



कर्मचारी भविष्य निधि संगठन

(श्रम एवं रोज़गार मंत्रालय, भारत सरकार)

EMPLOYEES' PROVIDENT FUND ORGANISATION

(Ministry of Labour & Employment, Govt. of India)

मुख्य कार्यालय / Head Office

भविष्य निधि भवन, 14-भोकाजी कामा प्लेस, नई दिल्ली-110 066.

Bhavishya Nidhi Bhawan, 14, Bhikaiji Cama Place, New Delhi - 110 066.

C-I -1(4)2017/Capital Dyeing/

To

All Regional P.F. Commissioners -I & II

In-charge of Regional Offices

Date: ' 18 1 MAY 2017

Sub.: Forwarding of important Judgment by Hon'ble High Court, Chandigarh in CWP No. 17366/1998 in the matter of Capital Dyeing V/s RPFC – regarding.

Sir

Please find enclosed herewith a copy of the judgment dated 27-10- 2016 passed by the Hon'ble High Court of Punjab and Haryana in CWP No. 17366/1998 in the matter of Capital Dyeing V/s RPFC.

The Hon'ble Court while dismissing the Writ Petition filed by M/s Capital Dyeing has made the following observations "*EPF Department in order to avoid disputes relating to number of employees employed by the employer and if there is no co-operation from employer or its agent / manager / any person in such circumstance, department has to utilize recording of panchanama by video graphing and insisting for installation of CCTV in and around factory premises. Thus in disputed matter evidence can be taken from video graphing.*"

A copy of the order is being circulated for information and implementation of this part of the order to use the videography as evidence in case of litigant / non-cooperative employers.

Yours faithfully,

Encl: As above.

(Aprajita Jaggi)
RPFC-I (Compliance)

- Copy to:
1. All ACCs-I&II (Zones)
 2. FA&CAO/CVO/All ACCs HQ/I&II
 3. Director, NATRSS/All ZTIs Training Institutes
 4. Director(Audit)/Zonal Audit Officers.
 5. All D.D.(Vig)
 6. Hindi Cell for Hindi Translation.
 7. RPFC-II NDC

S.No. 2 (R)

(31)

कर्मचारी भविष्य निधि संगठन

(श्रम मंत्रालय, भारत सरकार)
राष्ट्रीय कार्यालय, भविष्य निधि भवन,
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EMPLOYEES' PROVIDENT FUND ORGANISATION

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No.R.O. Ldh/ Legal Cell/CWP/17366/1998 1228

Dated: 25.11.2016

To

The Central Provident Fund commissioner
Employees Provident Fund Organisation,
Head Office, Bhavishya Nidhi Bhawan,
14, Bhika Ji Cama Palace,
New Delhi, 110 066

{By Name to :- Sri Samarendra Kumar, RPFC-I (Legal)}

Sub: Forwarding of important Judgment by Hon'ble High Court, Chandigarh in CWP No.17366/1998 in the matter of Capital Dyeing Vs RPFC -regarding.

Sir,

Please find enclosed herewith copy of judgment dated 27.10.2016 delivered by Hon'ble High Court, Chandigarh in CWP No. 17366/1998 in the matter of Capital Dyeing Vs RPFC.

In the instant matter, while dismissing the above case, Hon'ble High Court, Chandigarh directed that EPF department in order to avoid disputes relating to number of employees employed by the employer and if there is no co-operation from employer or its agent / manager/ any person in such circumstance, department has to utilize recording of panchnama by videographing and insisting for installation of CCTV in and around factory premises. Thus in disputed matter evidence can be taken from videographing.

Therefore, a copy of above said order dated 27.10.2016 is forwarded for circulation by the Headquarter.

Yours faithfully,

(Rakesh Yadav)

Regional P.F. Commissioner (Legal)

Encl : As above.

(17/11/16)
22/11/16
R.G./Li/S
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CWP_17366_1998 MEMO OF ORDER 10-Nov-2016 at 14:03

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IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA
AT CHANDIGARH

C.W.P. NO. 17366 OF 1998

M/s Capital Dyeing Company through
its proprietor Shri Suresh Kumar, 176,
Industrial Area-A, Ludhiana

...Petitioner

Versus

Resp. The Regional Provident Fund Commissioner
Sub Regional Office, Dhayan Singh Complex,
Near General Bus Stand, Ludhiana-141001

...Respondent



Petition under Articles 226/227 of the Constitution of India praying for the issuance of writ, order or direction especially in the nature of Certiorari quashing the impugned orders Annexure P- 3 by which the petitioner firm has been made liable and amenable to the provisions of the Employees Provident Fund Act and also to quash Annexure P-4 by which the appeal of the Petitioner against the orders dated 30th April, 1998 has been dismissed on 23rd September, 1998.

With a further prayer to stay the operation of the impugned order date 23rd September, 1998 or in the alternative to stay the proceedings pending before the competent authority, (Regional Provident Fund

Handwritten signature and notes

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Commissioner) under Section 7-A
of the Employees Provident Fund
Act.

RESPECTFULLY SHOWETH :-

1. That the petitioner is the citizen of India and is the resident of the State of Punjab and is hence competent to invoke the extra ordinary jurisdiction of this Hon'ble Court by way of a writ petition.
2. That the petitioner firm is carrying on the business of dyeing wool and has a small scale unit having been granted a small scale industry certificate dated 3rd June, 1979.
3. That the establishment initially was a partnership concern consisting of two partners i.e. the petitioner Sh. Suresh Kumar and one Shri Subhash Chander who expired on 11th February, 1989 and Mrs. Rani Bhandar wife of late Sh. Subhash Chander became the partner in the partnership firm. The said partnership was also dissolved on 5th January, 1996 and with this dissolution the petitioner has become the sole proprietor.
4. That the petitioner firm as stated above is a small unit and has never employed more than 10 to 12 persons at any time. The maximum number during the last

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High Court of Pb. & Hr., Chandigarh.

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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 17366 of 1998 (O&M)

Date of Decision : 27.10.2016

M/s Capital Dyeing Company
through its proprietor

.....Petitioner

vs.

The Regional Provident Fund Commissioner,
Ludhiana

.....Respondent

Coram: Hon'ble Mr. Justice P.B. Bajanthri

Present: Mr. P.K. Mutneja, Advocate
for the petitioner

Mr. Rajesh Hooda, Advocate
for the respondent.

P.B. Bajanthri, J.

In the instant writ petition the petitioner has questioned the validity of the order dated 30.4.1998 and 23.9.1998 vide Annexure P-3 and P-4 passed by the Regional Provident Fund Commissioner, Ludhiana and Employees' Provident Fund Appellate Tribunal, New Delhi, respectively.

2) Brief facts of the case, the petitioner's company was established in the year 1969. It was a partnership till 5.1.1994. On 6.12.1996. EPF Department officials and Inspectors gave a surprise visit to the petitioner's factory and found that there were 21 employees. The same was recorded and obtained signature and seal

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on behalf of the Proprietor (Mr. Nitin Guliani s/o petitioner – Proprietor). On 29.7.1997, the petitioner – Company was advised by the respondent – Department, that more than 19 employees are employed in the factory, therefore, the petitioner has to comply the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as 'EPF Act'). On 31.7.1997, the petitioner denied that he has employed more than 19 employees and stated that he has engaged only 6 employees. Therefore EPF Act is not applicable to the factory owned by the petitioner. Thus he had requested for personal hearing if further action is proposed to be taken by the department. After receipt of the reply of the petitioner on 23.9.1997, EPF Department furnished report of the Inspectors dated 6.12.1996, Coverage Form and list of employees and further reiterated that the petitioner-company is covered by EPF Act and requested for compliance of EPF Act. For non-compliance of EPF Act by the petitioner, the Enforcement Officer reported to Regional Provident Fund Commissioner, Ludhiana, to initiate proceedings against the petitioner-company for non-compliance of EPF Act. Similar request was made even on 13.10.1997. Thus notice was given to the petitioner for drawing proceedings under Section 7-A of the EPF Act on 23.1.1998.

3) The petitioner submitted written statement before the respondent – Regional Provident Fund Commissioner, Ludhiana. After hearing the petitioner and perusal of the records, Section 7-A proceedings of the EPF Act have been drawn on 30.4.1998 vide

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Annexure P-3, holding that EPF Act has been made applicable to the petitioner establishment and petitioner is statutorily bound to report compliance within 30 days. Feeling aggrieved by the order dated 30.4.1998, the petitioner preferred an appeal before the Appellate Tribunal. The Appellate Tribunal dismissed the appeal of the petitioner, while observing certain factual aspects. Thus the petitioner has presented this petition.

4) Learned counsel for the petitioner contended that his factory is proprietorship from 5.1.1994 onwards as on the date of inspection by the EPF Department on 6.12.1996 he was away from the factory and his son Mr. Nitin Guliani was present. In the absence of Proprietor or Manager, the Inspectors have perused the records and obtained signature from his son, who is not at all concerned with the factory. He was not appointed as an incharge of the factory, so as to give particulars of the factory. The Inspectors forcibly took the signature of the petitioner's son and seal of the factory to establish that 21 employees were working in the petitioner's factory. Whereas records disclosed that there were only 7 employees employed as is evident from the attendance register. It was further contended by the learned counsel for the petitioner that the respondent has failed to consider documents like attendance and wages register which determines the number of employees on the score that attendance and wages register are not authenticated by any other Government Agency/Department like Labour and ESIC. In fact balance sheet for the year 1996-97 was also not taken into consideration. Further

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certain error has been committed by the Inspectors like employees Sidh Nath and Chote Lal was taken from the attendance register, who were left job earlier and written the names of Ram Avtar and Ram Bahadur twice, whereas the Inspecting squad written the name of Ram Avtar as Ram Avtar II as well as Ram Bhahdur as Chowkidar. Whereas both are one and the same and further submitted that one Satya Parkash was present, which is not so, as he was admitted in the hospital and he died in the month of December 1996 itself. Therefore, lot of discrepancies are forthcoming from the Inspecting Squad report. These factual aspects have not been appreciated by the respondent, while drawing proceeding under Section 7-A, so also Appellate Tribunal. Therefore Section 7-A proceedings drawn by the respondent and decision of the Appellate Tribunal are liable to be set aside.

5) Learned counsel for the petitioner further submitted that the petitioner - factory would not fall under Section 1 (3) (b) of the EPF Act, which is applicable clause that if establishment having more than 20 persons engaged in a factory or industry, the EPF is covered. Therefore, the petitioner - factory do not cover the EPF Act. He has also relied on definition of employer, employee, occupier of a factory under Section 2 (a), (e), (f) and (k) of the EPF Act. It was further contended that Section 7-A proceedings are not in accordance with Rule 7-A of the Act. Even the Appellate Authority failed to appreciate the factual aspects, as well as, legal aspects.

6) It was further submitted that it was the duty of the

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Inspectors and Inspecting Squad to comply Section 13 of the EPF Act. The same has not been complied, i.e. in the absence of Proprietor or appointing incharge of the factory. In their presence, factory premises was not inspected. It was inspected in the presence of the petitioner's son, who is no where concerned with the petitioner's factory and forcibly information, signature and seal has been obtained, to contend that more than 20 persons are employed in the petitioner's factory and the petitioner's factory would cover EPF Act.

7) Per contra, learned counsel for the respondent resisted the claim of the petitioner, contending that the Inspection Squad visited the petitioner's premises on 6.12.1996 and obtained information that there were 21 employees who were engaged in the factory. The same has been attested by son of the petitioner alongwith seal of the factory who was physically present in the factory premises. Even though he is not incharge of the factory in the absence of the petitioner - Proprietor, petitioner's son was present, the petitioner failed to object for such inspection and proceedings immediately in the month of December 1996. He has raised objection that in the presence of the petitioner's son, Inspecting Squad inspected the factory premises and obtained information that 21 employees are employed on that particular date. Only reply to notice such a contention was taken on 31.7.1997. Therefore, it is an after thought. The petitioner's son was present when the Inspecting Squad visited the petitioner's factory and have obtained certain information. One of the information required for the purpose of EPF Act applicable or not

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is that more than 19 persons were employed or not. It is evident on the record that 21 employees were employed by the petitioner excluding petitioner's son. Therefore, it is undisputed fact that petitioner had engaged more than 19 persons. Consequently, EPF Act is applicable. Learned counsel for the respondent further submitted that attendance register and wages which were produced before the respondent under Section 7-A proceedings, was not authenticated, as it was not supported by any official report, so as to contend that only 7 employees were engaged as on 6.12.1996. Production of annual returns do not help the petitioner, so as to find out how many employees were engaged etc. Therefore, the petitioner has not made out a case.

8) It was further contended that under Article 226 of the Constitution, Court cannot appreciate or re-appreciate facts that the respondent is a fact finding authority under statutory provisions and the same has been examined by the competent authority. Therefore, under Article 226 of the Constitution, factual aspects cannot be re-examined. In support of the said contention, learned counsel for the respondent relied on the following judgments:-

1. Saraswati Construction Company vs. Central Board of Trustees and another 2010 (171) DLT 3
2. Saraswati Construction Company vs. Central Board of Trustees and another in SLP (Civil) CC14569 of 2010 decided on 27.9.2010;

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3. J.K. College of Nursing and Paramedicals vs. Union of India and others 2012 (1) LLJ 746;

4. Abdul Gaddafi vs. State of Kerala and others in WP (C) No. 15225 of 2011 (C) decided on 11.2.2004;

5. Abdul Gaddafi vs. State of Kerala and others in WA No. 822 of 2016 (C) in WP (C) 15225 of 2011 decided on 17.5.2016

6. Grand Chemical Works vs. The Presiding Officer, Employees Provident Fund Appellate Tribunal and another 2010 (2) SCT 160; and

7. M/s Sachdeva Maternity and General Hospital vs. Presiding Officer, Employees Provident Fund Appellate Tribunal and another in CWP No. 12326 of 2012, decided on 29.5.2015.

- 9) Heard learned counsel for the parties.
- 10) The question for consideration in the present petition is whether the petitioner – factory covers EPF Act or not. Perusal of the applicability Section 1 (3) (b) of the EPF Act that a firm or factory must have more than 19 persons so as to attract EPF Act. Therefore, Section 1 (3) (b) and definition of Section 2 (e), (f), (k), Section 7 and Section 13 of the EPF are reproduced hereunder :-

“1. Short title, extent and application.- (1) This Act may be called the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952.

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

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

Provided 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 twenty as may be specified in the notification."

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2. Definitions. - In this Act, unless the context otherwise requires, -

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(e) "employer" means- (i) in relation to an establishment which is a factory, the owner or occupier of the factory, including the agent of such owner or occupier, the legal representative of a deceased owner or occupier and, where a person has been named as a manager of the

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factory under clause f of sub-section 1 of section 7 of the Factories Act, 1948 (63 of 1948), the person so named; and (ii) in relation to any other establishment, the person who, or the authority which, has the ultimate control over the affairs of the establishment, and where the said affairs are entrusted to a manager, managing director or managing agent, such manager, managing director or managing agent;

(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;

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

(fff) "exempted establishment" means an

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establishment in respect of which an exemption has been granted under section 17 from the operation of all or any of the provisions of any Scheme or the Insurance Scheme, as the case may be, whether such exemption has been granted to the establishment as such or to any person or class of persons employed therein;

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(k) "occupier of a factory" means the person, who has ultimate control over the affairs of the factory, and, where the said affairs are entrusted to a managing agent, such agent shall be deemed to be the occupier of the factory;

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13. Inspectors. (1) The appropriate Government may, by notification in the Official Gazette, appoint such persons as it thinks fit to be Inspectors for the purposes of this Act, the Scheme, the Pension Scheme or the Insurance Scheme and may define their jurisdiction. (2) Any Inspector appointed under sub-section 1 may, for the purpose of inquiring into the correctness of any information furnished in connection with this Act or with any Scheme or the Insurance Scheme or for the purpose of

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ascertaining whether any of the provisions of this Act or of any Scheme or the Insurance Scheme have been complied with in respect of an establishment to which any Scheme or the Insurance Scheme applies or for the purpose of ascertaining whether the provisions of this Act or any Scheme or the Insurance Scheme are applicable to any establishment to which the Scheme or the Insurance Scheme has not been applied or for the purpose of determining whether the conditions subject to which exemption was granted under section 17 are being complied with by the employer in relation to an exempted establishment.

(a) require an employer or any contractor from whom any amount is recoverable under section 8A to furnish such information as he may consider necessary.

(b) At any reasonable time and with such assistance, if any, as he may think fit, enter and search any establishment or any premises connected therewith and require any one found in charge thereof to produce before him for examination any accounts, books, registers and other documents relating to the employment of

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persons or the payment of wages in the establishment;

(c) Examine, with respect to any matter relevant to any of the purposes aforesaid, the employer or any contractor from whom any amount is recoverable under section 8A, his agent or servant or any other person found in charge of the establishment or any premises connected therewith or whom the Inspector has reasonable cause to believe to be or to have been, an employee in the establishment;

(d) Make copies of, or take extracts from, any book, register or other document maintained in relation to the establishment and, where he has reason to believe that any offence under this Act has been committed by an employer, seize with such assistance as he may think fit, such book, register or other document or portions thereof as he may consider relevant in respect of that offence;

(e) Exercise such other powers as the Scheme may provide. (2A) Any Inspector appointed under sub-section 1 may, for the purpose of inquiring into the correctness of any information furnished in connection with the Pension

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Scheme or for the purpose of ascertaining whether any of the provisions of this Act or of the Pension Scheme have been complied with in respect of an establishment to which the Pension Scheme applies, exercise all or any of the powers conferred on him under clause a, b, clause c, or clause d sub-section 2.

(2B) The provisions of the Code of Criminal Procedure, 1898 (5 of 1898) shall, so far as may be, apply to any search or seizure under sub-section 2 or under sub-section 2A, as the case may be, as they apply to any search or seizure made under the authority of a warrant issued under section 98 of the said Code."

Reading of Section 1 (3) (b) of the EPF Act, requires that a firm or factory must have more than 19 persons employed. In the present case, EPF Department when gave a surprise visit to the petitioner's factory on 6.12.1996, they found names of 21 employees who were working and the same was recorded. To that extent, a list of employees names was prepared and signature of the petitioner -- proprietor's son namely, Mr. Nitin Guliani was obtained. Based on the inspecting squad report, the EPF Department proceeded to initiate proceedings and directed the petitioner to comply EPF Act, since petitioner's factory would fall under EPF Act. The learned counsel for the petitioner contended that in his factory hardly there were 7

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Scheme or for the purpose of ascertaining whether any of the provisions of this Act or of the Pension Scheme have been complied with in respect of an establishment to which the Pension Scheme applies, exercise all or any of the powers conferred on him under clause a, b, clause c, or clause d sub-section 2.

(2B) The provisions of the Code of Criminal Procedure, 1898 (5 of 1898) shall, so far as may be, apply to any search or seizure under sub-section 2 or under sub-section 2A, as the case may be, as they apply to any search or seizure made under the authority of a warrant issued under section 98 of the said Code."

Reading of Section 1 (3) (b) of the EPF Act, requires that a firm or factory must have more than 19 persons employed. In the present case, EPF Department when gave a surprise visit to the petitioner's factory on 6.12.1996, they found names of 21 employees who were working and the same was recorded. To that extent, a list of employees names was prepared and signature of the petitioner - proprietor's son namely, Mr. Nitin Guliani was obtained. Based on the inspecting squad report, the EPF Department proceeded to initiate proceedings and directed the petitioner to comply EPF Act, since petitioner's factory would fall under EPF Act. The learned counsel for the petitioner contended that in his factory hardly there were 7

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employees and not as contended or recorded by the EPF Department that 21 employees were employed in his factory. On the other hand, it was contended that in the absence of petitioner - proprietor, petitioner's son Mr. Nitin Guliani's signature and factory seal was obtained on the list of employees. Mr. Nitin Guliani, son of the petitioner is not at all concerned with the petitioner's factory. Therefore, signature of the petitioner's son and seal of the petitioner's factory obtained by the Inspecting squad by force. On the contrary, records of attendance register, wages register evident that only 6-7 employees were employed in the petitioner's factory. Therefore, the proceedings drawn by the EPF authorities under the statutory provision is contrary to the facts. Perusal of the facts reveals that the above contention of the petitioner is an after thought for the reasons that petitioner's factory premises was inspected by the EPF Department on 6.12.1996 and for the first time the petitioner took the above contention before the EPF Department only against issuance of show cause notice after lapse of more than 6-7 months. Had the petitioner objected that petitioner's son's signature had been obtained, at the earliest in the month of December 1996 by coercion or in the month of January 1997, one can understand. Therefore, the above contention of the petitioner obtaining signature of the unconcerned person in respect of petitioner's factory premises is not tenable. Further no mala fide is urged against any person or inspecting squad as to what was the enmity so as to record 21 employees were working. If the inspecting squad forcibly taken signature a complaint

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before jurisdiction police should have been lodged.

11) Learned counsel for the petitioner contended that the EPF Department failed to appreciate documents maintained by the petitioner like attendance register, wages register and annual returns – balance sheet. The EPF Department has rightly rejected the cited documents of the petitioner since it were not authenticated when physical verification was made by the Inspecting squad of the EPF Department. Therefore, the petitioner failed to adduce necessary evidence before the EPF Department. Consequently, the above contention of the petitioner is liable to be set aside. The learned counsel for the petitioner relying on various provisions of the EPF Act contended that his factory premises would not fall under EPF Act. It is to be noted that when Inspecting squad of EPF Department on 6.12.1996 recorded 21 employees names, it was attested by the petitioner's son Mr. Nitin Guliani and factory seal has been obtained on the list of 21 names of the employees. Therefore, as held by the EPF Department that the petitioner's factory is covered under EPF Act, consequently, provisions of EPF Act are applicable and the same is required to be complied by the petitioner.

12) Learned counsel for the respondent contended that this Court has no jurisdiction relating to examination of fact finding. In support of the same he has relied on number of decisions, in particularly, para 6 of the judgment passed in Abdul Gaddafi's case (Supra). Para 6 reads as under :-

“ 6. The scope and extent of consideration, in

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a Writ petition, challenging an order passed by the Appellate Authority under Section 7 (i) of the Act, is very limited and confined to the legality, propriety, arbitrariness and the denial of natural justice only. This Court is not sitting in appeal to re-appreciate the factual findings concurrently arrived at by the statutory Original Authority, as well as the Appellate Authority under the Statute."

13) It is relevant to quote para 10 and 11 of the decision of the Delhi High Court in the case of Saraswati Construction Company vs. Central Board of Trustees and another 2010 (171) DLT 3 (Supra). Para 10 and 11 reads as under :-

10. The Employees Provident Fund and Miscellaneous Provisions Act, 1952 is a beneficial piece of legislation for the benefit and betterment of the employees and their families and it is a statutory obligation of every employer to ensure that their employees and workers are not deprived of the benefits of the said statutory scheme. It would be worthwhile to refer to the judgment of the Apex Court in the case of Maharashtra State Coop. Bank Ltd. Vs. Provident Fund Commissioner (2009) 10 SCC 123 where the

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philosophy of the said Act has been very eloquently put as:

"Since the Act is a social welfare legislation intended to protect the interest of a weaker section of the society i.e. the workers employed in factories and other establishments, it is imperative for the courts to give a purposive interpretation to the provisions contained therein keeping in view the Directive Principles of State Policy embodied in Articles 38 and 43 of the Constitution. In this context, we may usefully notice the following observations made by Krishna Iyer, J. in **Organo Chemical Industries v. Union of India**⁷: (SCC pp. 587 & 591- 92, paras 28 & 40-41)

"28. The pragmatics of the situation is that if the stream of contributions were frozen by employers' defaults after due deduction from the wages and diversion for their own purposes, the scheme would be damaged by traumatic starvation of the Fund, public frustration from the failure of the project and psychic demoralisation of

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the miserable beneficiaries when they find their wages deducted and the employer get away with it even after default in his own contribution and malversation of the workers' share. "Damages" have a wider socially semantic connotation than pecuniary loss of interest on non-payment when a social welfare scheme suffers mayhem on account of the injury. Law expands concepts to embrace social needs so as to become functionally effectual

* * *

40. The measure was enacted for the support of a weaker sector viz. the working class during the superannuated winter of their life. The financial reservoir for the distribution of benefits is filled by the employer collecting, by deducting from the workers' wages, completing it with his own equal share and duly making over the gross sums to the Fund. If the employer neglects to remit or diverts the moneys for alien purposes the Fund gets dry and the retirees are denied the meager support when they most need it. This

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prospect of destitution demoralises the working class and frustrates the hopes of the community itself. The whole project gets stultified if employers thwart contributory responsibility and this wider fall-out must colour the concept of 'damages' when the court seeks to define its content in the special setting of the Act. For, judicial interpretation must further the purpose of a statute. In a different context and considering a fundamental treaty, the European Court of Human Rights, in the Sunday Times Case, observed:

The Court must interpret them in a way that reconciles them as far as possible and is most appropriate in order to realise the aim and achieve the object of the treaty.

41. A policy-oriented interpretation, when a welfare legislation falls for determination, especially in the context of a developing country, is sanctioned by principle and precedent and is implicit in Article 37 of the Constitution since the judicial branch is, in a sense, part of the State. So it is reasonable to assign to

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'damages' a larger, fulfilling meaning."

11. It is a settled legal position that if any establishment or employer is not covered under the said Act, then it is for the employer to place sufficient cogent and convincing material before the designated authority in an enquiry under Section 7A so as to satisfy the authority with regard to the non-applicability of the Act and on failure to place any such material, the onus cannot be shifted on the EPF authorities to prove the applicability of the Act, who under no circumstances, can be in possession of necessary records evidencing the extent of strength of employees in any particular establishment. In the case of **Himachal Pradesh State Forest Corporation Vs. Regional PF Commissioner (Supra)** cited by the counsel for the petitioner, being distinguishable on facts would not be applicable to the present case. As in the facts of the said case employer itself had admitted its liability under the Act and since due to delay of 16 years period, the employer was not in possession of the records, the Court directed the benefits only

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with respect to those employees who are identifiable and whose entitlement was proved on evidence. So far as the facts of the present case are concerned, the petitioner itself never came forward to place on record the documents or took any such plea of non-availability of the documents, therefore, the said judgment of the Apex Court will not cut any ice to help the petitioner in the facts of the present case."

14) In yet another decision of Delhi High Court in Grand Chemical Works' case (Supra), in para 9, 11, 12 and 19, it is held as under :-

9. There is no dispute as regards the legal position that the Regional PF Commissioner and Employee's Provident Fund Appellate Tribunal are the final fact finding authorities and this court normally would not re-appreciate and reassess the finding on facts. It is equally well known that a writ in the nature of certiorari may be issued only if the order of the inferior tribunal or subordinate court suffers from an error of jurisdiction, or from a breach of the principles of natural justice or is vitiated by a manifest or apparent error of

law. In this regard in *Harbans Lal v. Jagmohan Saran*, (1985) 4 SCC 333, the Hon'ble Apex Court observed as under:

5. We are satisfied that the High Court travelled outside its jurisdiction in embarking upon a reappraisal of the evidence. The Prescribed Authority as well as the learned Second Additional District Judge concurrently found that Madan Lal was sitting in the shop on behalf of the appellant and deputising for him in carrying on the vegetable selling business. The finding by both authorities rested on evidence, and there was no warrant for disturbing that finding of fact in a writ petition. The limitations on the jurisdiction of the High Court under Article 226 of the Constitution are well settled. The writ petition before the High Court prayed for a writ in the nature of certiorari, and it is well known that a writ in the nature of certiorari may be issued only if the order of the inferior tribunal or subordinate court suffers from an error of jurisdiction, or from a breach of the principles of natural justice or is vitiated by a manifest or apparent error of law. There is no

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sanction enabling the High Court to reappraise the evidence without sufficient reason in law and reach findings of fact contrary to those rendered by an inferior court or subordinate court. When a High Court proceeds to do so, it acts plainly in excess of its powers. We are informed that a report of the Commissioner in another suit was not considered by the Prescribed Authority and by the learned Second Additional District Judge, and therefore, it is urged, the High Court was justified in taking that report into consideration and entering into an examination of the material on the record. We have examined the report of the Commissioner and we find that an objection had been filed to that report and the trial court had failed to dispose it of. In other words, the report of the Commissioner is not a final document and cannot be taken into consideration as it stands. It must, therefore, be ignored. That being so, the finding of fact rendered by the Prescribed Authority and affirmed by the learned Second Additional District Judge remains undisturbed. The

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finding is that Madan Lal sat in the shop conducting the vegetable selling business on behalf of the appellant.

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11. The Employee's Provident Funds and Miscellaneous Provisions Act provides for the compulsory institution of contributory provident funds, pension funds and deposit linked insurance funds for employees. The act aims to ensure grant of retiral benefits to secure the future of the employee after retirement. The Employees' Provident Funds and Miscellaneous Provisions Act extend to whole of India except State of Jammu and Kashmir. The Act applies to industries specified in Schedule I employing 20 or more persons and any other class of establishments employing 20 or more persons notified by the Government. The Government may apply the Act to establishments employing less than 20 people. Employees covered under the Act include contract labour but exclude apprentices, trainees, directors, working partners, domestic servants and contractors. Establishments can seek exemption from any

or all the provisions of the act.

9. Section 2 (f) of EPF & MP Act defines employee and section 2 (ff) defines exempted 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 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 or under the standing orders of the establishment:

(ff) "exempted employee" means an employee to whom a Scheme or the Insurance Scheme as the case may be would but for the exemption granted under section 17 have applied;

12. From the above definition it is manifest that a person is an employee if he is

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- (a) Employed for wages;
- (b) in any kind of work, manual or otherwise;
- (c) in or in connection with the work of an establishment;
- (d) He must get his wages directly or indirectly from the employer.

The term employee 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 or under the standing orders of the establishment:"

XXX XXX XXX

19. On perusal of the Cross-examination of Mr. Sabharwal, proprietor of the petitioner firm, it has come up that he admitted the fact that a list of employees duly signed by him was supplied to the enforcement officers who visited the establishment on 13.5.1996 & also admitted that statement for the period from 1991 to 1996 was signed by him. He also admitted that casual daily workers were not

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shown in attendance register. The respondent department examined Sh. Sant Lal, Enforcement Officer, who visited the premises of the firm for physical verification and he deposed that he found 20 employees working in the premises of establishment but on perusal of the attendance register only 11 employees were shown and 9 employees were being paid vide wages on vouchers. In his cross-examination Sh. Sant Lal confirmed that the employer got the letter written through their accountant and then signed it in Urdu. Furthermore, it has come on record that Sh. Brij Bhan and Sh. I.D. Sharma, EO's were deputed to verify the record of the establishment and in their report dated 24.4.1998 they reported that on going through the attendance register maintained by the employer for the period from 1993-94 to 1996-97, it is seen that employer showed names of regular employees in the attendance register whereas employer employed some casual/temporary employees who were paid on vouchers. They also reported that the employer never showed more than 17 persons

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on record during the period from 1993-94 to 1996-97."

15) In view of the principle laid down by the various High Courts, it was bound down duty of the petitioner to establish that the petitioner's factory do not fall under the EPF Act, since the EPF Department, the Appellate Authority are competent to give a fact finding in the matter and the fact that the petitioner failed to place necessary materials before the EPF Department, scope of examination of facts under Article 226 of the Constitution is limited and confined to the legality, propriety, arbitrariness and denial of natural justice only. Whereas, perusal of the records, it is evident that there is not illegality, arbitrariness and denial of natural justice to the petitioner.

16) The EPF Department in order to avoid disputes relating to number of employees employed by the employer and if there is no co-operation from employer or its agent/manager/any person in such circumstances, Department has to utilize recording of panchanama by videographing and insisting for installation of CCTV in and around factory premises. Thus in disputed matter evidence can be taken from videngraphing.

17) Hence, the writ petition is liable to be rejected. Ordered accordingly.

18) No order as to costs.

(P.B. Bajanthri)
Judge

October 27th, 2016
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Whether speaking / reasoned
Whether reportable

Yes / No
Yes / No

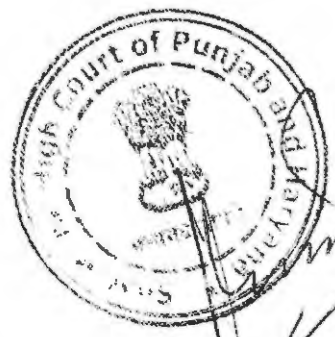
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