

CASE NO.:
Appeal (civil) 5717 of 2001

PETITIONER:
H.P. State Forest Corporation

RESPONDENT:
Regional Provident Fund Commissioner

DATE OF JUDGMENT: 03/04/2008

BENCH:
Tarun Chatterjee & Harjit Singh Bedi

JUDGMENT:
J U D G M E N T
NON-REPORTABLE

CIVIL APPEAL NO.5717 OF 2001
WITH C.A. No.5718/2001

HARJIT SINGH BEDI, J.

1. These appeals are directed against the judgment and order of the High Court of Himachal Pradesh at Shimla whereby the order of the Presiding Officer of the Employees Provident Fund Appellate Tribunal dated 15th December 1999 has been upheld and the direction issued thereunder to remand the case for the re-determination of the contribution with respect to the liability of the appellant Corporation has been maintained. The facts are as under:

2. The Appellant Corporation (hereinafter called the "Corporation") which is a company registered under the Companies Act, came into existence on 1st April, 1974. Proceedings for the deposit of the provident fund under the provisions of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter called the "Act") were initiated by the issuance of a notice dated 12th December 1988 under section 7-A of the Act for determination of the amounts due from the Corporation. This notice pertained to the period 1982-88. The Corporation, through its Regional Manager, contended, inter-alia, that the provisions of the Act were not applicable to it inasmuch as it was not an 'industrial establishment' in terms of section 2(e) of the Industrial Employment (Standing Order) Act, 1964 nor under section 25(k) of the Industrial Disputes Act, 1947. The Regional Provident Fund Commissioner however in his order dated 14th July 1999 took the view that the Corporation was covered under Section 1(4) of the Act as it had voluntarily submitted to its coverage and had been allotted a provident fund code number as well. The Commissioner then went into the question as to whether the persons employed by the contractor could be said to be the employees of the Corporation and hence entitled to the benefits of the Act and after examining the matter threadbare concluded that the said employees were in fact employees of the Corporation and therefore subject to the provisions of the Act and also drew up an assessment of the amounts due from the Corporation. An appeal was thereafter preferred before the Presiding Officer, Employees Provident Fund Appellate Tribunal wherein similar contentions were raised by the Corporation. The Tribunal in its order of 15th December 1999 held that the Corporation was indeed covered by the provisions of the Act but on the facts of

the case opined that as the matter was stale and pertained to the year 1982, it would be appropriate that the matter be remitted to the Commissioner for re-determination of the amount due and for this purpose issued the following guidelines:

"In view of the above discussions, the appeal is fit to be partly allowed and the case to be remanded back for re-determination of the dues with reference to the identifiable employees only. The appellant cannot be pressed to produce such records which under any Statute they are not made liable to maintain or which they are authorized to destroy because of expiry date. The appellants are directed to produce all the records in their possession for the disputed period and explain satisfactorily for those which they cannot produce. Contractors may be summoned if the appellant make a prayer for that and give full details. However, it is the appellant's liability to maintain the records and produce them as held by the Hon'ble Supreme Court.

Both the appeals are partly allowed. Coverage of the appellant in respect of contractors employees is held valid. The determination portion of the impugned order is set aside. The case is remanded back for re-determination after giving reasonable opportunity to the appellants to prove their case."

3. The Corporation then filed a Writ Petition in the High Court impugning the order of the Commissioner the Appellate Tribunal but vide order dated 29th November 2000, the High Court upheld the order of the Tribunal and dismissed the Writ Petition. It is in these circumstances that the matter is before us.

4. Mr. M.N. Rao, the learned senior counsel for the appellant has at the outset very fairly pointed out that as of today and in the light of the fact that the Corporation itself had voluntarily submitted that it was covered by the provisions of the Act the question of a dispute with regard to the liability of the Corporation was now largely academic, but has pleaded that as the employees in question were seasonal employees and the matter pertained to a long gone period i.e. 1982-98, the record pertaining to the employees was not available either with the Corporation or with the Contractors and that in many a case those who stood to benefit were not even traceable, it would be appropriate that the impugned orders be quashed as they would not serve any useful purpose. It has also been pleaded that although there was no limit prescribed under the Act within which proceedings under section 7-A could be initiated, but under the broad principle that a reasonable period ought to be read into the Statute, the present delay of 16 years from 1982 could not be justified.

The learned counsel for the respondents has, however, argued that the Tribunal and the High Court had granted a limited relief to the employees inasmuch that the examination of the claim was to be limited only to those employees who could be identified and that as the authorities below had exercised their authority with respect to a beneficent legislation for the weaker sections, it would be inappropriate to interfere with the impugned orders.

5. We have heard the learned counsel for the parties and gone through the record. We do appreciate that the inaction on the part of the Commissioner to initiate proceedings within a reasonable time, has to be deplored. However, as the Corporation has itself submitted that it was covered under the Act and in view of the limited relief granted by the authorities below and by the High Court, we are disinclined to interfere with the matter at this stage. We accordingly dismiss the appeals but reiterate the recommendation that the amounts due from the Corporation will be determined only with respect to those employees who are identifiable and whose entitlement can be proved on the evidence and that in the event the record is not available with the Corporation (at this belated stage), it would not be obliged to explain its loss, or that any adverse inference be drawn on this score. With this very small modification, we dismiss the appeals.