

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.03.2016

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THE HONOURABLE MR.JUSTICE A.SELVAM
and
THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM

W.A (MD) No. 478 of 2008

Builders Association of India,
Madurai Centre,
No.52, North Veli Street,
Post Box No.256,
Madurai – 625 001
through its Chairman
Mr.G.Selvam

.. Appellant/
Petitioner

Vs.

1.Union of India
through its Secretary,
Ministry of Labour,
Shram Sakthi Bhavan,
Raji Ahmed Kidwani Road,
New Delhi.

2.The Central Provident Fund Commissioner,
Mayur Bhavan,
Connaughts Circle,
New Delhi.

3.The Regional Provident Fund Commissioner,
Bhavishyanidhi Bhavan,
Lady Doak College Road,
Chokkikulam,
Madurai – 2. . . Respondents

Writ Appeal is filed under Clause 15 of the Letters Patent against the order dated 26.06.2007 passed in W.P(MD) No.3642 of 2004.

For Appellant : Mr.K.Srinivasan
Senior Counsel for
Mr.G.Prabhu Rajadurai

For Respondent : Mr.R.Nandakumar
No.1

For Respondents : Mr.V.S.V.Venkateswaran
2 and 3

JUDGMENT

(Judgment of the Court was made by A.SELVAM, J.)

This Writ Appeal has been directed against the order dated 26.06.2007 passed in W.P(MD) No.3642 of 2004.

2. The appellant herein as petitioner has filed W.P(MD) No.3642 of 2004 under Article 226 of the Constitution of India praying to issue a Writ of Mandamus so as to forbear the respondents from enforcing the provisions of the amended Paragraph 26(2) of the Employees Provident Fund Scheme in so

far as temporary and casual and site workers engaged by the members of the petitioner.

3. It is averred in the petition that the petitioner is a Builders Association of India. The avocation of the petitioner is to construct buildings by way of engaging casual workers/labourers. Casual workers/labourers are not covered within the purview of Employees' Provident Funds and Miscellaneous Provisions Act, 1952. But amendment 26(2) says employees engaged by any other establishment. Under the said circumstances the third respondent has issued the notice mentioned in the petition and therefore the present Writ Petition has been filed for getting the relief sought therein.

4. The learned Single Judge after considering the divergent contentions raised on either side has dismissed the Writ Petition.

However the petitioner is given liberty to raise his objection under Section 7-A of the Act. Against the order passed by the learned Single Judge, the present Writ Appeal has been filed.

5. The learned senior counsel appearing for the appellant/petitioner has contended that amendment 26(2) is totally erroneous and under the said circumstances the present petition has been filed.

6. Amendment 26(2) reads as follows:

"(1) (a) every employee employed in or in connection with the work of a factory or other establishment to which this scheme applies, other than an excluded employee, shall be entitled and required to become a member of the Fund from the day this paragraph comes into force in such factory or other establishment".

7. Even a cursory look of the said amendment, it is made clear that employees employed by other establishments would also cover within the purview of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

8. The learned counsel appearing for the respondents 2 and 3 has drawn the attention of the Court to the definition of Section 2(f) of the said Act, wherein it is mentioned as follows:

"employee" means any person who is employed for wages in any kind of work, manual or otherwise, in or in connection"

9. A mere reading of the said Section would clearly go to show that if any person is employed for wages, he would come within the purview of employee and the Employees' Provident Funds and

Miscellaneous Provisions Act, 1952 is also applicable to him.

10. The learned Senior Panel Counsel appearing for the first respondent has drawn the attention of the Court to the decision in *J.P. Tobacco Products, etc., etc. v. Union of India & Others* reported in 1996 1 LLJ 822, wherein a similar question has been dealt with by the Hon'ble Supreme Court and ultimately observed as follows:

"We have heard learned counsel for the parties. The "validity of paragraph 26(2) of the Scheme was challenged before the High Court on the following grounds:

(i) The amendment to paragraph 26(2) of the Scheme is invalid for non-compliance of S.7(2) of the Act.

(ii) The compulsory contribution amounts to denial of minimum wages.

(iii) The amendment is impracticable and unworkable.

(iv) The amendment is *ultra vires* the Act and Article 14 and Art.19(1) (g) of the Constitution.

By a detailed and well reasoned judgment, the High Court has rejected all the four contentions noted above. We see no ground to interfere with the impugned judgment of the High Court. We agree with the reasoning and the consequences reached by the High Court therein.

The special leave petitions are dismissed".

11. Since the Hon'ble Supreme Court has already dealt with amended paragraph 26(2) of the Employees' Provident Fund Scheme, 1952, the same cannot be challenged in the present Writ Petition and further as per Section 2(f) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, the same is applicable even to casual workers.

Therefore the first contention putforth on the side of the appellant/petitioner is sans merit.

12. The learned senior counsel appearing for the appellant/petitioner has contended that the learned Single Judge has given liberty to the petitioner to raise objection under Section 7-A of the Act and the same can be confirmed.

13. It is an admitted fact that under Section 7-A of the Act, the appellant/petitioner is having unfettered right of raising its objection if any and the same right has also been given by the learned Single Judge and this Court need not make any observation with regard to that aspect. Therefore viewing from any angle, the contentions putforth on the side of the appellant/petitioner cannot be accepted and altogether the present Writ Appeal deserves to be dismissed.

14. In fine, this Writ Appeal is dismissed without costs and the order passed in W.P(MD)No.3642 of 2004 is confirmed.

[A.S.,J.] [G.C.,J.]
31.03.2016

Index : Yes / No

Internet : Yes / No

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To

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**A. SELVAM, J.
and
G. CHOCKALINGAM, J.**

smn

**JUDGMENT MADE IN
W.A (MD) No. 478 of 2008**

31.03.2016