

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Decided on April 21, 2014

+ **W.P.(C) 2354/2014**

GOODS SHEPHERD PUBLIC SCHOOL Petitioner

Represented by: Mr.Pratap Sahani, Advocate

versus

EMPLOYEES PROVIDENT FUND ORGANISATION

..... Respondent

Represented by: Mr.R.C.Chawla, Advocate

CORAM:

HON'BLE MR. JUSTICE V.KAMESWAR RAO

V.KAMESWAR RAO, J. (Oral)

1. The challenge in this writ petition is to the order dated October 31, 2013 passed by the Employees Provident Fund Appellate Tribunal (Tribunal, in short) in an appeal filed by the petitioner against the order dated March 10, 2011 passed by the Assistant Provident Fund Commissioner, Orissa (Commissioner, in short), whereby the Commissioner has decided the applicability of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (Act, in short) to the appellant-Establishment for the period 06/2004 to 03/2009 and rejected the appeal, holding that the employees' strength of the Establishment reached the figure of 20 in the month of June, 2004.

2. The learned counsel for the petitioner concedes that the Act has been made applicable to the petitioner-Organisation w.e.f. April 2009. According to him, the reason for the applicability of the Act with effect from that date was because that the strength of the employees exceeded 20. On a pointed query, as to whether, their appointment letters have

been annexed in the writ petition, the answer was in the negative. In other words, no evidence has been placed on record to show that in fact, because of the appointment of new employees, that the figure exceeded beyond 20.

3. In any case, the Tribunal rejected the appeal on the basis of the following conclusion:

“3. To conclude, it is pertinent to note that the defense of the appellant is overwhelmed by one document itself; namely the report of the Enforcement Officer dated 28.01.2005 which has been affirmed by the Principal of the appellant establishment by putting his seal and signature. The said report dated 28.01.2005 mentions the employee strength for the month of June, 2004 (including the Principal) as 20. Since, the said report has been affirmed by the Principal of the appellant establishment, the report is to be held as accepted by the appellant establishment. Hence, it can be said that the employee strength of the appellant establishment reached the figure of 20 in the month of June, 2004 for the Act to be applicable to it. Accordingly, the present appeal is devoid of merits and is therefore dismissed. The order passed by the respondent authority is hereby upheld. Copy of the order be sent to the parties and the file be consigned to record room”.

4. From the aforesaid conclusion of the Tribunal, it is clear that the working of 20 persons in terms of the report of the Enforcement Officer

has been accepted by the Principal by putting his signatures on the report. If he had any objection, surely, the Principal was required to file objections on the copy of the report on which, he has put his signatures or by way of a separate communication. The Tribunal having concluded that the Principal has accepted the report by putting his signatures, this Court surely not take a different view than the one taken by the Tribunal. Further, I find as per its own stand of the petitioner-organisation in its letter dated February 16, 2006, the regular staff, at that point of time, consisted of 12 regular Teachers and 3 Attendants, which would add on to 15. It is also stated that the school was assisted by 5-6 Trainee Teachers for gaining some experience who were paid small honorarium. If the figure is added, the same could come to 20. It would be a different issue, if such Trainee Teachers had left subsequently as the same would not have any effect on the applicability of the Act inasmuch as once the number of 20 is attained, even if the number gets reduced below 20, that would not make the Act inapplicable. I do not find any merit in the writ petition. The same is dismissed.

5. No order as to costs.

(V.KAMESWAR RAO)
JUDGE

APRIL 21, 2014
akb