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LAW ASSOCIATES

SUPREME COURT'S DECISION ON THE DEFINITION OF "EMPLOYEE" UNDER THE EPF ACT

The Supreme Court of India in *The Officer In Charge, Sub Regional Provident Fund Office & Anr.* ("**Appellant**") *Versus M/s Godavari Garments Limited* ("**Respondent**") revisited the definition of the term "Employee" as defined under the Employees Provident Funds and Miscellaneous Provisions Act, 1952 ("**EPF Act**") and safeguarded the position of the workers working off-site.

The present civil appeal was filed to challenge the order dated April 27, 2012 passed in W.P. No. 1615 of 1993 by the Hon'ble Bombay High Court, Aurangabad Bench.

A. BACKGROUND:

The Respondent engaged women workers who were provided with cut fabric, thread, buttons, etc. to be made into garments at their own homes. The sewing machines used by the women workers were owned by them, and not provided by the Respondent.

The Appellant issued summons to the Respondent for a personal hearing under Section 7-A of the EPF Act and the Provident Fund Officer vide order dated 19.04.1993 held that the women workers engaged for stitching garments were covered by the definition of the "employee" under section 2(f) of the EPF Act and the Respondent is liable to pay Rs. 15,97,087/- towards the Provident Fund dues for the period from November 1979 to February 1991 and was directed to pay the same within 7 days.

The Respondent challenged the aforesaid order by filing W.P. No 1615 of 1993 before the Hon'ble Bombay High Court. The Hon'ble High Court revoked that order and allowed the writ petition filed by the Respondent and held that the Respondent had no direct or indirect control over the women workers. The conversion of cloth into garments can be done by anyone on behalf of the women workers. Therefore, no supervisory control over women employees was exercised by the Respondent. Aggrieved by the aforesaid Judgement, the present civil appeal was filed by the Provident Fund Office.

B. ISSUE BEFORE THE SUPREME COURT:

Issue for consideration is whether the women workers employed by the Respondent were covered under the definition of the term "employee" as defined under Section 2(f) of the EPF Act or not.

Section 2(f) of the EPF Act is set out hereinbelow:

"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;"

C. ARGUMENTS BY THE PARTIES:

BY THE RESPONDENT-

The Respondent argued the following:

a) there was no employer- employee relationship between the Respondent and the women workers. The women workers were not employees under Section 2(f) of the EPF Act. They were independent contractors.

b) the sewing machines used by the women workers were owned by them, and not provided by the Respondent.

c) the women workers worked from their homes, and not at the production centres of the Respondent. Hence, the work performed by them, could be done by their relatives, or any other person on their behalf.

d) the women workers were not bound to report to the production centres regularly, nor were they required to work at the production centres. The Respondent Company exercised no supervisory control over the women workers.

BY THE APPELLANT-

The Appellant argued the following:

a) In the present case, the women workers employed by the Respondent were provided all the raw materials, such as the fabric, thread, buttons, etc. from the Respondent – Employer. With this material, the women workers were required to stitch the garments as per the specifications given by the Respondent. The women workers could stitch the garments at their homes and provide them to the Respondent. The Respondent had the absolute right to reject the finished product i.e. the garments, in case of any defects. The mere fact that the women workers

stitched the garments at home, would make no difference. It is the admitted position that the women workers were paid wages directly by the Respondent on a per piece basis for every garment stitched.

b) The Appellant presented various judgements before the Court:

   i. In *Silver Jubilee Tailoring House and Ors.* v. *Chief Inspector of Shops and Establishments and Ors.* - it was laid down that as the employer has the right to reject the end product if it does not conform to the instruction of the employer and direct the worker to restitch it, the element of control and supervision as formulated in the decisions of this Court is also present.

   ii. In *Shining Tailors* v. *Industrial Tribunal II, U.P., Lucknow and Ors.* - the Court observed that the employer's right to reject the end product if it does not conform to the instructions of the employer speaks for the element of control and supervision. So also the right of removal of the workman or not to give the work has the element of control and supervision. If these aspects are considered decisive, they are amply satisfied in the facts of this case. It was held that the respondents were the workmen of the employer and the preliminary objection therefore, raised on behalf of the appellant employer was untenable and ought to have been overruled and we hereby overrule it.

   iii. In *The Daily Partap* v. *The Regional Provident Fund Commissioner, Punjab, Haryana, Himachal Pradesh and Union Territory, Chandigarh* it was laid down that The EPF Act is a beneficial social welfare legislation which was enacted by the Legislature for the benefit of the workmen.

c) The aforesaid judgments make it abundantly clear that the women workers employed by the Respondent are covered by the definition of "employee" under Section 2(f) of the EPF Act. Hence, the provisions under the EPF Act have to be interpreted in a manner which is beneficial to the workmen.

D. SUPREME COURT JUDGEMENT AND REASONING

The Bench comprised of Justice Abhay Manohar Sapre and Justice Indu Malhotra who noted that the definition of the term "employee" is an inclusive definition and is widely worded to include "*any person engaged either directly or indirectly*" in connection with the work of an establishment. "Merely because the women workers were permitted to do the work off site, would not take away their status as employees," the bench said. "The mere fact that the women workers stitched the garments at home, would make no difference. It is the admitted position that the women workers were paid wages directly by the Respondent on a par piece basis for every garment stitched.

In view of the aforesaid discussion, the judgment passed by the Bombay High Court vide the Impugned Order dated 27.04.2012, being contrary to settled law, was set

aside and the Order dated 19.04.1993 passed by the Appellant was restored. The Respondent was directed to deposit the amount assessed by Appellant towards Provident Fund dues of the women workers within 1 month from the date of this Judgment.

E. CONCLUSION

The judgement of the Hon'ble Supreme Court helps clarify the position of applicability of the EPF Act to persons who work outside of a traditional working arrangement. It is now clear that in evaluating the applicability the test of supervision and control plays an important role. Further, the ability of the employer to accept or reject the work product should be considered when applying the test of supervision and control.

F. DISCLAIMER

This article is for information purpose only. We request you to take specific legal advice before taking any action pursuant to this article.

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