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

NO. CGIT/LC/EPFA-109-2017

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

Madhya Pradesh Poorv Kshetra
Vidyut Vitran Company Ltd.Seoni

APPELLANT

Versus

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

RESPONDENT

Shri P.C.Chandak,assisted by
Shri Rajendra Puranik : **Learned Counsel for Appellant.**

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

(J U D G M E N T)

(Passed on this 4th day of May-2022)

1. Feeling aggrieved by the order dated 28-4-2014 passed by the Respondent Authority wherein he has held the Appellant Establishment liable to pay the employees provident fund dues of meter readers for the period between July-2006 to October-2006 and has assessed the amount to the tune of Rs.16,65,951/-, the Appellant Establishment has preferred this appeal.

2. Facts connected in brief in the appeal is mainly that according to the appellant, it is a company registered under the Indian Companies Act,1956 and is a successor to the erstwhile Madhya Pradesh Electricity Board. It works under the direct control and supervision of the State Government and the latter completely owns the Appellant Establishment to meet the requirements of installation of 30 lac meters, their reading and delivery of bills. A policy

decision was taken by the government to get the work done by meter readers to be engaged on contract basis. A scheme "Meter Reader Yojna " was formulated which provided the following :-

No.1 The appointment shall be made viz a viz number of machines to be monitored.

No.2 Selection committee shall include the local public representative .

No.3 Meter-readers were required to furnish security deposits.

No.4 Engagement of services would be as per the period specified in the agreement .

No.5 Meter-readers would not be empowered to check theft, etc.

The appellant establishment has been engaging meter readers on contract basis by way of entering into separate contract with every meter-reader which was for a fixed period. The Meter-readers were to be paid a fixed amount per Meter reading. They acted as independent contractors. No post was created or sanctioned or kept vacant for them. The Appellant Establishment did not have any control over them. They were free to move out of the contract as and when they desired, hence there was no employer-employee relationship of any kind between the Meter-Readers and the Appellant Establishment. They were not paid wages rather they were paid as agreed amount for per meter-reading. There was no minimum meter-reading required for a day or a week or a month to be done by them. On the basis of inspection of the Enforcement Officer, the Respondent Authority issued notice assuming that the Meter-Readers were the employees of the Appellant Establishment for the purposes of Employees Provident Fund And Misc. Provisions Act,1952, herein after referred to the word Act". It is further the case of the appellant establishment that it appeared before the Respondent Authority and filed its objection taking the above noted stand that the meter-readers were independent contractors and not employees of the Appellant Establishment under the Act. Hence the Appellant Establishment is not under obligation to deposit their employees provident fund dues but the Respondent Authority illegally ignored the objection and wrongly held the Appellant

Establishment liable to deposit the employees provident fund dues of its meter-readers also and made the impugned assessment.

3. The ground of appeal taken in the Memo of Appeal are mainly that the impugned finding and assessment is against law attacking the settled preposition of law laid down by Hon'ble the Apex Court that these meter Readers are not workman in Industrial Dispute Act, hence committed error in law. The finding of the Respondent Authority that meter readers are covered within the definition of employee as defined in Section 2(f) of the Act, ignoring the fact that appellant had entered into a separate contract with each meter reader and the terms of the contract provides that the meter readers are to be paid on the basis of number of meter they inspected or billed and also ignoring the fact that there was no fixed working hours. No control of Appellant Establishment over them and that they were at their will to move out of the contract as and when they desire, hence committed error in law.

4. In its reply/counter the Respondent Authority has defended the impugned order with the case that the Act is a beneficial legislation providing social security to the employees working in establishment. The definition and parameters as to whether a person is an employee of the establishment for the purposes of the Act is to be decided according to Section 2(f) of the Act which defines the word employee and clearly spells out that employees impleaded by or through the contractor in or in connection with the work of the establishment are employees for the purposes of the Act. According to the Respondent Authority, the definition of the word 'employee' in the Act is independent of definition of employee or workman or worker as provided in Minimum Wages Act, Industrial Disputes Act, M.P.Industrial Relations Act , Factories Act and other labour legislations. According to the Respondent Authority the impugned order cannot be faulted in law and fact.

5. The Appellant Establishment has preferred a rejoinder, wherein it has mainly reiterated its case as taken in the memo of appeal.

6. I have heard arguments of Shri P.C.Chandak assisted by Rajendra Puranik, learned Counsel appearing for Appellant Establishment and Shri J.K.Pillai, Learned Counsel appearing for the Respondent Authority. I have perused the record and have also perused the written arguments filed by the Appellant Establishment through its learned counsel which is on record.

7. On perusal of record in the light of rival arguments, the following points arise for determination :-

No.1: Whether the finding of the Respondent Authority that Meter-Readers are employees of the Appellant Establishment for the purposes of the Act is justified in law or fact or not?

No.2: Whether the finding of the Respondent Authority holding the Appellant Establishment liable to pay employees provident fund dues of its meter-readers and assessment is correct in law or fact or not?

8. **Point For Determination No.1:-**

In the impugned order, the Respondent Authority has observed that firstly definition of employee in Section 2(f) of the Act is different from other legislations. He has further observed that there may be two types of employees, one who are employed by the employer for or in connection with the work of his establishment and second who are employed by or through a contractor for or in connection with the work of the establishment. The Respondent Authority has drawn parity of workers of contractors working in cycle stand or in hospital or canteen of hospitals or cinema halls who have been held to be employees for the purposes of the Act for deduction of their employees provident fund dues. He has referred

to case laws **Santokba Durlabhji Memorial Hospital, Jaipur Vs. Assistant Provident fund commissioner, Jaipur (2000) 87 FLR 100** and case of **Royal Talkies Hyderabad and Other Vs. E.S.I.Corporation (198) 37 FLR 128** wherein in such type of workers working in canteen of hospital or cycle stand have been held to be employees for the purposes of this Act. He has referred to another case of **P.M.Patel & sons Vs. Union of India (1986) 1 SCC 32** in which home workers rolling bides has been held to be employee for the purposes of the Act. According to the Respondent Authority, the meter readers though working on separate contracts with the appellant establishment are thus indirect workers of the appellant establishment, hence employees for the purposes of the Act.

9. Learned Counsel for the appellant has attacked this finding of the Respondent Authority with an argument that the basic factor in employer-employee relationship is whether the employer has control and supervision over the work of the employee or not. He has referred to judgment of Hon'ble High Court of Andhra Pradesh in **Nihal Ahmed Siddiqui and another Vs. Bharat Heavey Electricals Limited, Hyderabad and another**(2013) 138 FLR 613, paragraph 10 to 14 of this judgment are being reproduced as follows.

> 10. With a view to provide the institution of provident funds for employees in factories and other establishments, the Parliament enacted the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. The various expressions used in the said Statute have been defined in Section 2 of the aforementioned Act. The expression `employee' has been defined in Section 2(f) of the said Act, as 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. Section 6 of the said Act has thrust a compulsion on every employer to make a contribution at a fixed percentage of wages payable to each of the employees employed by him. It is therefore significant to understand the true meaning of the expression `employee' used by the aforesaid Act. It is clearly stated that employee means any person who is employed for wages in or in connection with the work of an establishment. Therefore, the essential condition for a person to be an employee within the terms of this definition, he should be employed for wages in or in connection with the work of the establishment. The words chosen viz., `employed for wages' clearly imply some sort

of contract of service representing the existence of 'master and servant relationship'. The definition insists upon the person to be employed and such employment must be in or in connection with the work of the establishment. What factors constitute a true contract of service between two persons, has fallen for consideration before the House of Lords in Short v. J & W Henderson Ltd., (1946 Appeal Cases (AC) 24 (HL)). Lord Thankerton in his speech has pointed out the following factors:

(1) The maters' power of selection of his servant

(2) the payment of wages or other remuneration

(3) the masters' right to control the method of doing the work

(4) the masters' right of suspension or dismissal.

It is hardly in doubt that both salary and wages are the same form of emoluments paid to an employee by the employer as a measure of re-compense for his labour. (See Mohmedalli v. Union of India – AIR 1964 SC 980). A clear distinction is required to be maintained between a 'contract for service' and a 'contract of service'. In the case of a 'contract for service' the master can order or require what is to be done while in the case of a 'contract of service', the mater can order or require not only what is to be done, but also, the manner in which it has to be done. In Dharangadhara Chemical Works Limited v. State of Saurashtra (AIR 1957 SC 264), the legal principle has been summarized in the following words:

'... The principle which emerges from these authorities is that prima facie test for the determination of the relationship between master and servant is the existence of the right in the master to supervise and control the work done by the servant not only in the matter of directing what work the servant is to do but also the manner in which he shall do his work, or to borrow the words of Lord Uthwatt at page 23 in Mersey Docks & Harbour Board v. Coggins & Griffihs (Liverpool) Limited, (1947) 1 AC 1 : 'The proper test is whether or not the hirer had authority to control the manner of execution of the act in question.'

The nature or extent of control requisite to establish the relationship of 'employer and employee' varies from business to business and is by its very nature incapable of a precise decision. There cannot be any abstract test for the purpose of yielding an instantaneous and satisfactory result to disclose the control which is required to establish a contract of service. In Bank Voor Handel en Scheepvaart N.V. v. Slatford ((1952) 2 All ER 956, 971), Denning, L.J said that 'the test of being a servant does not rest nowadays on submission to orders. It depends on whether the person is part and parcel of the organization. In United States v. Silk ((1947) 331 US 704), the Judges of the Supreme Court of United States of America observed that the test to be applied was not that of power of control, but whether the men were employees 'as a matter of economic reality'.'

In Market Investigations Limited v. Minister of Social

Security, Cooke, J. said :

'... The fundamental test to be applied is this. 'Is the person who has engaged himself to perform these services performing them as a person in business on his own account?' If the answer to that question is 'yes' then the contract is a contract for service. If the answer is 'no' then the contract is contract of service. No exhaustive list has been compiled and perhaps no exhaustive list can be compiled of the considerations which are relevant in determining that question, nor can strict rules be laid down as to the relative weight which the various considerations should carry in particular cases. The most that can be said is that control will no doubt always have to be considered, although it can no longer be regarded as the sole determining factor; and that factors which may be of importance are such matters as whether the man performing the service provides his own equipment, whether he hires his own helpers, what degree of financial risk he takes, what degree of responsibility for investment and management he has, and whether and how far he has an opportunity of profiting from sound management in the performance of his task.'

14. In Regional Regional Provident Fund Commr. v. T.S. Hariharan ((1971) 2 SCC 68), the Supreme Court has held that:

'.....in the light of the foregoing discussion it appears to us that employment of a few persons on account of some emergency or for a very short period necessitated by some abnormal contingency which is not a regular feature of the business of the establishment and which does not reflect its business prosperity or its financial capacity and stability from which it can reasonably be concluded that the establishment can in the normal way bear the burden of contribution towards the provident fund under the Act would not be covered by this definition. The word 'employment' must, therefore, be construed as employment in the regular course of business of the establishment; such employment obviously would not include employment of a few persons for short period on account of some passing necessity or some temporary emergency beyond the control of the company.....'

The Learned Counsel has further referred to judgment of M.P.Industrial Court Indore in **M.P. State Electricity Biard Vs. M.P.Electiricty Bill Vitrak Sangh and others** reported in (2007) MPLSR 103 and another judgment of M.P.Industrial Tribunal Indore in Ref . No. 4/IT/2012 in which relying on judgment of Hon'ble the Apex Court in **Punjab State Electricity Board Vs. Sudesh Kumar Puri**(2007) 2 SCC 428 and **Surinder Singh Vs. Union of India** (2007) 11 SCC 599 it is held that the Meter Readers are not workman as defined in Industrial Disputes Act,1947. In another Judgment

Sunil Kumar Shrivastav & another Vs. The State of Advisory Contract Labour Board & Others in W.P.No.14855/2015. Relying on the Judgement of Supreme Court in the Case of Sudesh Kumar Puri and Surinder Singh(Supra) the meter readers have been held not to be the workman in the Industrial Disputes Act,1947.

10. Learned Counsel for the Respondent has submitted that the case laws referred to by learned counsel for the appellant establishment are not directly the Employees as provided in Provident Fund and Misc. Provisions Act,1952 or the definition of workman in Industrial Disputes Act,1947 or other Acts and employee in Section 2(f) of the Act are different, hence as submitted by learned counsel for the Respondent these case laws will not help the Appellant Establishment .

11. Different statutes have defined the word 'workman' or 'employee' in different ways. The Industrial Disputes Act,1947 defines the workman in Section 2(s) of the Act as under.

> **Section 2(S)-**
> **"workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-**
>
> **who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or**
> **who is employed in the police service or as an officer or other employee of a prison, or**
> **who is employed mainly in a managerial or administrative capacity, or**
> **who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.]**

Section 2(f) of the Employees Provident Fund and Misc. Provisions Act,1952 defines employee as under:-

> **(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 1[an establishment], and who gets, his wages directly or indirectly from the employer, 2[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;]**

12. A comparative reading of these two Acts as referred to above, makes it clear that definitions are not one and the same, hence, the case laws referred to by the learned counsel for the Appellant as mentioned above will not apply to the facts of the case in hand because they relate to the Industrial Disputes Act,1947 and other Act.

13. If we go through the definitions of employees in the Act, it comes out that apart from the Apprentice the employees may be of two types and for two purposes. They may be employed by the employer itself or through the contractor and secondly they may be employed in or in connection with the work of the establishment. The case of the meter reader is to be tested on these parameters. Not disputed is the fact that the meter readers are not engaged by the establishment through contractors i.e. they are not employees of the contractors. They are not direct employees of the Appellant Establishment rather they have been engaged under separate contracts and to be paid on piece rate basis as mentioned in their contracts. They were paid their remuneration on the basis of number of meters which they read. This is also established that they did not have any fixed hour and fixed place of working. The reference of para 10 to 14 in Nihal Ahmed Siddiqui(supra) is necessary here wherein on the basis of certain other decisions of Hon'ble the Apex Court, Court of House of Lord's, Hon'be High Court has made a distinction between contract for service and contract of service. In a contract for service the master can order or require what is to be done, whereas in the case of contract of service,

the master can order or require not only what is to be done but also the manner in which it is to be done. It also comes out that the fundamental test is whether the person who has engaged himself to perform is performing than as a person in business on his own account or not . If he is doing this on his own account, it is a contract for service, if not, it is contract of service.

14. The Respondent has referred to a decision of Hon'ble the Apex Court in **P.M.Patel & sons Vs. Union of India** (1986)1 SCC 32 wherein Hon'ble the Apex Court has held that the home workers engaged in bidi making at home are employees for the purposes of the Act. Further in two cases of Royal Talkies Hyderabad (supra) the employees of contractor who manage the cycle stand or canteen have been held to be the employees for the purposes of the Act.

15. In case of P.M.Patel(Supra) the home workers engaged in beedi making through homes were given raw material by the establishment. They used to sell processed beedis to the establishment. The establishment has right to reject the product if it was not found as per their norms i.e. to say that the establishment had control over the home workers regarding the quality and content of the product and could issue directions in this respect. The Respondent Authority has tried to stretch these prepositions to the case of meter readers to the case in hand .

16. The facts of the referred cases and the facts of case in hand are different. In the case in hand the meter Readers are not given any material or instructions. The appellant establishment does not have control over how they read the meters. They are working under separate contracts entered into between each of the meter readers and the Appellant Establishment. Hence, since the Appellant establishment does not have control over the workman of the meter Readers, they cannot be put on parity with the home beedi makers.

17. In the light of the above discussion, the finding of the respondent Authority that the meter readers are employees for the purposes of the Act is held to be bad in law and cannot be sustained The meter readers are accordingly held that they are not employees as defined under Section 2f of the Act. **Point for determination No.1 is answered accordingly.**

18. **Point for determaintion No.2:-**

In the light of the above discussion in Point for determination No.1, the assessment is held bad in law and is held liable to be set aside. **Point for determination no.2 is answered accordingly**.

19. On the basis of above finding, the Appeal succeeds.

ORDER

Appeal is allowed. The impugned order of Respondent Authority dated 28-4-2014 is set aside.

No orders as to costs.

(P.K.SRIVASTAVA)

PRESIDING OFFICER

JUDGMENT SIGNED , DATED AND PRONOUNCED.

(P.K.SRIVASTAVA)

PRESIDING OFFICER

Date:4/5/2022