

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
CUM LABOUR COURT/EPF APPELLATE TRIBUNAL,
JABALPUR

NO. CGIT/LC/EPFA-21-2020

PRESENT: P.K.SRIVASTAVA
H.J.S.(Retd.)

M/S Director General Home Guard
Civil Lines,Jabalpur

APPELLANT

Versus

The Regional Provident Fund Commissioner
Bhopal(M.P.).

RESPONDENT

NO. CGIT/LC/EPFA-17-2020

M/S Director General Home Guard
Jabalpur

APPELLANT

Versus

The Regional Provident Fund Commissioner
Jabalpur.

RESPONDENT

Shri Manhar Dixit : **Learned Counsel for Appellant.**

Shri J.K.Pillai : **Learned Counsel for Respondent.**

Shri Praveen Yadav : **Learned Counsel for Intervenors**

(J U D G M E N T)

(Passed on 22-8-2022))

- 1.* Since both the appeals are covered by a common question of law and fact, hence there are being disposed by one common order.

2. Being aggrieved by the order dated 27-12-2019 passed by the Respondent Authority under Section 7A of the Employees Provident Fund And Misc. Provisions Act,1952, herein after referred to the word 'Act', the Appellant Establishment has preferred appeal no.21/2020, whereas the Appeal no.17/2020 has been preferred by the Appellant Establishment against the order dated 9-3-2019 passed by the Respondent Authority holding the Appellant Establishment liable to deposit the employees provident fund dues of its home guard volunteers with a finding that they are entitled to the benefits of the Act.

3. Facts connected, in brief, are mainly that according to the Appellant Establishment, it is a Government Organization established under the M.P.Home Guard Act,1947, herein after referred to by the word 'Home Guard Act' and is involved in providing security and services including police establishments to various Government Organizations, also engaged in maintaining law and order with police establishment as and when required. It has enrolled volunteers since its inception who are paid honorarium decided by the State Government from time to time, as mentioned in Rule 21 and 22 of M.P.Home Guard Rules 2016. The Establishment is not covered under the provisions of the Act, hence is not required to deposit any employees provident fund dues in respect of any of its volunteers with the Respondent Authority because its volunteers are not employees. The Respondent Authority sent a communication dated 26-4-2016 and required the Appellant Establishment to depute a representative from its office with required records from April-2009 till date. As the Appellant Establishment failed to deposit the employees provident fund dues of its employees as per the Act from 1-4-2009, the Appellant Establishment appeared before the Respondent Authority and represented that since the honorarium is paid to these volunteers, there are not employees for the purposes of the Act and the Appellant Establishment is not covered under the Act. The Respondent Authority further required vide its communication dated 28-2-2013,

the Appellant Establishment to produce records namely viz. registers, cash vouchers, salary slips and other documents required in the communication which were submitted by the Appellant Establishment before the Respondent Authority. The Respondent Authority passed the impugned order ignoring the plea of Appellant Establishment that the Act had no application to its volunteers, hence this appeal.

4. Grounds of appeal are mainly that the impugned order is bad in law as it is in contravention of Rules and principles of law laid down by Hon'ble the Apex Court. The impugned order suffers from malice in law and is capricious. The Respondent Authority has erred in law in holding that the volunteers of Appellant Establishment are 'employees' for the purposes of the Act and that the Appellant Establishment was under obligation in law to deposit the employees provident fund dues for its employees in which it failed, ignoring the fact that the Appellant Establishment is not involved in manufacturing work and is not a factory. The impugned order has been passed by the Respondent Authority without applying his mind ignoring the fact that the Appellant Establishment has already impleaded a scheme whereby the volunteers will get collected sum after completion of 60 years of service as per policy enshrined by State Government, which is more beneficial to them. The Respondent Authority further committed error in law in not appreciating the fact that volunteers of Appellant Establishment are withdrawing salary more than Rs.21,000/- per month, hence the Act does not apply to them.

5. In its counter to the Appeal, the Respondent Authority has defended the impugned order with a case that firstly the Appellant Establishment is not an exempted establishment nor are his employees to whom the Act applies, 'exempted employees' as defined in the Act. The Appellant Establishment does not have its own trust or provident fund scheme, extending benefit of provident fund and other allied

benefits to its Home Guards which is equivalent or beneficial as the Act and the scheme framed therein, hence, the Appellant Establishment is covered under the Act with respect to all of its employees, whether casual, daily wagers, time scale paid employees, volunteers by whatever name they are called. There is a definite scheme and procedure for appointment of volunteers called home guard in the M.P.Home Guard Act, 1947 and rules framed there under. The Act and the Rules do not provide social security particularly provident fund and pension benefits to the Home Guards. It is further the case of the Respondent Authority that the Act will automatically apply to all set of employees engaged directly or indirectly by the Establishment under any name or category, if there total strength becomes 20 or more. It is further the case of the Respondent Authority that the Act is a social welfare legislation providing social security to the employees working in the establishment, hence it has to be interpreted liberally in favour of employees. The finding of the Respondent Authority, hence as pleaded by the Respondent Authority, are justified in law and fact and do not warrant any interference. Accordingly, it has been prayed that the Appeal be answered against the Appellant Establishment.

6. No rejoinder has been preferred from the side of the Appellant Establishment.
7. I have heard arguments of Shri J.K.Pillai, learned counsel for the Respondent. Learned counsel for the Appellant Establishment was not present when this appeal was taken for oral submission. He was given an opportunity to file written argument which he has availed and has filed written arguments. I have gone through the record and the written arguments as well.
8. On perusal of the record, in the light of rival arguments, the following points come up for determination in the case in hand:-

“Whether the finding of the Respondent Authority that the Home Guard volunteers of the Appellant Establishment are entitled to the benefits of the Act, is justified in law and fact?”

9. Perusal of the impugned order in these two appeals goes to reveal that the Respondent Authority had framed two issues for determination they are as follows:-

(1)Whether the home guards engaged by the establishment do fall in the category of ‘employees’ as per Section 2(F) of the Act or otherwise?”

(2)Whether the establishment is eligible for exclusion under Section 16(1)(b) or Section 16(1)(c) of the Act?”

10. Regarding the first issue the Respondent Authority has recorded a finding that the home guards are ‘employee’ within the definition of Section 2(F) and for Section 2(B) of the Act. It further comes out that the case of Appellant Establishment before the Respondent Authority during the inquiry denying the home guards as employee was based on two points which are as follows-

(a)The home guards get honorarium and not wages.

(b)They are Volunteers.

11. The learned counsel for the appellant has attacked the finding of Respondent Authority on these points that they are not based on facts and law. According to the learned counsel the M.P.Home Guard Act,1947 was created to establish body of volunteers to supplement and assist regular police force in case of emergency as and when required and Section 2A of the Act defines home guard to be a person appointed under Section 6 of the Act and other provisions of the Act which deals with the appointment, duty of home guard, honorarium paid to the home guard, volunteers, it has been further submitted by learned counsel for the appellant that every home guard is a volunteer and is paid honorarium in accordance with the police in para-27 (4)

of 1947 Act. These volunteers are granted social security and benefits by State Government. There are schemes ensuing financial benefits post retirement to the home guard volunteer formulated by State Government in the year 2013 which provide them 15 days honorarium for each calendar year after completion of 10 years of service and this amount would be released to them after completing service or attaining age of superannuation which comes to average five lakhs depending on the number of years in service. they are also entitled to compensation of Rs.15,000/- for injury caused during the course of employment and ex-gratia payment of Rs.50,000/- in case of death on duty also it has been submitted that this honorarium has been revised from time to time and now home guard volunteers are drawing Rs.25,000/- per month on an average. Learned Counsel has further submitted that these home guards are 'excluded employees' within the meaning of Section 2F of the The Employees Provident Fund Scheme 1952, hereinafter referred to by the word 'Rules' because they are getting at present more than R.15,000/- per month. The Respondent Authority committed error in law in ignoring these facts and recording his finding.

12. Learned Counsel has further referred to Section 1(3) of the Act and has submitted that the Appellant Establishment is not a factory or industry specified in Schedule I of the Act. The Appellant Establishment is also not an establishment which the Central Government as by notification in official gazette for the purposes of the Act. The respondent Authority further committed error in law in not considering these provisions. The learned Counsel has also submitted that the findings of Respondent Authority that the home guard volunteers are employees for the purposes of the Act is ignorance of Section 16(1)b and Section 16(1)(c) of the Act, hence bad in law. Also the finding of the Respondent Authority that the home guards are employee for the purposes of the Act is also against law, hence is bad in law.

13. Learned counsel for Respondent Authority has defended the impugned finding with an argument that it is a well discussion finding. The Respondent Authority has taken all the contentions raised from the side of the Appellant in recording the impugned finding, hence it does not warrant any interference because it is justified in fact and law. Learned counsel for Intervenor as also adopted the arguments from the side of the Respondent Authority.

14. Before entering into any discussion, some provisions of the Act of M.P. Home Guards Act, 1947 requires to be reproduced as follows:-

1(3) It shall be in force in the towns of Jabalpur, Sagar, Khandwa, Burhanpur, Raipur, Bilaspur, Chhindwara and Betul and in all such revenue districts of Madhya Pradesh, in which this Act or any law corresponding to it was in force immediately before the commencement of the Madhya Pradesh Extension of Laws Act, 1958 (23 of 1958) and may be brought into force in any other revenue district or part thereof on such date as the State Government may, by notification in the Official Gazelle, appoint.

15. Before entering into any discussion, some provisions of the EPF Act, 1952 requires to be reproduced as follows:-

1(3) Subject to the provisions contained in section 16, it applies-

(a) To every establishment which is a factory engaged in any industry specified in Schedule I and in which Twenty] or more persons are employed, and

(b) To any other establishment employing 1[twenty] or more persons or class of such establishments which the Central Government may, by notification in the Official Gazette, specify in this behalf:

Provident that the Central Government may, after giving not less than two months' notice of its intention so to do, by notification in the Official Gazette, apply the provisions of this Act to any establishment employing such number of persons less than 1[twenty] as may be specified in the notification.]

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 3[an establishment] and who gets his wages directly or indirectly from the employer, 4[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];

2[(ff) “exempted employee “means an employee to whom a Scheme 2[or the Insurance Scheme, as the case may be,] would, but for the exemption granted under 3[***] section 17, have applied;

2(b) “Basic wages” means all emoluments which are earned by an employee while on duty or 3[on leave or on holidays with wages in either case] in accordance with the terms of the contract of employment and which are paid or payable in cash to him, but does not include-

(i)The cash value of any food concession;

(ii) Any dearness allowance (that is to say, all cash payments by whatever name called paid to an employees on account of a rise in the cost of living), house-rent allowance, overtime allowance, bonus, commission or any other similar allowance payable to the employee in respect of his employment or of work done in such employment;

(iii) any presents made by the employer;

2(g)“Factory” means any premises, including the precincts thereof, in any part of which a manufacturing process is being carried on or is ordinarily so carried on, whether with the aid of power or without the aid of power:

2(i)“Industry” means any industry specified in Schedule I, and includes any other industry added to the Schedule by notification under section 4;

16. Act not to apply to certain establishment. - 3[(1) This Act shall not apply-

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16(1)(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

16(1)(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; 1[**] 2[***]

The employees Provident Fund Scheme,1952

2(f) "excluded employee" means— (i) an employee who, having been a member of the Fund, withdrew the full amount

of his accumulations in the Fund under clause (a) or (c) of subparagraph (1) of paragraph 69; (ii) an employee whose pay at the time he is otherwise entitled to become a member of the Fund, exceeds [fifteen thousand rupees] per month; Explanation : --'Pay' includes basic wages with dearness allowance [retaining allowance (if any) and cash value of food concessions admissible thereon;] (iii) [omitted]; (iv) an apprentice. Explanation :-- An apprentice means a person who, according to the certified www.epfindia.gov.in 19 standing orders applicable to the factory or establishment, is an apprentice, or who is declared to be an apprentice by the authority specified in this behalf by the appropriate Government;

16. The Respondent Authority has referred to definition of employee under Section 2f of the Act(referred to above) which means that a person who is employed in or in accordance with the work of the establishment and gets wages directly or indirectly from employer as an employee. Now the question arises which has been dealt by the Respondent Authority is whether the honorarium is wages or not and whether the volunteer home guard are employees for the purposes of the Act.

17.. The Respondent Authority has referred to letter of Deputy Secretary of the Department , letter No.2(a)02/2017/V-4/2 dated 5-7-2017 stating that the home guards are paid honorarium on daily/monthly basis and the same is revised keeping in view the dearness. The Respondent Authority has further recorded another order of Additional Secretary M.P.Government Home Department dated 8-11-2017 which goes to show that the home guards are paid certain allowances also and they are liable to pay professional tax to Government of M.P. under Section 4 of the M.P. Professional Tax Act,1995. The Respondent Authority has further referred to Section 2(b) of this Act and also definition of the word emoluments given in oxford dictionary and on this basis, he has recorded a finding that the honorarium paid to the home guard is wages as defined under Section 2(b) of the Act.

18. Section 4 of the M.P. Professional Tax Act 1995 provides that "a person getting salary or wages is liable to pay professional tax". It is not disputed from the side of the appellant that professional tax is paid by the home guards also. **Hence, the finding of the respondent authority that the honorarium paid to the home guard is wages for the purposes of the Act is held supported by law and fact both and it is further held not faulted in law or fact. It is liable to be affirmed and is affirmed accordingly.**

19. As regards the second finding of the Respondent Authority that there is a master servant relationship between the appellant establishment and the home guards and they are in fact all the employees of the establishment, the main argument of the appellant is on this point that the home guards are volunteers and not employees. The home guard is at his will to work or not to work. The finding of the Respondent Authority on this point is bad in law, as submitted by learned counsel for the Appellant. The process of home guard as mentioned in the Home Guards Act, 1947 is to create body of volunteers to supplement police force in assisting the police in emergency to maintain law and order. Hence, as held by Respondent Authority, the home guards are engaged for the work of or in connection with the work of the Appellant Establishment. The Respondent Authority has further referred to the Division Bench judgement of Hon'ble Gujarat High Court in the case of **Satish Plastic Vs. Regional Provident Fund Commissioner** (1982) 4 FLR 2007 in which Hon'ble High court has laid down the following parameters/tests to be applied to decide the question whether the person employed is a person or not?

(1) Was he doing the work for monetary payment?

(2) Was the work done by him as the work of establishment or had he nexus with such work.

(3) Was the payment made to the person for the physical or mental efforts in such connection with such work?

(4) Was the work such that it had to be done as directed by the establishment or under its supervision and control to the extent

that supervision and control are possible having regard to the specialised nature of work or skill needed for its performance?

(5) Was the work of such nature and character that ordinarily a master servant relationship could exist and but for the agreement styling it as contract, common practice and common sense would suggest a master servant bond?

(6) Was the relation indicative of master servant status in substance having regard to economic realities, irrespective of nomenclature devised by the parties?

(7) Was he required to do the work personally without the liberty to get it done through someone else?

20. The Respondent Authority has further drawn the following inferences from Home Guard Rules and Act:-

- (1) The Home Guards receive the remuneration in the name of so called as evident from Section 3 and orders of the Govt. of M.P. issued from time to time?
- (2) The work done by the Home Guard is main line function for establishment for which it has been actually created.
- (3) The payment has been done by establishment in response to the services rendered by the Home Guard. The nomenclature used by the establishment to address this remuneration is varied but the fact remains that it is the remuneration to the Home Guard for their services.
- (4) The policing work which is to be performed by the Home Guard is done under strict supervision by the establishment and concerned police station/Thana, or any other of establishment with which they are attached for duties. IN fact, there is a very strict provisions of jail in case of any refusal to attend the directed duties in the Home guard Act, as mentioned in Section 11 & 12. Besides the specialized nature of job performed by the Home Guard their job profile makes amply clear that it is a very sovereign function which is performed by them along with regular Police force like General Policing. VIP duties, watch and ward functions extra.

21. The Respondent Authority has further referred to Section 14 of the Home Guard Act and Section 21 of the Indian Penal Code which lay down that home guard are public servants and has accordingly recorded the finding that simply by naming them volunteers, the home guard do not cease to be the employee of the Appellant Establishment

for the purposes of the Act. The Respondent Authority has further referred to the meaning of the word ‘volunteer in Cambridge Dictionary which says that the volunteer is a persons who does something, especially helping other people, willingly and without being forced or paid for it”. It is to be mentioned here that the work volunteer is nowhere defined in the Home Guard Act,1947, hence dictionary meaning of the word may be taken for consideration which has been taken for consideration by the Respondent Authority. I find no occasion to dis-agree with the observations and findings of the Respondent Authority that the home guards are employees of the appellant establishment for the purposes of the Act, keeping in view the aforesaid observation of Respondent Authority **I am inclined to affirm this finding holding it justified in law and fact** . The arguments of learned counsel for the appellant in this respect are held having no leg to stand.

22. **As regards the finding of respondent authority regarding applicability of the Act with respect to the home guard**, learned counsel for the Appellant Establishment has attacked this finding with an argument that firstly it is against Section 2f of the Provident Fund Scheme 1952 ignoring the fact that at present a home guard gets average Rs.25,000/- as total amount with his basic wages and allowances and Section 16(1)(b) and 16(1)(c) of the Act. The Respondent authority has held that Section 16(1)(b) and Section 16(1)(c) of the Act do not help the Appellant Establishment . He has further held that home guards are not excluded employees as per Section 2f of the Scheme.

23. Learned counsel for Appellant establishment has also referred to Section 1(2) & Section 1(3) of the Act referred to above in attacking the finding of the Respondent Authority regarding applicability of the Act on appellant establishment. According, to the learned counsel for the Appellant, **firstly** it is not a factory or industry, **secondly** there is no notification of Central government in official gazette regarding this

coverage. If we go through Section 1(3)(a) and (b) of the Act, referred to above, the Appellant Establishment is covered in Section 1(3)(b).

24. The criteria is that the establishment must be employing 20 or more person **OR** such organizations which the Central government by way of notification in official gazette has covered them under this Act. Hence argument of learned counsel for the Appellant on this point is fallacious and is liable to be rejected. As regards the second leg of argument regarding Section 16(1)(b) and 16(1)(c) of the Act, it is established from record that other employees of Appellant Establishment are covered by Provident Fund Scheme run by Government or N.P.S. The schemes of ex-gratia payment on death and deduction of 15 day honorarium per year to be paid on superannuation of services is certainly not as beneficial as Provident Fund Scheme 1952 run under the Act, hence the finding of the Respondent Authority that has been 16(1)(b) and 16(1)(c) do not d-bar the Appellant Establishment particularly the home guard of the Appellant Establishment from coverage under the Act is held justified in law and fact and is affirmed accordingly.

25. As regards the **third leg of argument** of learned counsel for the appellant regarding Section 2F of the Provident Fund Scheme 1952 on the ground that average home guard is paid Rs.25,000/- as salary and allowances per month, hence he is not covered under the benefits of the Act. This argument is also fallacious because what is to be relevant for this point is as to what salary he was getting when he was first covered under the 'Act' and not when he is at present working on salary and wages. Accordingly, in the light of the above discussion, the finding of the Respondent Authority regarding applicability of the Act with respect to the intervenor home guards is held justified in law and fact and is affirmed accordingly.

26. ON the basis of the above discussion and findings, both the appeal deserves to be dismissed.

ORDER

Appeal No.21/2020 and No.17/2020 is dismissed.

Parties to bear their own cost.

(P.K.SRIVASTAVA)

PRESIDING OFFICER

JUDGMENT SIGNED , DATED AND PRONOUNCED.

(P.K.SRIVASTAVA)

PRESIDING OFFICER

Date:22-8-2022