2015 LLR 893

MADRAS HIGH COURT

Hon'ble Mr. V. Ramasubramanian, J.

Hon'ble Mr. P.R. Shivakumar, J.

W.A. Nos. 463 to 465/2013,

D/–13-3-2015

Bharat Sanchar Nigam Limited

vs.

Union of India and Others

EMPLOYEES' PROVIDENT FUNDS SCHEME, 1952 – Para 26B – Employees' Provident Funds and Miscellaneous Provisions Act, 1952 – Section 7A – Validity of determination in terms of Para 26B – Upon knowing that the management of BSNL enrolled the employees as members of EPF Scheme, only from the date of completion of orientation training – R.P.F Commissioner Initiated enquiry in terms of para 26B of Scheme – And after giving opportunity passed an order holding that they are liable to be covered from the date on which they were sent for pre-induction training – "Qualifying service" in BSNL Employees Gratuity Rules, includes the period of training followed by regular appointment – Moreover the appellant themselves have counted the entire period of second and third phase of training which commences after the expiry of initial period of 14 weeks training – Therefore there is no rhyme or reason for management not counting the first phase of I mining – Thus no justification found for interfering with order – E.P.F.O. to proceed further in terms of section 7-A of E.P.F. Act, 1952. Paras 12 and 141

For the Appellant **:** Mr. N.C. Ramesh, Advocate.

For the Respondents-2&3 **:** V. Vibhushanan, Advocate.

For the Respondents-4-9 **:** V P. Raman, Advocate.

Important Points

- The provisions of Employees' Provident Funds and Miscellaneous Provisions act, 1952 include every person including apprentices or trainees within the purview of definition to the expression 'employee' except those engaged under the Apprentices Act, 1961.
- Employer is also liable to pay EPF contributions in respect of Pre-Induction Training period of the trainees.

JUDGMENT

V. RAMASUBRAMANIAN, J.—1. Bharat Sanchar Nigam Limited, has come up with the above writ appeals, questioning the correctness of the order passed by the learned single Judge in three writ petitions, challenging the validity of the determination made by the Regional Provident Fund Commissioner in terms of para 26B of the Employees Provident Fund Scheme, 1952.

2. We have heard Mr. N.C. Ramesh, learned Senior Counsel appearing for the appellants, Mr. V. Vibhushanan, learned counsel appearing for the Employees Provident Fund Organization and Mr.V.P.Raman, learned counsel appearing for the individual employees who are respondents.

3. The private respondents in these writ appeals, were provisionally selected for direct recruitment as Junior Telecom Officers or Junior Accounts Officers in Bharat Sanchar Nigam Limited, in the year 2001. By the proceedings of the Assistant General Manager dated 6.12.2001 and the like, all persons who were provisionally selected for direct recruitment, were sent for a Pre-Induction Training for a period of fourteen weeks. Thereafter, a test was conducted and almost all candidates, except those who had not passed the test, were regularly absorbed as Junior Telecom Officers or Junior Accounts Officers.

4. Upon coming to know that the Management of Bharat Sanchar Nigam Limited, enrolled the employees as members of the Employees Provident Fund Scheme, only from the date of completion of the orientation training, the Regional Provident Fund Commissioner initiated an enquiry in terms of para 26B of the Employees Provident Fund Scheme, 1952. After giving opportunities to the Management as well as employees, the Regional Provident Fund Commissioner passed an order holding that they are liable to be covered from the date on which they were sent for Pre-Induction Training.

5. Aggrieved by the said order of the Regional Provident Fund Commissioner, the Management of Bharat Sanchar Nigam Limited, filed a batch of writ petitions in W.P.Nos. 21520, 21782 and 21783 of 2010. These writ petitions were dismissed by the learned Judge by a common order dated 16.6.2011. Aggrieved by the said order, the Management has come up with these writ appeals.

6. The main plank of the argument of Mr. N.C. Ramesh, learned Senior Counsel appearing for the appellants is that the period of training undergone by the employees was actually a Pre-Induction Training and that therefore, the said period cannot be counted for the purpose of enrolling them as members of the Provident Fund Scheme. In this regard, the learned Senior Counsel relies upon the decision of the Supreme Court in *Haryana Power Generation Corporation* v. *Harkesh Chand* , 2013 (136) FLR 666 (SC).

7. We have carefully considered the above submissions.

8. At the outset, it should be pointed out that the decision of the Supreme Court in Haryana Power Generation Corporation, related to the engagement of apprentices under the Apprentices Act. In so far as the Employees Provident Fund Scheme is concerned, the very definition of the expression "employee" under Section 2(f), includes within its purview, all Apprentices other than those Apprentices covered by the Apprentices Act. The definition to the expression "employee" in Section 2(f) of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 reads as follows:—

"Section 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 an establishment and who gets his wages directly or indirectly from the employer, 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."

9. Therefore, fundamentally, the provisions of the Employees Provident Fund and Miscellaneous Act, 1952 includes every person engaged as an Apprentice, within the purview of the definition to the expression "employee" , except those who are Act Apprentices.

10. It is not the case of the appellant Management that the employees concerned in these cases were Apprentices under the Apprentices Act, 1961. On the contrary, the orders issued while sending them for Orientation Training makes it clear that these employees were: (a) provisionally selected and (2) directly recruited as Junior Telecom Officers or Junior Accounts Officers. In such circumstances, the contention that the employees are excluded from the purview of the Act, stares at the face of the definition under Section 2(f) of the Employees Provident Fund and Miscellaneous Act, 1952.

11. As rightly pointed out by the learned Judge, the employees in these cases, were not only recruited directly after a process of selection, but their period of training was also included both for the purpose of gratuity as well as for the purpose of promotion. This fact was recorded by the Regional Provident Fund Commissioner himself in his order dated 1.9.2010. The learned Judge has also noted that under fundamental Rule 9(6)(b)(2), the period of training undergone by these employees are to be treated as duty for the purpose of promotion.

12. In addition, the appellant Management has a set of rules governing the question of gratuity. These rules are known as BSNL Employees' Gratuity Trust Rules. These rules define the expression "Qualifying Service" in Rule 1(vii) to include the period of training followed by regular appointment. This definition reads as follows:—

"Qualifying Service" means the un-interrupted service rendered in the Company after completion of 18 years of age, excluding period of service rendered as apprentice or as casual but includes the period of training followed by regular appointment in the case of trainees. The period will also include service which was uninterrupted by authorized leave and cessation of work not due to any fault of the employee concerned."

13. Therefore, there are three things that make the cases on hand stand out from the one decided by the Supreme Court in Haryana Power Generation Corporation. They are:

(1) the very definition of the expression "employee" under Section 2(f) of the Act includes these persons;

(2) these persons are entitled to count the period of training both for the purpose of increments as well as for the purpose of promotion; and

(3) these employees are also entitled to take the period of training as part of "qualifying service" for the purpose of gratuity.

14. Apart form all the above, the appellant Management themselves have counted the entire period of the second and third phase of training, which commences after the expiry of the initial period of fourteen weeks training, as the period during which the employees are liable to become the members

of the Scheme. Therefore, there is no rhyme or reason for the Management not counting the first phase of training. Thus, we find no justification for interfering with the order of the learned Judge. As a matter of fact, the Appellants ought not to have come up with the writ appeals at all. In any case, since the Employees Provident Fund Organization has got teeth in terms of other provisions, we are not imposing any costs upon the appellants. We simply dismiss the writ appeals, leaving it open to V. RAMASUBRAMANIAN, J AND P.R. SHIVAKUMAR, J gr.

15. The Employees Provident Fund Organization to proceed further in terms of Section 7A of the Employees Provident Fund and Miscellaneous Act, 1952. There will be no order as to costs. Consequently, connected miscellaneous petitions are closed.