

K. D. SRIVASTAVA'S COMMENTARIES ON THE EMPLOYEES' PROVIDENT FUNDS AND MISCELLANEOUS PROVISIONS ACT, 1952 (5th ed. 1986). By G. Saran. Eastern Book Company, Luknow. Pp. xxviii + 479. Price Rs.125.

THE EMPLOYEES' Provident Funds and Miscellaneous Provisions Act 1952 is an important enactment well known to the employers and employees in industries. The new edition of the commentary¹ is outstanding because the previous edition was of 1979 and the amount of case law since then has been considerable. Indeed this commentary sets up such a high standard of exposition of the law as to be a model for others. While in many commentaries, only references are given to judicial decisions, in this the full effect of every decision is given to make it an exhaustive statement of the law on the particular point.

It has happened often enough that divergences among judicial decisions have been discovered. It is here that the help of a commentary is required. The book under review has stood up to this expectation and criticised judicial decisions to bring out a correct statement of law from among the divergences. To illustrate the quality of the discussion of case law a reference may be made to only one instance. Section 7-A of the Act is its fulcrum around which it revolves. It is this section which gives the power of determination of money due from employers for contribution to the provident fund. This naturally means that whether the employment contract subsists and whether the employer is liable to pay the contribution *etc.* have all to be determined by the provident fund commissioner under it. This is a tremendous power given to an administrative authority. The only provision for an appeal or a revision against the determination has to be found in section 19-A which gives the Central Government the power to remove difficulties.

When the question arose as to the constitutional validity of section 7-A, it was held in *Wire Netting Stores v. Regional Provident Fund Commissioner*² by Justice Deshpande (as he then was) that the section was valid because the provisions of sections 1(3) and 4, schedule 1 and the scheme of the Act clearly laid down the framework within which the commissioner was to act. There was thus no unguided or unfettered discretion given to him at all. Sub-section (3) of section 7-A expressly lays down that no order determining the amount due from any employer shall be made under sub-section (1) unless he is given a reasonable opportunity of representing his case. The Act also gives sufficient guidelines in schedule 1 to be followed by the commissioner in determining whether a particular industry is covered by it or not. It cannot be said that the commissioner is authorised to act arbitrarily, particularly when his decision is liable to be reviewed by the Central Government under section 19-A or by civil courts as being without jurisdiction, or by High Courts under articles 226 and 227 of the

1. G. Saran, K.D. Srivastava's *Commentaries on The Employees' Provident Funds and Miscellaneous Provisions Act, 1952* (5th ed. 1986).

2. A.I.R. 1970 Del. 143.

Constitution and, of course, by the Supreme Court under article 136. Further, the power is given for a beneficent purpose to enforce the social security given to employees and has to be viewed sympathetically. Hence section 7-A cannot be said to impose any unreasonable restrictions on the rights of employers guaranteed by article 19(1)(g). The substance of the decision has been fully set out in the commentary.³

A division bench sitting in appeal, however, took a contrary view and held section 7-A to be unconstitutional mainly because no appeal or revision was provided against it in the Act. This view is set out in the commentary⁴ and it is submitted by the commentator that the view adopted by Justice Deshpande is likely to find greater acceptability than the view expressed by the division bench. He then gives his own opinion in favour of the validity of section 7-A and supports it by reference to other decisions which agree with the former.

The reviewer may add that finality to the decision of an administrative authority has been given without violating the Constitution not only by several statutes but even by a contract between parties. In *State of Karnataka v. Shri Rameshwar Rice Mills*,⁵ the Supreme Court held that a clause in an agreement giving the power to one of the parties to the agreement (the state government) to determine the amount of damages was valid and there was nothing wrong in an administrative authority being given such a power. If so, *a fortiori*, the power given by section 7-A would be valid.

The commentary also includes schemes framed under the Act and the whole Act as amended. It is always necessary in every commentary that the text of the Act should be dealt with not only in it but must be available for the perusal and consideration of the reader at one place. This makes it self-contained.

V. S. Deshpande*

3. *Supra* note 1 at 164.

4. *Id.* at 165.

5. J.T. 1987 (1) S.C. 578.

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