

(11) The argument of learned counsel for the respondent based on the judgment of the Supreme Court in **Krishnakant Raghunath Bibhavnekar's case** (*supra*) has failed to impress us because there was ample scope for holding of an enquiry as the employee had neither been retired from service nor was retrenched. In the present case, the employer-employee relationship has come to an end on 30th June, 2002 when he was retrenched from service and, therefore, the aforementioned judgment is not applicable to the facts of the present case. Accordingly, the argument is devoid of merit and the same is rejected.

(12) For the reasons aforementioned, this petition succeeds and the order dated 20th November, 2002 (Annexure P1) is set aside. The petitioner is held entitled to all consequential benefits. In other words, he shall be paid salary for whole of the period of suspension from 12th July, 1996 to 30th June, 2002 by treating the same as a period spent on duty for all intents and purposes.

R.N.R.

Before S.S. Nijjar & S.S. Saron, JJ.

RAM SINGH & OTHERS,—*Petitioners* .

versus

PUNJAB STATE COOP. SUPPLY & MARKETING FEDERATION
LTD. AND OTHERS,—*Respondents*

C.W.P. NO. 16879 OF 2004

25th July, 2006

Constitution of India, 1950—Art. 226—Employees Provident Fund and Miscellaneous Provisions Act, 1952—S.2—E.P.F. Scheme, 1952—Para 30—Petitioners engaged as labourers by their contractors for doing labour job for Markfed/PUNSUP as per their requirements—Markfed/PUNSUP stopping depositing deductions made on account of EPF and directing contractors to obtain its own Code number—Whether deductions are to be deposited by the employing agencies i.e. Markfed/PUNSUP or by its respective contractor—Provisions of the Act and EPF scheme provide that it is the liability of principal employer to deposit the employees' share and employers' share of the EPF contribution in respect of labour engaged by it, either directly or through a contractor—Petition allowed.

Held, that a perusal of clause (2) of para 30 of the EPF Scheme shows that in respect of employees employed by or through a contractor, the contractor shall recover the contribution payable by such employee in this Scheme referred to as the member's contribution so deduction together with an equal amount of contribution in this Scheme referred to as the employer's contribution and also administrative charges. In terms of clause (3) of para 30, it is responsibility of the principal employer to pay both the contributions payable by himself in respect of the employees directly employed by him and also in respect of the employees employed by or through a contractor and also administrative charges. Besides, para 35 of the EPF Scheme provides for Preparation of Contribution Cards. It is to be prepared by the employer in Form 3 or in Form 3-A in respect of every employee in his employment at the commencement of the EPF Scheme or who is taken into employment after that date and who is required or entitled to become or is a member of the Fund including or is a member of the Fund including those who produce an Account Number. Therefore, it is for the employer to send to the Commissioner the consolidated return and it is his duty in terms of clause (3) of para 30 of the EPF Scheme to pay the contributions payable by himself in respect of the employees directly employed by him and also in respect of the employees employed by or through the contractor.

(Para 8)

Action of the respondents, Markfed and PUNSUP in attempting to shift the liability of obtaining code numbers for the labour employed by or through the contractor, on the contractor, is unsustainable. It is the liability of the principal employer to deposit the employees' share and the employer's share of the EPF contribution, in accordance with the provisions of the Act and the EPF Scheme in respect of the labour engaged by it, either directly or through a contractor.

(Para 13)

Raman Sharma, Advocate *for the petitioners.*

Sangeeta Dhanda, Advocate,

Kamal Sehgal, Advocate,

H.S. Dhandi, Advocate and Jaspal Kaur Gurna, Advocate *for the respondent.*

JUDGEMENT

S.S. SARON, J.

(1) This order will dispose of above mentioned six writ petitions as they involve identical questions of law and somewhat similar facts.

(2) The petitioners in CWPs 16879, 16880 and 16881 of 2004 are working as handling labour under the respondent No. 3 in the said respective petitions who are the contractors of the Punjab State Cooperative Supply & Marketing Federation Limited (Markfed—for short), Chandigarh through its M.D. (respondent No. 1) and the Branch Manger, Markfed Depot, Bhawanigarh (respondent No. 2). The petitioners in CWPs. 19891, 19921 and 20154 of 2004 are working as handling labour under respondents No. 2 in the said respective petitions who are the contractors of PUNSUP Depots at Sangrur, Tapa and Bhawanigarh, respectively. They seek the quashing of the action of the respondents in asking their contractors to obtain its own Code number for the purpose of compliance with the provisions of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (Act—for short). The provisions of the Act, it is stated, are applicable to the respondents with whom the petitioners are working as handling labour and the petitioners have been allocated the EPF Code numbers, as mentioned in their respective writ petitions. It is stated that the contractor of the respondents—Markfed and PUNSUP keep changing from year to year basis but the labour remains the same and it does not change. The petitioners along with various others are continuously working as labourers and deductions on account of the EPF are being made which is to be deposited with the EPF authorities in the account numbers allotted to the petitioners by the respondent—EPF Commissioner, Sub-Regional Officer, Bhatinda. It is stated that for the last two months, a move had been started by the respondents—Markfed and PUNSUP whereby the contractors are being asked to obtain their own code numbers from the EPF authorities and to deposit the EPF dues of the petitioners and other workers in that code numbers by obtaining individual account numbers for the workers. This is being done despite resistance of the workers. Some workers even approached the Deputy Commissioner, Sangrur who,—*vide* communication dated 18th May, 2004, directed the Markfed and PUNSUP authorities to follow the earlier procedure regarding deposit of EPF and not to

change the prevalent system. However, despite the directions issued by the Deputy Commissioner, the Markfed and PUNSUP authorities are insisting upon the contractors to have their own code numbers and make compliance with the provisions of the Act. Therefore, the endeavour on the part of the Markfed and the PUNSUP, it is alleged, is to shift the liability of depositing the EPF of the petitioners on the contractors. This, according to the petitioners, would cause grave prejudice to the petitioners. It is stated that the principal employer, which in the present cases, are either the Markfed or the PUNSUP are to comply with the provisions of the Act and their liability cannot be shifted.

(3) In the written statements filed by the Markfed and the PUNSUP, it is stated that the petitioners are labourers working under the control of their contractors and they have never been engaged by the Markfed or the PUNSUP. The petitioners are never employed by the said agencies. It is stated that under the provisions of the Act, it is the liability of the Markfed and the PUNSUP to ensure that the contractor who has engaged them for the execution of its works, had obtained the code numbers regarding payment of the EPF. As to what type of labour is engaged by the contractor for the execution of the work, it is stated, is not the responsibility of the Markfed or the PUNSUP. In fact, by filing the present writ petitions, the petitioners are trying to get a back door entry for employment either by the Markfed or the PUNSUP.

(4) Learned counsel for the petitioners submits that at present the practice has been that the petitioners who are working as labourers have been assigned an EPF account number on the basis of the depot of the Markfed or the PUNSUP where the labour is engaged. The contractors of the labourers keep changing but the labour remains the same and it does change. The petitioners have been working as labourers continuously and deductions on account of their EPF is being made and the deductions made must have been deposited with the EPF authorities in the respective account numbers of the petitioners. A reference is made to the provisions of the Act to contend that the same leaves no manner of doubt that it is the principal employer i.e. the Markfed or the PUNSUP, as the case may be, which is to comply with the provisions of the Act and deposit the EPF in the code numbers allotted to the petitioners. Therefore, the Markfed and the PUNSUP

are wrongly asking the contractors to obtain their own code numbers and make compliance with the provisions of the Act and also the EPF Scheme, 1952. The said action of the Markfed and the PUNSUP, it is contended, is liable to be quashed.

(5) In response, learned counsel appearing for the Markfed and the PUNSUP have opposed the stand of the petitioners. It is contended that as to what kind of labour is engaged by the contractor for the execution of work, is none of their business. Therefore, it is contended that the petitioners are in fact trying to get a back door entry for their employment in the Markfed or the PUNSUP, as the case may be. The Markfed and the PUNSUP only give contract to the contractors for getting a specific work done on piece rate and further engaging the labour and giving them the wages etc. is the sole prerogative of the contractor. The labour is engaged through contract on daily wage basis as per work which keeps on changing every season. Therefore, it is for the contractor to furnish the details of the petitioners and their wages etc.

(6) Learned counsel for the contractors has submitted that it is the action of the Markfed and the PUNSUP, which has been assailed in the present writ petition. Therefore, they are not necessary parties. In any case, in terms of para 30 of the EPF Scheme, 1952, it is stated that the employer at the first instance is liable to pay both the contributions payable by him himself and also on behalf of the employees employed by him directly or through contractors. In respect of employees employed by or through the contractor, the contractor is required to recover the contributions payable by such employees and pay the same to the principal employer together with equal contribution and also with the administrative charges. However, as per clause (3) of para 30 of the EPF Scheme, it is the principal employer who is liable to pay both the contributions payable by itself in respect of the employees directly employed through the contractor.

(7) We have given our thoughtful consideration to the respective contentions of the learned counsel for the parties. The position is that the petitioners are engaged as labourers by their contractors for doing labour job for the Markfed and the PUNSUP, as per their requirements. The questions that arise for consideration is whether the deductions made on account of EPF is to be deposited

by the employing agencies i.e. the Markfed or the PUNSUP, as the case may be, or by its respective contractor and whether the past practice of depositing the deductions made on account of EPF by the employing agencies, is liable to be continued. In order to appreciate the said questions, the definition of the 'Employer' and the 'Employee', as contained in Section 2(e) and 2(f) of the Act may be noticed :—

“S. 2. Definitions :

In this Act, unless the context otherwise requires :—

(a) to (d) xxx xxx

(e) “employer” means—

- (i) in relation to an establishment which is a factory, the owner or the 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 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 the 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.”

(8) As regards payment of contribution, para 30 of the EPF Scheme; 1952 reads as under :—

“30 Payment of contribution :

- (1) The employer shall, in the first instance, pay both the contribution payable by himself (in this Scheme referred to as the employer's contribution) and also, on behalf of the member employed by him directly or by or through a contractor, the contribution payable by such member (in the Scheme referred to as the member's contribution).
- (2) In respect of employees employed by or through a contractor, the contractor shall recover the contribution payable by such employee (in this Scheme referred to as the member's contribution) and shall pay to the principal employer the amount of member's contribution so deducted together with an equal amount of contribution (in this Scheme referred to as the employer's contribution) and also administrative charges.
- (3) It shall be the responsibility of the principal employer to pay both the contribution payable by himself in respect of the employees directly employed by him and also in respect of the employees employed by or through a contractor and also administrative charges.

Explanation.—For the purpose of this paragraph the expression “administrative charges” means such percentage of the pay (basic wages, dearness allowance, retaining allowance, if any, and cash value of food concession admissible thereon) for the time being payable to the employees other than an excluded employee, and in respect of which provident fund contributions are payable as the Central Government may, in consultation with the Central Board and having regard to the resources, of the fund for meeting its normal administrative expenses, fix.”

Section 2(e)(ii) of the Act referred to above, defines ‘employer’ 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 the Managing Agent, such Manager, Managing Director or Managing Agent. Section 2(f) of the Act defines an 'employee' to mean a 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 employed by or through a contractor in or in connection with the work of the establishment. A perusal of clause (2) of para 30 of the EPF Scheme referred to above shows that in respect of employees employed by or through a contractor, the contractor shall recover the contribution payable by such employee in this Scheme referred to as the member's contribution so deducted together with an equal amount of contribution in this Scheme referred to as the employer's contribution and also administrative charges. In terms of clause (3) of para 30, it is responsibility of the principal employer to pay both the contribution payable by himself in respect of the employees directly employed by him and also in respect of the employees employed by or through a contractor and also administrative charges. Besides, para 35 of the EPF Scheme provides for Preparation of Contribution Cards. It is to be prepared by the employer in Form 3 or in Form 3-A in respect of every employee in his employment at the commencement of the EPF Scheme or who is taken into employment after that date and who is required or entitled to become or is a member of the Fund including those who produce an Account Number. Besides para 36 of the Scheme provides for duties of the employers. It is *inter alia* provided therein that every employer shall send to the Commissioner, within fifteen days of the commencement of the EPF Scheme, a consolidated return in such form as the Commissioner may specify. "Commissioner" has been defined in clause 2(d) of the EPF Scheme to mean a Commissioner for Employees' Provident Fund appointed under Section 5-D of the Act and includes a Deputy Provident Fund Commissioner and a Regional Provident Fund Commissioner. Therefore, it is for the employer to send to the Commissioner the consolidated return and it is his duty in terms of clause (3) of para 30 of the EPF Scheme to pay the contributions payable by himself

in respect of the employees directly employed by him and also in respect of the employees employed by or through the contractor. The learned counsel appearing for the respondents have not been able to show any other mode for the deductions and desposit of the amount payable on account of the EPF. Therefore, it is the responsibility of the principal employer to pay the contributions towards EPF in respect of employees employed by or through a contractor. It may also be noticed that a Division Bench of Himachal Pradesh High Court in the case of **Ramesh Kumar and ors. versus National Hydro Electric Power Corporation and anr.** (1) considered a similar matter and held that though the contractor recovers the contribution payable by his employees and further pays it to the principal employer together with an equal amount of contribution and also administrative charges, yet it is primarily the responsibility of the principal employer to pay both the contribution payable by him in respect of the employees directly employed by him and also in respect of the employees employed by or through a contractor, and also administrative charges.

(9) In view of the above, the action of the respondents Markfed and PUNSUP in attempting to shift the liability of obtaining code numbers for the labour employed by or through the contractor, on the contractor, is unsustainable. It is the liability of the principal employer to deposit the employees' share and the employer's shares of the EPF contribution, in accordance with the provisions of the Act and the EPF Scheme in respect of the labour engaged by it, either directly or through a contractor. The objection that the petitioners are seeking to get back door entry in service of Markfed or PUNSUP, is clearly misconceived as it is the EPF which is to be deducted and deposited in accordance with the provisions of the Act and the EPF Scheme.

(10) For the foregoing reasons, the writ petitions are allowed, the impugned action of the Markfed and the PUNSUP asking the contractors to get the Code numbers in respect of the labour employed by or through the contractor allotted from the Provident Fund Department/EPF authorities, is quashed. No costs.