Shri V. K. Bhatt, Inspector Employees' Provident Fund, Ahmedabad

Vs

M/S. Allwin Concrete Blocks and Tiles Mfg. Co. and Others

Criminal Appeal No. 168 of 1970

(M. H. Beg, Y. V. Chandrachud JJ)

30.11.1973

JUDGMENT

CHANDRACHUD, J. -

1. Respondent No. 1 is a partnership firm of which respondents Nos. 2 and 3 are partners. They were charged for offence under Paragraph 76(a) of the Employees' Provident Funds Scheme, 1952 and Section 14(2) of the Employees' Provident Funds Act, 1952, on the allegation that they had failed to pay Provident Funds contributions amounting to Rs. 337.50 for the months of November and December, 1966 and January 1967. The learned City Magistrate, 7th Court, Ahmedabad held the charges proved and sentenced the respondents to pay a fine of Rs. 50 each. He further directed them to pay a sum of Rs. 200 to "the prosecution" by way of costs. This order was set aside by the High Court of Gujarat in a revision application filed by the respondents. The High Court has granted to the Department, Employees' Provident Fund, Ahmedabad, a certificate to appeal to this Court under Article 134(1)(c) of the Constitution.

2. Section 1(3)(a) of the Employee's Provident Funds Act, 1952, provides that subject to the provisions contained in Section 16, the Act applies to every establishment which is a factory engaged in any industry specified in Schedule I and in which twenty or more persons "are employed". There is no dispute now that the factory of the respondents if engaged in an industry specified in Schedule I. The High Court, however, took the view that the words "are employed" which occur in Section 1(3)(a) of the Act "indicate some sort of continuity of employment of the required number of workers for a reasonable period however small the period may be", that is to say that the real meaning of the words "are employed" is "are ordinarily employed". On the construction of the particular words two conflicting decisions were cited before the High Court, one of the High Court of Madras in East Indian Industries (Madras) Private Ltd. v. Regional Provident Fund Commissioner, ((1964) 1 Lab LJ (Cri) 706 : AIR 1964 Mad 371 : (1964) 1 Mad LJ 441), and the other of the High Court of Andhra Pradesh in Nazeena Traders (P) Limited v. Regional Provident Fund Commissioner, Hyderabad and Ors. (AIR 1965 AP 200 : (1965) 2 Andh WR 326) The Madras High Court has held that the words "are employed" do not postulate continuity of employment while the High Court of Andhra Pradesh has held that Section 1(3)(a) contemplates that the required number of people should work continuously in the factory in a given year. The High Court of Gujarat preferred to follow the latter decision.

3. This, in our opinion, is not a fit case for resolving the conflict touching the interpretation of the words "are employed" in Section 1(3)(a) of the Act. Even assuming that the High Court is right that Section 1(3)(a) can have no application unless twenty or more persons are ordinarily employed in a factory, there is an important piece of evidence on the record of the case which prima facie shows

that twenty or more persons were employed in the factory of the respondents in December 1960, and thereafter in the years 1963, 1964 and 1965. In column 9 of the Inquiry Report (Ex. 4) dated February 9, 1966, one of the partners of the factory had employed twenty-two persons. In the space apparently reserved for furnishing details in regard to the years 1963, 1964 and 1965, the partner has stated under his signature bearing the date February 27, 1966 "We have employed more than 19 persons as on 31-12-60". If this represents the true state of affairs, Section 1(3)(a) would apply to the factory of the respondents for it would appear that twenty or more persons were ordinarily employed therein. The trial Court which convicted the respondents and the High Court which acquitted them have both overlooked this aspect of the matter. Learned Counsel for the respondents may perhaps be right that the statement contained in the Inquiry Report (Ex. 4) is susceptible to more than one inference, particularly in view of a somewhat conflicting statement contained in another Inquiry Report (Ex. 5) dated February 17, 1966. Neither of the two Inquiry Reports was put to the respondents in their examination under Section 342, Code of Criminal Procedure. It would, Therefore, not be fair to the respondents to snatch at their admissions which are pressed upon us here on behalf of the prosecution.

4. Counsel for the respondents argued for a confirmation of the acquittal but he expressed his willingness that in the event we decided to set aside order of acquittal the case may be remitted to the trial Court for a fresh hearing. We must add that the evidence led by the prosecution is also in an unsatisfactory state and no serious effort seems to have been made to put the relevant facts before the Court. We hope that the matter will now be approached in a proper perspective so as to facilitate a fair and correct decision.

5. We therefore set aside the orders passed by the Courts below and direct that the learned Magistrate shall hear the case afresh. Parties will be at liberty to produce in the trial Court evidence in support of their respective cases. We may add that if it be true as contended before us by the respondents that they have long since closed their business and that they had employed twenty or more persons in their factory for a few days in a few months only, the Department should consider whether this is a proper case for pursuing the prosecution.

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