PUNJAB AND HARYANA HIGH COURT

Hindustan Electric Co. Ltd

Vs

Regional Provident Fund

(A.N Grover, J.)

05.09.1958

ORDER

A.N. Grover, J.

1. This judgment will also dispose of the other two connected petitions (Civil Writs Nos. 1067 and 1069 of 1957) as common points of law are involved. The facts in Civil Writ No. 1068 of 1957 may be shortly stated.

2. The Government of India started a general engineering workshop at Faridabad in which according to the petitioner-company ordinary stoves meant for domestic use were being manufactured. The Government decided to dispose of the factory and invited tenders for its sale. The tender of the petitioner-company was accepted and an agreement was entered into on 17-2-1955 by virtue of which the company purchased the factory for Rs. 3,56,045/8/-.It is alleged that after the purchase of the factory ihe company utilised the engineering workshop for the manufacture of parts required for installing a motor factory up to June 1950. By means of a letter dated 31-7-1956 the company was informed by the Regional Provident Fund Commissioner that the factory in question fell within the purview of the Employees' Provident Funds Act, 1952.The company was required to deposit the dues on account of contribution and administrative charges in respect of such employees who wore entitled to the benefit of the scheme which had been framed by the Central Government. It was further mentioned in the letter that the date from which the factory started functioning under the Rehabilitation Ministry would be deemed to be the date of its establishment.The company, however, took up the position that the factory had been established by it in October 1955 and the Act was not applicable for three years as provided in Section 16(1)(b). Oilier objections were raised which need not be stated. As respondent No. 1 did not accept the position advanced by the company the present petition was filed under Article 226 of tlie Constitution.

2a. Mr. S. K. Kapur who appears for the company has raised certain points which are common to all the petitions and it would be convenient to deal with them first. It is contended that Section 5 of the Act is unconstitutional and ultra vires as it violates Article 14 of the Constitution, The validity ot Section 5 of the Act is further assailed on tlte ground that its provisions place unreasonable restrictions on the right to hold property and thus come into conflict with the provisions of Article 19(1)(f) of the Constitution.

3. In order to decide the questions that have been canvassed the provisions of the Act before its amendment by Act 94 of 1956 atone will be relevant as they would govern the decision of the case.

4. Section 5 is as follows:

> "(1) The Central Government may, by notification in the Official Gazette, frame a Scheme to be called the Employees' Provident Fund Scheme for the establishment of provident funds under this Act for employees or for any class of employees and specify the factories or class of factories to which the said scheme shall apply and there shall be established, as soon as may be after the framing of the Scheme, a Fund in accordance with the provisions of this Act and the Scheme.

(2) A Scheme framed under Sub-section (1) may provide that any of its provisions shall take effect either prospectively or retrospectively on such date as may e specified in this behalf in the Scheme". Section 6 provides for the contributition which shall be paid by the employer to the fund. According to Section 7 the Central Government may by notification add to. amend or vary any scheme framed under the Act. Section 16 deserves to be set out in its entirety and its provisions are as follows:

"(1) This Act shall not apply to –

(a) any factory belonging to the Government or a local authority, and

(b) any other factory, established whether before or after the commencement of this Act, unless three years have elapsed from its establishment.Explanation: For the removal of doubts it is hereby declared that the date of the establishment of a factory shall not be deemed to have been changed merely by reason of a change of the premises of the factory.

(2) If (he Central Government is of opinion that having regard to the financial position of any class of factories or other circumstances of the case, it is necessary or expedient, so to do, it may, by notification in the Official Gazette, and subject to such conditions as may be specified, in the

notification, exempt that class of factories from the operation of this Act for such period as may be specified in the notification."

5. It has been submitted by Mr. S. K. Kapur that Section 5 is discriminatory on its face and the Government can pick out particular factories or a particular set of employees out of various departments in a factory and make the scheme applicable to them and leave out similar factories and employees working in similar circumstances in other factories or in the same factory and deprive them of the benefit of the scheme.It is urged that the Act gives unfettered and arbitrary discretion to the executive to apply the scheme according to its whim and fancy. It is also contended that there is no time limit indicated is Sub-section (2) of Section 5 by which retrospective operation can be given to a scheme and that the power of delegation under Section 19 is altogether unfettered, and any officer or authority can be empowered to exercise the powers given under the Act. A great deal of reliance is placed on the latest decision of the Supreme Court in *Ram Krishna Dalmia v. Justice S. R. Tendolkar*[1]*R* in which all the principles that have been settled up-till now with regard to the applicability of Article 14 have been fully summarised, in that case the validity of the Commissions of Inquiry Act, 1952, was impugned and while examining the same the following five classes were indicated into which a statute may be placed, when its validity under Article 14 of the Constitution is to be decided :

> "(i) A statute may itself indicate the persons or things to whom its provisions are intended to apply and the basis of a classification of such persons or things may appear on the face of the statute or may be gathered from the surrounding circumstances known to or brought to the notice ot the Court. In determining the validity or otherwise of such a statute the Court has to examine whether such classification is or can be reasonably regarded as based upon some differentia which distinguishes such persons or things grouped together from those left out of the group and whether such differentia has a reasonable relation to the object sought to be achieved by the statute, no matter whether the provisions of the statute are intended to apply only to a particular person or thing or only to a certain class of persons or things. Where the Court finds that the classification satisfies the tests, the Court will uphold the validity of the law. ....

(ii) A statute may direct its provisions against one, individual person or thing or to several individual persons or things but no reasonable basis of classification may appear on the face of it or be deducible from the surrounding circumstances, or matters of common knowledge. In such a case the Court will strike down the law as an instance of naked discrimination .... , ..

(iii) A statute may not make any classification of the persons or things for the purpose of

applying its provisions but may leave it to the discretion of the Government to select and classify persons or things to whom its provisions are to apply. In determining the question of the validity or otherwise of such statute the Court will not strike the law out of hand only because no classification appears on its face or because a discretion is given to the Government to make the selection or classification but will go on to examine and ascertain if the statute has laid down any principle or policy for the guidance of the exercise of discretion by the Government in the matter of the selection or classification. After such scrutiny the Court will strike down the statute if it does not lay down any principle or policy for guiding the exercise of discretion by the Government in the matter of selection or classification, on the ground that the statute provides for the delegation of arbitrary and uncontrolled power to the Government so as to enable it to discriminate between persons or things similarly situate and that therefore, the discrimination is inherent in the statute itself. In such a case the Court will strike down both the law as well as the executive action taken under such law..... ... - ... .

(iv) A statute may not make a classification of the persons or things for the purpose of applying its provisions and may leave it to the discretion of the Government to select and classify the persons or things to whom its provisions are to apply but may at the same time lay down a policy or principle for the guidance of the exercise of discretion by the Government in the matter of such selection or classification; the Court will uphold the law as constitutional, as it did in *Kathi. Raning Rawat v. State of Saurashtra*[2]*R*

(v) A statute may not make a classification of the persons or things to whom their provisions are intended to apply and leave it to the discretion of the Government to select or classify the persons or things for applying those provisions according to the policy or the principle laid down by the statute itself for guidance of the exercise of discretion by the Government in the matter of such selection or classification. If the Government in making the selection or classification does not proceed on or follow such policy or principle, it has been held by this Court, e. g. in AIR 1952 SC 123 (B), that in such a case the executive action but not the statute should be condemned as unconstitutional ..."

6. Mr. Kapur submits that no Principle or policy for the guidance of the executive has been laid down in the matter of selection or classification by the Act and that the discrimination is inherent in the Statute itself. The learned Deputy Advocate-General points out that according to the provisions of Section 1(3), the Act applies in the first instance to all factories engaged in any industry specified in Schedule I in which 50 or more persons are employed and this is subject to the provisions contained in Section 16. The Central Government is empowered after giving not less than two months' notice to apply the Act to all factories employing such number of persons less than 50 as may be specified. Although the Government can by notification make the Act

applicable to factories employing less than 50 persons, but even then it will have to be confined to those factories which are engaged in the industries specified in Schedule I only. It cannot he said that no classification appears on the face of the statute. There is another class of factories to which the Act can be made applicable and that is provided for by Sub-section (4) of Section 1 of the Act which lays down that where the employer and the majority of employees in relation to any factory have agreed that the provisions of the Act should be made applicable, the Central Government can by notification apply them to that factory. In these circumstances it is difficult to sec how the contention raised by Mr. Kapur can be sustained in the matter of indication of the factories to which the Act can be made applicable. Apart from this, there is a good deal of force in the submission made by the Deputy Advocate-General that the statute itself has laid down the principle and policy for the guidance of the exercise of discretion by the Government in the matter of selection or classification. They are indicated in the provisions contained in Section 1 (3)and (4) as also in other provisions of the Act. It is provided in Section 16(1)(b), as set out before, that the Act shall not apply to any factory other than a factory belonging to the Government or local authority unless three years have elapsed from its establishment. This indicates the policy that such factories are not to be subjected to the provisions of the Act as are yet in their infancy and have not established themselves industrially or otherwise. Another principle that is indicated in Section 16(2) is that the Central Government has to take into consideration the financial position of any class ' of factories and if it is of the opinion that it is necessary to exempt that class from the operation of the Act for a specified period, it may do so.

7. So far as the factories which can be brought within the ambit of Section 5 of the Act are concerned, the principle and the policy have been: clearly laid down by section 1 read with Schedule I; and the definition of industry contained in Section 2(i) of the Act. As regards the argument that there is no classification with regard to the employees who might get the benefit of the scheme and that any class may be picked out arbitrarily for availing of the advantage of the scheme and any other class similarly circumstanced may be deprived of its benefit, the answer is to be found in the definition of the word 'employee' as given in section 2(f) of the Act. At a later stage its true meaning and scope would be considered from which it will be clear that there is a valid classification in the statute itself with regard to the employees who can get the benefit of the scheme and it is not left entirely to the discretion of the executive to pick and choose as it likes. Moreover, this point may be open to the employees to agitate and it does not lie in the mouth of the employers to make it a ground of attack.

8. It is contended that while examining the validity of Section 5 of the Act the provisions of section 19 have also to be considered which give uncontrolled discretion to the Government to delegate its powers to any officer or authority subordinate to the Government. This argument,

however, is specious and has only to be examined to he repelled. The discretion itself is given in the first instance to the Central Government Or the State Government. It is true that the Government may delegate the powers to any officer or authority subordinate to it, but the fact that the power of delegation is to be exercised by the Government itself is a safeguard against the abuse of such power (vide *Virendra v. State of Punjab*[3]*R*

9. With regard to the provisions in Section 5 that a scheme framed under Sub-section (1) may provide that any of its provisions shall take, effect either prospectively or retrospectively, my atten tion has been invited to the observations of their Lordships of the Supreme Court in Express News paper Ltd. v. Union of India, AIR 1958 SC 578 at p.621 (D). While considering the meaning and scope of reasonable restrictions as employed in Article 19 of the Constitution, it has been observed that the effect of the statute being given retrospec tive operation may also be properly taken into con sideration in determining the reasonableness of the restrictions imposed in the interest of the general public. In (S) AIR 1957 SC 898 (C), it was held that Section 3 of the Punjab Special Powers (Press) Act, 1956 was ultra vires and one of the factors which weighed with their Lordships was that no time had been indicated for the operation of the order in the aforesaid section. In reply the learned Deputy Advocate-General submits that the extent to which retrospectivity can be effectuated is indicated by the provisions contained in Section 16(1) which, are to the effect that the Act shall not apply to any factory unless three years have elapsed from its establishment.

It is submitted that the principal check which the Act provides is that factories in their stages of infancy cannot be subjected to its provisions. Once the factory has started functioning as a going concern there is no reason why the Legislature in its wisdom should not have considered it fit to make the Act and the scheme applicable. Moreover, there are ample safeguards contained in Section 16(2) according to which the Government can examine the case of a particular class of factories and exempt the same from the operation of the Act for such period as may be considered necessary. The Government is expected to exercise a proper discretion in these matters and there is no danger that the Act would be applied without due regard to the financial position or other circumstances relating to the factories. Moreover the Government is not expected to frame a scheme which may be arbitrary and which may apply retrospectively in such a manner that it should be contrary to the interests of the employers and the employees. The object of the Act is to confer some benefit on the employees and if the Central Government makes any scheme which may be unworkable it will only lead to the ruination of the factories resulting in, unemployment for the employees as well. The cases which have been relied upon by Mr. S. K. Kapur in support of his submission with regard to the provisions contained in Sub-section (2) of Section 5 are clearly distinguishable and the observations made by their Lordships

of the Supremo Court were made in a different context and with regard to a different set of circumstances. I am of the view that there is an indication in Section 16(1)(b) , itself with regard to the time limit for the application of the Act and consequently of the scheme.

10. Mr. Kapur has next assailed the constitutionality of section 5 of the Act by invoking the rule laid down in *Mohammad Yasin v. Town Area Committee, Jalalabad*[4], He contends that the contribution which the employer has to make towards the Provident Fund of the employee is in the nature of a levy and would be an unreasonable restriction on the currying on of business of the company. The decision referred to by Mr. Kapur related to certain bye-laws made by the Town Area Committee of Jalalabad providing that no person shall sell or purchase any vegetables or fruits within the prescribed limits of the Town Area Committee by wholesale or auction, without paying the fees fixed by the bye-laws to the licensee appointed by the Town Magistrate. It was held that the bye-laws imposed a charge on the wholesale dealer in the shape of the prescribed fee irrespective of any use or occupation by him of immovable property vested in or entrusted to the management of the Town Area Committee and that the bye-laws were ultra vires the powers of the Committee. It is difficult to see, firstly, how the contribution which an employer makes towards the Provident Fund of the employee can be regarded as a levy and, secondly, the decision of the Supreme Court in Mohammad Yasin's case (E) related to points which were entirely different. My attention has also been invited to *State of Rajasthan v. Nath Mal.*[5] where it was held that the last portion of Clause 25 of the Rajasthan Foodgrains Control Order. 1949. relating to requisitioning or disposal of stocks of foodgrains under Orders of the authority concerned at the rate fixed for purposes of Government procurement was void under Article 19 (1) (f) and Article 31 (2) of the Constitution. The reasons given by their Lordships for coming. to that conclusion were :

(i) because the clause places an unreasonable restriction upon the carrying on of trade or business and is thus an infringement of the respondent's right under Article 19, (1) (f) of the Constitution:

(ii) because the clause by vesting the power, in the authority to acquire the stocks at any price fails to fix the amount of compensation or specify the principles on which it is to be determined and leaves it entirely to the discretion of the executive authority to fix any compensation it likes and is thus hit by Article 31 (2) of the Constitution." It is contended that it is open to the Government or the authority to whom the powers of the Government have been delegated to pick out any factory or factories for the purpose of making the employers liable to make a contribution to the Provident Fund of the employees. This matter has already been considered while examining the challenge made to the constitutionality of section 5 of the Act on the ground that it infringes Article 14. As the principle and the policy that have to guide the discretion of the executive have been indicated in the statute itself, Section 5 cannot be struck down ; on the

ground that has been pressed by Mr. Kapur.

11. The nest substantial contention of Mr. Kapur is that the Act could not have been made applicable to the case of all the petitioner companies for at least three years which should be counted not from the date of the original establishment of the factories but from the date when they ceased to be owned by the Government and were established by the Companies as their own factories. For instance, in the case of the Hindustan Electric Company the sale of the factory by the Government to the Company is staled to have been completed in October, 1955. According to Mr. Kapur the date of establishment of the factory within the meaning of Section 16(1)(b) of the Act would be the year 1955 and the Act cannot be made applicable for a period of three years from that date. It is submitted that the Act could not apply at all to any factory belonging to the Government or a Local Authority in view of the provisions of Section 16(1)(a) and reading Clause (b) together with Clause (a) the only interpretation that is possible is that three years have to be calculated from the date when the factory became established as a private concern. In reply the learned Deputy Advocate-General relies on a decision of Bishan Narain, J., *in Robindra Textile Mills v. Secretary, Ministry of Labour, Govt. of India, New Delhi*[6], in which while deciding how the date of establishment of a factory within tbe meaning of section 16 of the Act is to be determined, it was observed that the date of establishment would be the date when the manufacturing process started and that a change of ownership could not start a fresh date of establishment of a factory. The learned Judge relied on the definition of the factory as given in the Act "as premises where manufacturing process is being carried on or is ordinarily carried on." This matter was also considered by Bose, J., in Bharat Board Mills Ltd. v. Regional Provident Fund Commissioner, (S) AIR 1957

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702 (II). The following observations at p. 707 are noteworthy:

> "In my view, the date of establishment of a factory is the date when the factory starts its manufacturing process. The fact that a new company or concern subsequently takes over or acquires the factory does not shift the date of the establishment of the factory to the date of its taking over or acquisition; nor does the fact that the factory had ceased to produce goods for a certain time and resumed production after certain brief intervals result in extinction of the old factory and establishment of a new factory. I, therefore, hold that there is no substance in this point of Mr. Dutt, See the unreported decision of the Bombay High Court -- *Chagganlal Textile Mills Private Ltd. v, P. A. Bhaskar*[7], of Tendolkar, J., D/- 5-11-1956."

12. I am in respectful agreement with the I View of Bishan Narain, J. and Bose J., in the cases

cited above. The contention raised by Mr. Kapur, therefore, cannot be accepted.

13. It will be appropriate at this stage to dispose of another contention raised by Mr. Kapur. It is pointed out in the case of the Hindustan Electric Company that prior to the sale of the factory by the Government, the engineering workshop was used for the purpose of manufacturing ordinary stoves meant primarily for heating and cooking for domestic purposes. It was contemplated by the Government of India, that the factory should be closed and it was for that reason that tenders were invited for its sale. It is stated in para 7 of the petition of the Company that the running factory was not purchased as such but individual items of various stores and other equipments including plant and machinery had been purchased by the Company from the Government. No goodwill or liabilities of the workshop were purchased or taken over by the Company. According to para 8 of the petition the Company utilised the said engineering workshop for the manufacture of parts required for installing a motor factory up to June, 1956 and thereafter for the manufacture of panels as well. It is contended that when the Government was running the factory it was only manufacturing stoves which do not fall within any ot the items mentioned in Schedule I of the Act and thus the factory can be said to be established only when it started manufacturing the motor parts which happened after the workshop had been acquired by the Company in 1955. Therefore, the Act could not be made applicable for three years by virtue of the provisions of section 16(1)(b). It is further submitted that the words "electrical, mechanical or general engineering products" have been used in Schedule I in contradistinction with hand-made products and do not cover all products which are made by means of mechanical or electrical process but mean products which ate utilised for purposes of producing electricity Or implements or other apparatus and machinery. On this interpretation it is said that the stoves will not be an item covered by the Schedule. It is further emphasised that since the factory was not engaged in the manufacture of any of the items mentioned in Schedule I during the period it was run by the Government that period cannot be taken into account for the purposes of Section 16. The position of the respondents is that the workshop in question did manufacture stoves previously but such a process fell within the meaning of "electrical, mechanical or general engineering" occurring in Schedule I of the Act. Reference has been made to the decision of Mehrotra, T. in *Great Eastern Eleclroplaters, Ltd. v. Regional Provident Fund Commissioner, U. P.*[8], There it has been held that from the nature of the articles mentioned in the Schedule, the scope of the words "electrical and mechanical products" is not to cover all products which are made by means of mechanical or electrical process but it means products which are utilised for purposes of producing electricity or implements and other apparatus and machinery or goods like fans, radio and battery shells. A torch case is only an article for purposes of keeping batteries and not for purposes of generating electricity.The fact that torch cases are produced by cutting, shaping and soldering brass and from sheets by means or machineries does not make them mechanical or

electrical products. A contrary view however, has been taken by Falshaw, J. in Nadir Ali Khan v. Union of India, AIR 1958 Punj 177 (K). According to this decision although musical instruments, whether made of metal or otherwise, are not specifically mentioned in Schedule I, such products fall within the expression "electrical, mechanical or general engineering products."

14. A Division Bench of the Bombay Court in Nagpur Glass Works Ltd., Nagpur v. Regional Provident Fund 'Commissioner, Bombay, (S) AIR 1957 Bom 152 (L), dissented from the decision of The Allahabad Court mentioned above and held that the expression "electrical, mechanical or general engineering products" means engineering products relating to or connected with electricity, or engineering products acting or worked or produced by a machine or mechanism, or products produced by a craftsman employing a certain design or invention. Burners and metal lamps will thus fall within the aforesaid expression. The reason given by the Bombay Bench for dissenting from the Allahabad view is that the words "electrical, mechanical and general" have reference to the process of manufacture and not to the use to which the articles produced could be put. With respect I agree. There can be no doubt that the words "electrical, mechanical or general engineering products" are used in a very wide sense and even though certain specific articles are mentioned in the explanation, that cannot cut down the generality of the expressions employed. It must, therefore, be held that the manufacture of stoves would fall within the expression "mechanical or general engineering products" as used in Schedule I and the contention raised by Mr. Kapur in this matter must be repelled. Mr. Kapur wished to raise a similar contention with regard to the other Companies but as the relevant facts staled in their petitions are not accepted by the respondents as correct, it is not possible to Rive any decision on the point, the facts being disputed.

15. Mr. Kapur has finally raised the question that the Employees' Provident Fund Scheme of 1952 that has been framed by flip Central Government under the provisions of the Act goes beyond the provisions of the Act and is. unenforceable. It is submitted that according to the definition contained in the Scheme in para 2 an "excluded employee" means : "(i) an employee who. having been a member of the Fund once, withdrew the full amount of his accumulations in the Fund on retirement after attaining the age of 55 years or on retirement due to total incapacity caused by bodilv or mental infirmity; (ii) an employee whose basic wages at the time he is otherwise entitled to become a member of the Fund exceed three hundred rupee? per month: (iii) an employee employed by a contractor: Explanation: An emnloyee who gets his wages directly or indirectly from an employer and in respect oF whom the employer retains control in the matter of discharge, dismissal and reinstatement, shall not be deemed to have been employed by a contractor; (iv) an apprentice; or (v) an employee who by virtue of any notification issued under Section 17 of the Act is exempted from the operation of this Scheme."

16. It is contended that according to Section 2(f) of the Act, an "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 a factory, 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 factory. According to Mr. Kapur on a proper interpretation of the expression 'wages' employed in the above definition the scheme can be framed for such employees only who are receiving wages and not salaries. Furthermore they must be employed in such work as is manual or something akin to manual. In other words those employees who draw salaries and who do not perform or do any kind of manual work or duty cannot be considered to be employees for the purposes of the Act and the Scheme. The point raised in the petition, however, has been stated in a somewhat different form. It has been alleged that the Act applies only to 'menials' and other similar staff drawing wages which means very low remuneration and not salaries, and persons who are getting monthly salaries of Rs. 100/ or more cannot be included for the purposes of the scheme, and the Company cannot be asked to make any contribution with regard to them. The reply of the respondents is that all the employees working in a factory other than excluded employees as defined under para 2 (f) of the Scheme are eligible for the membership of the fund in terms of para 26 of the Scheme. Mr. Kapur has largely relied on a decision of the Madras High Court in In re *K. V. V. Sarma*[9], In that case Govinda Menon and Basheer Ahmed Saveed, JJ. had to consider the meaning of the word 'wages' as employed in various enactments like the Payment of Wages Act, 1936 and the Factories Act, 1948. The principal question which arose was whether the studio in which the films were produced was a "factory" within the meaning of that term in the Factories Act and whether the persons employed were "workers" as defined in that Act. While, considering the definition of "worker" as given in Section 2(b) of the Factories Act, the question of the meaning of "wages" came up for consideration. A "worker" has been defined to be a person employed directly or through any. agency whether for wages or not in any manufacturing process etc. Govinda Menon, J. made an exhaustive examination of all the English and Indian authorities as also the relevant statutory enactments in order to arrive at the true meaning of the word "wages." It will be futile to cover the same ground as the Madras judgment is, with respect, authoritative with regard to the meaning of the expression "wages" and its true import when employed in labour legislation. The following conclusion that was reached may be set out :

> "It seems to us that in finding out whether a person employed directly or through any agency in a manufacturing process, is receiving wages, the question has to be determined with regard to the period for which the amount is settled to be paid. We are definitely of opinion that if the remuneration is to be paid daily or weekly, it can be called wages. But where it is monthly remuneration payable on the last day of the month or after that date and where the remuneration, considering the general standards of payment is fairly high,

then it has to be understood as salary.

We do not think that in order to bring the compensation within the term "salary" any lower limit need be fixed, In the Payment of Wages Act the same is Rs. 200 and under the Workmen s Compensation Act, it is Rs. 400/- per month. So far as the Factories Act is concerned, there is no restriction at all. But we also feel that even if the compensation paid at the end of the month is less than Rs. 200/- as laid down in Payment of Wages Act, it would be more appropriate to call it as wages. But where it is Rs. 200/- or more the same may be termed as salary." Mr. Kapur has laid particular, emphasis on the fact that the word "wages" has been employed in the definition of an "employee" in the Act and according to him the other words used in the definition also give an indication that it was meant to be confined to wage earning workers only who were doing manual work and was not intended to cover those employees who were receiving a monthly salary. Mr. Kapur contends that the word "otherwise" should be read ejusdern generis with the word "manual" and should not be taken to cover such work as was non-manual. It is altogether unnecessary to decide whether the word "otherwise" is to be read ejusdem generis with the word "manual" as the point which is really to be determined is whether the definition of "employee" covers wage earners only in the sense in which the Madras Court has given the meaning of "wages" or whether it is used in a general sense and also covers the case of salaried employees. The learned Deputy Advocate-General submits that every type of employee is included except those who hold offices of responsibility and exercise supervisory powers. It seems difficult to me to ignore the significance which must be attached to the use of the expression "wages" which has come to attain a particular meaning in this type of legislation. The Employees Provident Funds Act makes provision for provident funds for employees in factories and other establishments of the same kind. The legislature was fully alive to the distinction between the words "wages" and "salary" particularly after judicial decisions have given a special meaning to the expression "wages" and if it had been intended that employees receiving salary should also be included, then some other expression would have been employed like "remuneration." It seems to me that reading the definition of the word "employee" as given in the Act, it must be held that the expression "wages" has the meaning given to it by the learned Madras Judges in the decision mentioned before, In this view of, the matter para 2 (f) of the scheme in so far as it does not exclude employees drawing monthly compensation or salary in excess of Rs. 200/- is ultra Vires the Act. It has not been contended before me on behalf of the respondents' that employees drawing a monthly salary in excess of Rs. 200/- up to Rs. 300/- are not to get the benefit of the scheme.

17. My conclusions are therefore, as follows:

(1) Section 5 of the Employees' Provident Funds Act, 1952 does not infringe Article 14 or

Article 19 (1) (f) of the Constitution.

(2) The period of three years under Section 16(1)(b) of the Act is to be counted from the date of, the original establishment of the factories in the present cases and not from the date when they ceased to be owned by the Government and started working as non-Government factories.

(3) The manufacture of stoves would fall within the expression "mechanical or general en-

gineering products" as used in Schedule I of the Act.

(4) The definition of the word "employee" as given in the Act must be restricted to such employees who are paid wages and who do not receive compensation or monthly salary in excess of Rs. 200/-.

(5) Para 2 (f) of the Scheme as framed is ultra vires the Act to the extent mentioned above.

18. In the result all the petitions are allowed to the extent that the respondents are directed not to enforce the scheme without bringing para 2 (f) of the Scheme in conformity with law. In the cir cumstances of the case there will be no order as to costs in this Court.

Cases Referred.

1 AIR 1958 SC 538(A)
2 AIR 1952 SC 123 (B)
3 AIR 1957 SC 896 at p. 901 (C)
41952-53 SCR 572 : (AIR 1952 SC 115) (E)
51954 SCR 982: (AIR 1954 SC 307) (F)
6AIR 1958 Punj 55 (G)
7Misc. Appln. No. 289 of 1956 (Bom)
8AIR 1956 All 495 (T)
9AIR 1953 Mad 269 (M)