the appellant in the normal course of their business.

8. After the Hon'ble High Court remitted case back to the respondent the appellant examined two goldsmiths as witnesses in the enquiry. Those witnesses also filed affidavit stating they are not employees of the appellant as they are doing the work for many other jewellers also. It is seen that one Mr.Yohannan and Mr. Santhosh M.D gave evidence in the enquiry. From Exbt R1 list of goldsmiths working for the appellant establishment provided by the appellant it can be seen that the two witnesses were not in the list. The name of Sri.Yohannan is not at all available and there is one person by name Shri.Santhosh C.K

where as the witness examined in the enquiry was Mr. Santhosh M.D. Hence it is doubtful whether the witnesses were actually, the goldsmiths working with the appellant establishment. Shri.Yohannan stated in evidence that he was working with the appellant establishment for the last 23 years and is not clear why his name is not reflected in the list of goldsmiths furnished by the appellant in Exbt R1. According to these witnesses they make jewellery at home on the basis of the pattern and specification provided by the appellant and they get making charges. They make jewellery for various jewellery such as House of Alappat, Shalimar Jewellery and Mahila Jewellery. It is also stated that at present making charges are given in gold. According to the respondent the making charges are paid in cash as per books maintained by the appellant and payments are made on the basis of vouchers given by the concerned goldsmiths. From this, it is very clear that the witness produced by the appellant before the 7A authority are not reliable particularly in view of the fact that their names are not reflected in the list of goldsmiths furnished in 13 GR register of the appellant establishment. Even if the evidences are admitted it is not going to improve the case of the appellant in any way. It is clear from the available evidence that the goldsmiths work for the

appellant establishment continuously for many years. The appellant provides the pattern and specification for the gold ornaments. It is implied that the appellant has the right of rejection if the ornaments are not as per the pattern and specification. The goldsmiths get the making charges in cash against the voucher given by the goldsmiths. The mere fact that the goldsmith work for other jewellers without in any help the appellant as already explained in earlier paras. Further there is no prohibition under EPF & MP Act for having multiple membership and all the employers can remit the contribution in the same Universal Account Numbers.

9. Considering the facts pleadings and evidence in this appeal I am not inclined to interfere with the impugned order.

Hence the appeal is dismissed.

Sd/-
(V. Vijaya Kumar)
Presiding Officer