

Before S. C. Mital and Surinder Singh JJ.

T. L. SHARMA,—Appellant.

versus

RAM PARKASH and another—Respondents.

Criminal Appeal No. 1354 of 1976

May 22, 1979.

Employees' Provident Funds (and Family Pension Funds) Act (XIX of 1952)—Sections 13(2) and 14—Employees' Provident Funds Scheme, 1952—Para 76—Employer called upon to produce records—Records not produced—Employer pleading non-applicability of the Act—Non-production of records—Whether punishable as an offence—Finding as to the applicability of the Act—Whether relevant or within the competence of the Magistrate in such proceedings.

Held, that it is obvious from a bare perusal of section 13(2) (b) of the Employees' Provident Funds (and Family Pension Funds) Act, 1952 and para 76 of the Employees' Provident Funds Scheme, 1952 that the Provident Fund Inspector, for the purpose of enquiring into the correctness of any information furnished in connection with the Act or with the scheme or for the purpose of ascertaining whether the provisions of the Act or the Scheme are applicable to an establishment, may enter upon any premises 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 persons or the payment of wages in the establishment. Where the gravamen of the charge for which an accused is tried is his non-production of the record which was required for the purpose of ascertaining the very fact as to whether the Act was applicable to the factory or not, the complainant is not bound to prove at the very outset that the Act was applicable to the Factory. It is beyond the competence of the Magistrate trying the accused to consider or to give a finding in such proceedings as to whether the Act was applicable or not, nor is this fact material for the purpose of deciding as to whether the accused had violated the relevant provisions of the Act and the Scheme. Thus, where an employer refuses to produce the record when called upon by the Provident Fund Inspector and pleads non-applicability of the Act to his establishment, he commits a violation of the provisions of sub-section (2) (b) of section 13 of the Act and the said contravention is punishable under section 14 thereof. (Paras 4 and 6).

Appeal from the order of the Court of Shri R. L. Anand, Judicial Magistrate 1st Class, Amritsar, dated the 19th July, 1976, acquitting the respondents.

C. D. Dewan, Advocate C. B. Kaushik, Advocate with him, for the appellant.

Harinder Singh, Advocate (R. K. Garg, Advocate with him), for the Respondent.

JUDGMENT

Surinder Singh, J.—

(1) This appeal has been filed by Shri T. L. Sharma, Provident Fund Inspector, Amritsar, against the judgment of the Judicial Magistrate, First Class, Amritsar, dated July 19, 1976, in a complaint filed by the appellant under para 14 of the Employees' Provident Funds Scheme, 1952 (hereinafter referred to as the Scheme) against Shri Ram Parkash Bali, proprietor of Messrs Bali Woollen Mills, Kashmir Road, Amritsar, and the said Firm. The allegation in the complaint was that the respondents had failed to produce the attendance register, wage register, cash book/ledgers of the Firm in spite of being called upon to do so and had, thus, committed violation of the provisions of sub-section (2)(b) of section 13 of the Employees' Provident Funds and Family Pension Fund Act, 1952 (hereinafter referred to as the Act), the said contravention being punishable under section 14 of the Act read with Para 76 of the Scheme, mentioned above. The appellant-complainant prayed that the respondents be summoned to stand their trial for the above contravention and punished according to law. The respondents, in consequence of this complaint were summoned and were tried. After considering the material produced before him, the learned Judicial Magistrate First Class, Amritsar, found that no case was made out against the respondents. He accordingly dismissed the complaint and acquitted the respondents. This is the order of the learned Magistrate against which the present appeal is directed.

(2) With the aid of Mr. C. D. Dewan, learned counsel for the appellant, we have been taken through the record of the case including the deposition of Shri T. L. Sharma, Provident Fund Inspector (P.W. 1). The said witness gave the history of the matter during the period of his posting at Amritsar, i.e., from July 26, 1971 to March 6, 1973. The witness stated that on August 7, 1971, he issued

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notice to the respondent-Firm for producing their entire record so that it may be examined with a view to find out whether the Act is applicable to their Factory or not. A reply was received from Mr. Ram Parkash Bali owner of the Factory,—*vide* letter dated August 11, 1971, that the records of the Firm were in their Head Office at Bombay and they would produce after getting the same from there. The witness further deposed that in spite of several opportunities being afforded to the Firm, they did not make available the record. Therefore, the witness referred the matter to his superior, i.e., Regional Provident Fund Commissioner, Chandigarh. The said Officer then issued a registered letter to the Firm on September 30, 1972, directing them to produce the record before Shri T. L. Sharma Inspector. Shri T. L. Sharma, P.W. also averred that he visited the Factory premises of the respondents on December 16, 1972, January 2, 1973 and February 6, 1973, but on all these dates, neither the proprietor appeared before him, nor was the record produced on the pretext that the proprietor was away. Shri Sharma then made a report regarding this matter to his superior officer,—*vide* letter Exhibit PW 1/C, dated February 21, 1973, in which he mentioned about his visits to the Factory of the respondents on the three dates noticed above and the non-production of the record before him by the representatives of the respondents. All that could be elicited in the cross-examination of Shri Sharma is, that he could not say as to how many workers were working in the Factory, nor did he see the number of such persons actually working there when he visited the Factory premises. He explained the circumstance by deposing that on his visits, the behaviour of the respondents was not proper. The testimony of Shri Sharma is all the evidence that has been produced by the complainant.

(3) When the statement of Shri Ram Parkash Bali owner of the Firm was recorded by the trial Court under the provisions of section 313, Code of Criminal Procedure, the above material was put to him, but he denied its correctness. Shri Ram Parkash stated that he had been always ready to produce the record before the Inspector who had never visited the Factory premises. He also took up the stand that the Act was not applicable to their Firm as more than twenty persons had never been employed. No evidence in defence was produced.

(4) Mr. C. D. Dewan, learned counsel for the appellant has referred to the impugned judgment of the learned Magistrate and has contended that the acquittal of the respondent (Shri Ram Parkash Bali) is based merely on the fact that there was nothing on the record to show that the number of employees working in the Firm was more than twenty, attracting the application of the Act, to the said Factory. The argument is that the gravamen of the charge for which the respondents were tried is their non-production of the record which was required for the purpose of ascertaining the very fact as to whether the Act was applicable to the Factory or not and it was beyond the competence of the Magistrate to consider or to give a finding in the present proceedings as to whether the Act was applicable or not, nor was this fact material for the purpose of deciding as to whether the respondents had violated the relevant provisions of the Act and the Scheme.

(5) After hearing the learned counsel for the appellant as also for the respondents, we find there is substance in the submission made by Mr Dewan. For the purpose of appreciating this argument, a reference will have to be made to section 13(2) (b) of the Act, which is reproduced below, for ready reference:

“13(2) Any Inspector appointed under sub-section (1) may, for the purposes of inquiring into the correctness of any information furnished in connection with this Act or with any Scheme or for the purpose of ascertaining whether any of the provisions of this Act or any Scheme has been complied with in respect of an establishment to which any Scheme applies or for the purpose of ascertaining whether the provisions of this Act or any Scheme are applicable to any establishment to which the 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)

(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

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any one found in charge thereof to produce before him for examination any accounts, books, registers and other documents relating to the employment of persons or the payment of wages in the establishment.”

(6) At this stage, the provisions of Para 76 of the Employees' Provident Funds Scheme, 1952, may also be noticed:

“76. Punishment for failure to pay contribution, etc.—If any person—

(a) and (b)

(c) obstructs any Inspector or other official appointed under the Act or this Scheme in the discharge of his duties or fails to produce any record for inspection by such Inspector or other officials, or

(d)

“he shall be punishable with imprisonment which may extend to six months or with fine which may extend to one thousand rupees, or with both.”

It is obvious from a bare perusal of the above statutory provisions that a Provident Fund Inspector, for the purpose of inquiring into the correctness of any information furnished in connection with this Act or with the Scheme or for the purpose of ascertaining *whether the provisions of the Act or the Scheme are applicable to any establishment*, may enter upon any premises 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 persons or the payment of wages in the establishment. It appears that the learned Magistrate has not considered this aspect of the matter at all and has proceeded to dispose of the case on the premises that the complainant was bound to prove at the very outset that the Act was applicable to the Factory. In fact, this is nothing but begging the question, as the contravention which is alleged in this case is the non-production of the relevant record from which it had to be found out by the Provident

Fund Authorities, whether the Act is really applicable or not. This being so, the judgment of the learned Magistrate cannot be sustained on that score. In view of this finding, the judgment of the trial Court is set aside.

(7) The question now arises as to whether the case should be remanded to the trial Court for re-consideration in accordance with law. Mr Harinder Singh, learned counsel for the contesting respondent has, however, submitted that the matter has already lingered on for several years and if the case is remanded to the trial Court now, it will cause further harassment to his clients. He has, therefore, prayed that this Court should assess the material on the record and decide as to whether any contravention of the specific provision has been committed by the respondents or not. The prayer is quite reasonable and we have, therefore, considered the matter from that point of view.

(8) So far as the prosecution is concerned, as already noticed Shri T. L. Sharma, Provident Fund Inspector, has deposed about all the facts and circumstances of the case culminating with the prosecution of the respondents. He has made reference to the repeated demands made to the respondents, to produce the record which they failed to produce in spite of a communication having been sent to them even by the Provident Fund Commissioner, in this behalf. We find absolutely no reason to disbelieve Shri T. L. Sharma in this respect, especially when his testimony is corroborated by documentary evidence in the shape of a number of letters which have been produced on the record, which indicate that a demand for the production of record was made to the respondents on several occasions. In one of the letters sent by the respondents, it is mentioned that their records are in their Head Office at Bombay and they will produce after getting the same from there. Mr Harinder Singh, learned counsel for the respondents has tried to contend that there is no proof in regard to the receipt of the letters sent by the Provident Fund Inspector to the respondents. We do not think any further proof is necessary in the circumstances of this case. It is also argued that the communication of these letters for production of the record, has not been put to Shri Ram Parkash proprietor of the respondent-Firm, in his examination under section 313, Code of Criminal Procedure. This argument is also of no avail. The respondents contested the trial

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throughout and cross-examined the only witness for the prosecution, at length. The mere non-mention of certain facts in the examination under section 313, Code of Criminal Procedure, is not shown to have caused any prejudice to the respondents and the same is, therefore, of no avail. In our view, the case against the respondents was proved beyond doubt and the trial Court fell into a palpable error in acquitting respondent No. 1, on a point which was extraneous to the matters which required attention.

(9) In view of the above circumstances, we accept the appeal and convict respondent No. 1, Shri Ram Parkash Bali who is the proprietor of the Firm, for contravention of section 13(2) (b) of the Employees' Provident Funds and Family Pension Fund Act, 1952, punishable under section 14 of the Act, read with Para 76 of the Employees' Provident Funds Scheme 1952. For the said offence, we sentence him to pay a fine of Rs 300. In default of payment of fine, he shall undergo one month's imprisonment.

S. C. Mital, J.—I agree.

S. C. K.

Before S. S. Sandhwalia, C.J. and G. C. Mital, J.

MALKIAT SINGH,—Petitioner

versus

STATE OF PUNJAB and others,—Respondents.

Civil Writ Petition No. 1039 of 1979

May 22, 1979

Constitution of India 1950—Article 16—Presidential Order providing a scheme for regularisation of service of ad hoc employees—Completion of one year's minimal service—Whether a pre-requisite for such regularisation—Terminus from which the said period is to be determined—Calculation of such period—How to be made.

Held, that sub-para (1) of paragraph 3 of the Presidential Order lays down in no uncertain terms that the *ad hoc* employee holding the post on the 31st of March, 1976 must have completed a minimal of one year's service on the 31st of March, 1976. It then proceeds to