

Workers stitching garments from home 'Employees' under Provident Fund Act: Supreme Court

written by Ram Bharathwaj | August 20, 2019

The Bench comprising of Justice Abhay Manohar Sapre and Justice Indu Malhotra of Hon'ble Supreme Court of India in the judgement dated July 24, 2019 in the matter of The Officer-In-Charge, Sub Regional Provident Fund Office Vs. M/s Godavari Garments Limited,<sup>[1]</sup> observed that merely because workers were permitted to do the work off-site, their status as employees for the purpose of Employees' Provident Fund and Miscellaneous Expenses Act, 1952 will not be taken away.

The present civil appeal has been 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.

**FACTS:**

In this present case, the Respondent Company is a subsidiary of Marathwada Development Corporation, which is an undertaking of the Government of Maharashtra. It was covered under the provisions of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952. The main objective

of the Respondent Company, as per its Memorandum of Association, was to encourage, promote, develop, set-up readymade garment industry in the Marathwada region, with a perspective of providing profitable employment to individuals

with abilities in stitching, tailoring and allied activities, especially to women from the economically weaker sections of the society. The Respondent Company 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 Company.

On March 12, 1991, Appellant No. 1 – Officer-In-Charge, Sub Regional Provident Fund Office,

issued a show cause notice to the Respondent Company calling upon it to pay the

provident fund contributions for the women workers. The Balance Sheet of the Respondent Company for the year 1988-89 disclosed large debits towards salary and wages for direct and indirect workers, but the Respondent Company had falsely stated that they only had 41 employees.

On November 30, 1992, Appellant No. 1 issued

summons to the Respondent Company for a personal hearing under Section 7-A of the EPF Act. The representative of the Respondent Company appeared and argued that the women workers who were fabricating garments for the Respondent Company, were not their employees, and would not be subject to Section 2(f) of the EPF Act. Therefore, even

though wage were not paid to the women workers, the Respondent Company was not

liable for paying the Provident Fund Contribution to them.

The Provident Fund Officer [Appellant No. 1] 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 Company 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 Company 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 Company and held that the Respondent Company 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 Company. Aggrieved by the aforesaid

Judgement, the present civil appeal has been filed by the Provident Fund Office.

ISSUES:

The Hon'ble Supreme Court of India considered the following question of law and facts:

'Whether the women workers

fabricating garments for the Respondent Company from their home, comes under the purview of the definition of "employee" under Section 2(f) of Employees Provident Fund and Miscellaneous Provisions Act, 1951?'

SUBMISSIONS:

Learned Counsel appearing on behalf of the

Appellants, submitted that the women workers employed by the Respondent Company

fall within the definition of "employee" under Section 2(f) of the EPF Act.

Supporting his submissions, reliance was placed on the Hon'ble Supreme Court's

decision in M/s P.M. Patel & Sons

and Ors. Vs. Union of India and Ors.[2]

to contend that the women workers employed by the Respondent Company were covered by the definition of "employee" under Section 2(f) of the EPF Act.

Hence,

Respondent Company is liable to pay Provident Fund Contribution in respect of the women workers.

The Respondent Company, submitted that there was no

employer-employee relationship between the Respondent Company and the women workers. The women workers are merely independent contractors and not employees

in accordance with Section 2(f) of the EPF Act.

It was further submitted that the sewing machines

used by the women workers were not provided by the Respondent Company but are owned by them and the women workers didn't work in the production centres of the Respondent Company. As they all worked from their home, no supervision was

possible as to who worked on behalf as relatives and anyone could have done their work. They were not required to work at the production centre as well.

JUDGEMENT:

In the present case, the women workers employed by the Respondent Company were provided with all the raw materials, such as the fabric, thread, buttons, etc., from the Respondent- Employer. By the provided material, the women workers stitched the garments at their home, as per the specific instructions of the Respondent Company and provide the same to the Respondent Company. The Respondent Company had the absolute right to reject the finished products 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 a fact and an accepted stance that the women workers were paid wages directly by the Respondent Company on per piece basis for every garment stitched.

The issue in the present case is squarely covered by this Hon'ble Supreme Court by referring to the decision gave by the Hon'ble Court in *Silver Jubilee Tailoring House and Ors. Vs. Chief Inspector of Shops and Establishments and Ors.*[3] The Court held that " quite apart from all these circumstances, 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 re-stitch it. The element of control and supervision as formulated in the decisions of this court is also present."

On the issue where payment is made by piece-rate basis to the workers, would they be covered by the definition of "employee", the Hon'ble Supreme Court referring to its decision in *Shining Tailors V. Industrial Tribunal II, U.P., Lucknow and Ors.*,[4] held that: " We have gone through the record and especially the evidence recorded by the Tribunal. *The Tribunal has committed a glaring error apparent on record that whenever a payment is made by piece rate, there is no relationship of master-servant and such relationship can only be as between principal and principal and therefore, the respondents were independent contractors. Frankly, we must say that the Tribunal has not clearly grasped the meaning of what is the piece rate. If every piece rated workmen is an independent contractor, lakhs and lakhs of workmen in various industries where payment is correlated to production would be carved out of the expression 'workmen' as defined in Industrial Disputes Act.*

The aforesaid judgement make it abundantly clear that the women workers employed by the Respondent Company are covered by the definition of "employee under Section 2(f) of the EPF Act.

Section 2(f) of the EPF Act is set-out herein below for ready reference:

(f) "employee" means any person who is employed for a wage 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,

1. Employed by or through a contractor in or in connection with the work of establishment;
  2. Engaged as an apprentice, not being an apprentice engaged under the Apprentices Act, 1961 or under the standing orders of the establishment.
- The above-stated definition is an inclusive definition and widely worded to include any person engaged either directly or indirectly in connection with the work of an establishment.

The EPF Act is beneficial social welfare legislation which was enacted by the legislature for the benefit of the workmen.[5] The Hon'ble Supreme Court in *The Daily Pratap v. The Regional Provident Fund Commissioner, Punjab, Haryana, Himachal Pradesh, and Union Territory, Chandigarh*,[6] held that: "it

*has to be kept in view that the Act in question, is a beneficial social welfare legislation meant for the protection of weaker sections of society, namely workmen who had to eke out their livelihood from the meagre wages they receive after toiling hard for the same."*

Hence, the provisions under the EPF Act have to be interpreted in a manner which is beneficial to the workmen.

Judgement passed by the Bombay High Court vides the Impugned Order dated April 27, .2012, which is contrary to established law, is set aside in perspective of the aforementioned debate.

The order dated April 19, 1993 passed by the Appellant is restored and the Respondent Company has been directed by Hon'ble Supreme Court to deposit the amount assessed by the Appellants towards the Provident Fund dues of the women workers within 1 month from the date of this Judgement

#### CONCLUSION:

The Hon'ble Supreme Court harmoniously balanced the principles of natural justice and legislative intent to safeguard the interests of the women workers appointed by the Respondent Company and the Appellant was set right by setting aside the Hon'ble Bombay High Court order and restoring the order passed by the Appellant. It shall be rightly concluded that the purposive interpretation adopted by the Hon'ble Supreme Court serves the purpose and intentions legislature had, while enacting the Employees Provident Fund and Miscellaneous Provisions Act, 1952.

Contributed By - Ram Bharathwaj

Designation - Associate

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- [1] [Civil Appeal 5821/2019]
- [2] (1986) 1 SCC 32.
- [3] (1974) 3 SCC 498.
- [4] (1983) 4 SCC 464
- [5] *Regional Provident Fund Commissioner v. The Hoogly Mills Company Ltd. and Ors.*, 2012 (1) SCALE 422.
- [6] (1998) 8 SCC 90.

King Stubb & Kasiva,  
Advocates & Attorneys

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Tel: [+91 11 41032969](tel:+911141032969) | Email: [info@ksandk.com](mailto:info@ksandk.com)