



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3483]

WRIT APPEAL NO: 11/2025

Between:

M/s. Sri Chakra Cements Ltd.,

...APPELLANT

AND

The Employees Provident Funds and Others

...RESPONDENT(S)

Counsel for the Appellant:

1.K VENUGOPAL REDDY

Counsel for the Respondent(S):

1.T BALAJI(SC FOR EPFO)

**CORAM: THE CHIEF JUSTICE DHIRAJ SINGH THAKUR
SRI JUSTICE RAVI CHEEMALAPATI**

DATE : 21.03.2025

JUDGMENT

(Per Sri Justice Ravi Cheemalapati)

Assailing the orders dated 28.10.2024 passed by a learned single Judge in Writ Petition No.28392 of 2010, the petitioner therein, preferred this intra court appeal under Clause 15 of Letters Patent.

2. Through the order impugned, the writ petition filed by the petitioner seeking to quash the orders dated 25.07.2010 passed by Employees Provident

Funds Appellate Tribunal in Appeal No. ATA No.545 (1) of 2024, was dismissed.

3. By orders dated 25.07.2010, the appellate Tribunal confirmed the orders passed by respondent no.2-The Regional Provident Fund Commissioner, Guntur, whereby and whereunder the EPF contributions due from the petitioner establishment was determined at Rs.8,09,558.12 ps.

4. The facts that led to filing of this writ appeal, in brief, are that

(a) the appellant/ writ petitioner is a factory engaged in manufacture of cement with work force of more than 100 employees and hence it was covered by the provisions of the Employees Provident Funds & Miscellaneous Provisions Act, 1952 (For short, 'the EPF Act'). The same was declared as sick industry and a reference was made to Board for Industrial and Financial Reconstruction (BIFR) under Sick Industrial Companies (Special Provisions) Act, 1985 (for short, 'SICA') and even after such reference, the company has been paying contributions as demanded by respondent no.2 from time to time.

(b) The respondent no.2 passed an order under Section 7(A) of the EPF Act and the same was challenged by the petitioner by filing

Writ Petition vide W.P.No.18280 of 2003 contending that the amount determined includes the contributions in respect of persons, who are not working in the company and further the evidence placed by petitioner was not considered. The said writ petition was disposed of, setting aside the order passed under section 7(A) and remitting back the matter to respondent no.2 for fresh consideration.

(c) Pursuantly, respondent no.2 appointed a commission and conducted detailed enquiry and passed orders dated 11.06.2004 determining the amount at Rs.8,09,558.15 ps. for the period from April, 1999 to March, 2003. The said order was challenged by petitioner by filing writ petition No.10165 of 2004. The said writ petition was disposed of vide orders dated 22.06.2024 relegating the petitioner to avail alternate remedy of preferring statutory appeal before the Tribunal. Accordingly, an appeal was preferred and the same was dismissed vide orders impugned in the writ petition.

(b) The respondent-Employees' Provident Fund Organization (EPFO) resisted the relief claimed by the petitioner by filing counter-affidavit contending that pursuant to the complaint received from employees union stating that the petitioner had failed to enroll certain

employees as members for the benefit of provident fund, an enquiry under section 7A was initiated and order dated 11.06.2004 was passed, which was challenged in appeal and the appeal was dismissed through the impugned orders. The word 'employee' defined under section 2(f) of the Act does not distinguish regular, contract, casual etc. and thus, any person employed in connection with the work of the petitioner has to be enrolled as member of provident fund. The writ petition lacks merits and deserves dismissal in *limini*.

(c) The learned single Judge upon perusing the material available on record and upon considering the submissions made by learned counsel for the parties, dismissed the writ petition.

(d) Assailing the said dismissal orders, this writ appeal has been preferred.

5. Heard Sri K.Venugopal Reddy, learned counsel for the appellant/writ petitioner and Sri T.Balaji, learned Standing Counsel for Employees' Provident Fund Organization.

6. Sri K.Venugopal Reddy, learned counsel, while reiterating the contents of the writ affidavit and grounds of appeal would contend that the

learned single Judge, dismissed the writ petition, upon erroneous view that definition 'employee' includes contract employees engaged through the contractors, which is in utter contravention of the ratio laid down by the Hon'ble Supreme Court in ***The Provident Fund Inspector, Guntur vs. T.S.Hariharan***¹ and ***Karachi Bakery vs. Regional Provident Fund Commissioner***². The learned counsel would further contend that due towards Provident Fund subscription was arrived at basing on the entries made in the balance sheet and further amount has been determined in respect of unidentified workers, in utter violation of the pronouncements of Employees Provident Fund Appellate Tribunal in ATA No.445(1)/2000. Therefore, the orders of the learned Single Judge impugned in this writ appeal are liable to be set aside. Accordingly, prayed to allow the writ appeal.

7. Per Contra, the learned Standing Counsel for EPFO while reiterating the contents of the counter-affidavit filed in the writ petition would contend that the definition 'employee' in unambiguous terms include the ones employed by or through a contractor in or in connection with the work of the establishment and thus respondent no.2 had properly determined the amount due towards Provident Fund Contributions and further the learned single

¹. AIR 1971 SC 1519

².1990 LawSuit(AP) 61

Judge upon meticulous analyzation of the facts of the case as well as the decisions relied on by both the parties had rightly dismissed the writ petition. There are no merits in this writ appeal and the same deserves dismissal. Accordingly, prayed to dismiss the writ appeal.

8. Perused the material available on record and considered the submissions made by learned counsel for the parties.

9. As rightly held by the learned single Judge, the word 'employee' defined under section 2(f) of the Act includes the persons employed by or through a contractor in or in connection with the work of the establishment. In the decision relied on by the learned counsel for the petitioner in The ***Provident Fund Inspector, Guntur*** (supra 1), the Hon'ble Supreme Court held that the word 'employment' must, therefore, be construed as employment in the regular course of business of the establishment; such employment obviously would not include employment of a few persons for a short period on account of some passing necessity or some temporary emergency beyond the control of the company.

10. The employees engaged by security agencies, for loading and unloading, office maintenance/factory maintenance and Pay Loader work in

respect of whom the provident fund benefit was not extended according to the Provident Fund authorities, cannot be equated to that of the persons employed for a short period on account of some passing necessity or some temporary emergency beyond the control of the company. Therefore, the employees referred to above would be covered by the definition 'employee' as defined under Section 2(f) of the Act and the employer must extend the benefit of EPF Act to those employees also. Thus, the contention of the learned counsel for appellant in this regard are not tenable and the decisions relied on by him are not applicable to the facts of the case.

11. Perusal of the orders passed by respondent no.2-preliminary authority would indicate that inquiry under Section 7(A) of the Act was initiated pursuant to the complaint received from General Secretary of Staff and Workers Union of the appellate company. The said complaint is to the effect that the employer had not enrolled nearly 75 workers to Provident Fund. During 7A enquiry the General Secretary appeared and requested to conduct physical verification and accordingly a physical verification was conducted. During enquiry, the commission enquired other union representatives, who submitted that none of the persons mentioned in the list furnished by General Secretary had ever worked in the factory. Consequently,

the commission arrived at a decision that there was no conclusive proof to establish genuinity of the complaint. On verification of ledger, the commission found that certain employees, though were paid salaries/wages were not extended the Provident Fund benefit.

12. The outcome of 7A enquiry was that there is no conclusive proof to establish the genuinity of the complaint made by General Secretary regarding non-enrolment of 75 employees, however, certain employees particularly engaged by security agencies and also for loading and unloading along with certain employees engaged in office maintenance/factory maintenance and Pay Loader work were not extended the Provident Fund benefit. Accordingly, the dues payable by the establishment in respect of those employees was determined at Rs.8,09,558.15 ps. by furnishing their details as Annexures-A,B,C,D and E.

13. Annexure-A appended to the inquiry is in relation to Provident Fund due payable to the employees engaged by security service agencies, which was determined at Rs.2,51,200- 60 ps. Except mentioning the names of the security services agencies, the names of the employees that were engaged were not mentioned. Annexure-B is in relation to Loading & unloading charges. There also the names of the employees were not mentioned and it

seems that amount payable was arrived at Rs.4,59,742-00 basing on the ledger entries. Annexure-C, which is in relation to material handling/Pay Loader charges and the Provident fund dues payable to the statutory fund was arrived at Rs.12,425-30 ps. by specifically mentioning the names of the employees. Likewise, Annexure-D pertains to workers engaged for the work of Establishment & Maintenance and the due payable was arrived at Rs.48,116-00 and therein also the names of the employees in respect of whom the due is payable were specifically mentioned. So, it is patent that the workers/beneficiaries in respect of whom the amount due towards Provident Fund was calculated in Annexures-A and B are not identified. The amount arrived at therein is basing on the ledger accounts.

14. Vide orders dated 25.01.2005 passed in ATA No.445(1)/2000 in ***M/s. Janchaitanya Housing Limited vs. Asst. Provident Fund Commissioner, Guntur***, relied on by the appellant, the Employees Provident Fund Appellate Tribunal, New Delhi, held as follows:

"4.Till the time beneficiaries/workers are not identified, it is not understood as to how the amount so realized could reach to such workers/beneficiaries. It is necessary for the authority under Section 7-A of the Act to identify such workers/beneficiaries, who have worked with an establishment before determining the dues. Since in this case workers have not been identified, the determination on the basis of entries in the balance sheet would not be proper."

15. With the above observations, the Appellate Tribunal has set aside the order impugned therein with regard to the determination of the dues in respect of staff stipend/wages amounting to Rs.12,47,767.45 ps and the matter was remanded to the APFC, Guntur for redetermination of the amount only after identifying the workers in accordance with law.

16. As already held, in the instant case, the amounts specified in Annexures-A & B were determined without identifying the workers who had worked with the establishment. In view of the observations made by the Employees' Provident Funds Appellate Tribunal that without identifying the workers, the determination of dues on the basis of entries in the balance sheet would not be proper, the order dated 11.06.2004 passed by the Employees Provident Fund Organization, Sub Regional Office, Guntur is to be set aside so far as it relates to determination of the dues in respect of unidentified workers. The learned single Judge did not consider this aspect in proper perspective.

17. Accordingly, this writ appeal is allowed in part, setting aside the orders passed by the learned single judge, so far as they relate to upholding the order passed under Section 7(B) of the Act by the appellate authority in ATA No.545 (1) 2024 in respect of determination of amount for unidentified

workers/beneficiaries. Consequently, orders passed by the appellate authority and so also the assessment orders passed under section 7(B) of the PF Act by the primary authority in relation to determination of the due in respect of unidentified beneficiaries/workers, is set aside. Rest of the 7B order so far as it relates to the workers identified and specifically mentioned therein, is confirmed. The Employees Provident Fund Organization, Guntur is at liberty to identify the workers that had worked during the relevant period and then pass 7B orders in respect of those employees. There shall be no order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

DHIRAJ SINGH THAKUR,CJ

RAVI CHEEMALAPATI,J

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