

**SUPREME COURT OF INDIA**

Asst. Provident Fund Commissioner EPFO, Bareilly

Vs.

U.P.State Warehousing Corp.

C.A.No.6295 of 2019

(Abhay Manohar Sapre and R.Subhash Reddy,JJ.,)

14.08.2019

**JUDGMENT**

**Abhay Manohar Sapre,J.,**

SLP(C)No.3458 of 2015

1. Leave granted.
2. This appeal is filed against the final judgment and order dated 27.08.2013 passed by the High Court of Judicature at Allahabad in CMWP No. 49599 of 2011 whereby the High Court allowed the writ petition filed by respondent No.1 herein and quashed the awards dated 03.08.2010 and 02.12.2002 passed by the Employees' Provident Fund Appellate Tribunal and the Employees' Provident Fund Organization, Sub-Regional Officer respectively.
3. In order to appreciate the short issue involved in this appeal, a few facts need mention infra.
4. The appellant herein is respondent No. 1 whereas respondent No.1 herein is the writ petitioner and respondent No. 2 herein is respondent No. 2 in the writ petition before the High Court out of which this appeal arises.
5. The appellant is the Assistant Provident Fund Commissioner of the Employees' Provident Fund under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as "the Act"). Respondent No.1 is the statutory Corporation known as U.P. State Warehousing Corporation for the State of U.P. (hereinafter referred to as "Corporation") and respondent No. 2 is the Union of workers.
6. The Corporation is inter alia engaged in the business of stocking the grains and other commodities in its Godown. The work of loading and unloading of the commodities in the Godown is done by the workers on regular basis. The business of Corporation is governed

by the provisions of Warehousing Corporation Act, 1962 (for short called, “The Act 1962”).

7. It is the case of the Corporation that the stocking, loading and unloading of the commodities in its Godowns is done through Contractor, who, in turn, employs the workers for doing the work of loading and unloading for the Corporation in their Godowns. These workers have formed their Union called U.P. Rajya Bhandar Nigam Asthayi Handling Mazdoor Union- respondent No. 2 herein.

8. The question arose as to whether the workers (total 159 at the relevant time), who were engaged in the work of loading and unloading in the Godowns, are entitled to claim the benefit of the Act and, if so, whether the Corporation is liable to pay the statutory contribution in relation to such workers in accordance with the provisions of the Act so as to entitle the workers to claim the benefits of the Act.

9. The appellant with a view to decide this question accordingly issued notice to the Corporation under Section 7A of the Act and called upon them to pay the arrears due towards provident fund contribution of these workers (159) in accordance with the provisions of the Act.

10. The Corporation contested the show cause notice inter alia on the ground that since there was no relationship of employer and employee between the Corporation and these workers, the Corporation was not liable to pay any contribution of these workers under the Act.

11. The Corporation also pointed out that the question as to whether these workers were the employees of the Corporation or not was already gone into between the parties before the Labour Court in adjudication Case Nos. 89/2006 and 3/2009 and the same was decided by the Labour Court in workers’ favour but later the award of the Labour Court was set aside by the High Court by order dated 15.05.2013 in W.P. No 72314 of 2010. It is on this basis, the Corporation contended that in the light of this finding having been recorded by the High Court in their favour, the present proceedings initiated under Section 7A of the Act against the Corporation are wholly devoid of any merit and hence the proceedings be withdrawn.

12. By assessment order dated 02.12.2002, the adjudicating authority did not accept the contentions raised by the Corporation and held that the Corporation was liable to pay the contribution of these workers in accordance with the provisions of the Act. The appellate authority constituted under the Act upheld the order, which gave rise to filing of the writ petition by the Corporation in the High Court of Allahabad.

13. By impugned order, the High Court (Single Judge) allowed the writ petition and set aside the order of the adjudicating authority and the appellate authority. The High Court simply placed reliance on the finding recorded by the High Court in the earlier proceedings and held that since there was no relationship of master and servant between the

Corporation (as master) and the workers (as servants) as was held by the High Court in the earlier writ proceedings, the proceedings in question are rendered bad in law and deserves to be quashed.

14. It is against this order, the Provident Fund Authorities felt aggrieved and filed this appeal by way of special leave in this Court questioning its legality and correctness.

15. So the short question, which arises for consideration in this appeal, is whether the High Court was justified in allowing the writ petition filed by the Corporation and thereby was also justified in setting aside the orders of the adjudicating authority and the appellate authority.

16. Heard Mr. Keshav Mohan, learned counsel for the appellant and Mr. P.S. Misra, learned senior counsel for respondent No.1 and Mr. R.R. Rajesh, learned counsel for respondent No.2.

17. Having heard the learned counsel for the parties and on perusal of the record of the case, we are constrained to allow the appeal and while setting aside the impugned order remand the case to the High Court (writ court) for deciding the writ petition afresh on merits.

18. In our considered opinion, the need to remand the case to the High Court has arisen for the reason that the High Court failed to examine the issue keeping in view the definition of "employee" as defined under Section 2(f) of the Act which reads as under:

"2(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;"

(emphasis supplied)

19. In our view, the High Court should have seen that the proceedings in question have arisen out of the Act in question and, therefore, the issue was required to be decided in the light of the relevant provisions of the Act in question but not in the light of the finding recorded in the proceedings arising under the Industrial Disputes Act, 1947(hereinafter referred to as "the ID Act").

20. The High Court also should have seen that in order to decide the relationship of

employer and employee for the purpose of applicability of the Act in question, the issue has to be decided in the light of definition of "employee" as defined under Section 2(f) of the Act.

21. It should have been seen that firstly, the definition of "employee" under the ID Act is not identical to the definition of "employee" defined under Section 2(f) of the Act; and secondly, the object of the ID Act and the Act in question is not the same. In other words, the definition of "employee" under the ID Act and the one defined under the Act in question are not similar. Even their objects are also not identical.

22. It is for these two reasons, any finding recorded by the Labour Court while deciding the dispute under the ID Act will be of no consequence while deciding the question arising under the Act in question. The issue was, therefore, required to be decided independently and de hors the proceedings decided under the ID Act.

23. Since the High Court did not notice the definition of "employee" defined under Section 2(f) of the Act and proceeded to pass the impugned order only in the light of finding recorded in the proceedings arising under the ID Act in the order dated 15.05.2013 passed in W.P. No.72314 of 2010, the impugned order is rendered bad in law and, therefore, calls for interference in this appeal.

24. In the light of the foregoing discussion, the appeal succeeds and is accordingly allowed. The impugned order is set aside. The case (writ petition) is remanded to the High Court (writ court) for deciding the Corporation's writ petition afresh on merits keeping in view the definition of "employee" as defined under Section 2(f) of the Act and then decide as to whether the proceedings under section 7A of the Act are legal and proper or not.

25. We request the High Court to decide the writ petition expeditiously.