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SOCIAL SECURITY AND LABOUR LAW

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I INTRODUCTION

IN THE year 2015 there have been significant developments, both legislative and judicial, in the arena of social security law. In the legislative area the Payment of Bonus Act, 2015 was amended, section 2(13) of the principal Act (Payment of Bonus Act, 1965) has widened the scope of employees eligible for payment of bonus. There has also been significant development in judicial sphere and a number of cases relating to social security have been reported by Supreme Court and high courts. It includes cases on The Building Workers' (Regulation of Employment and Conditions of Service) Act, 1996 (Cess Act), The Building and Other Construction Workers' Welfare Cess Act, 1996 (BOCW Act), Employees' Compensation Act,1923, Employees State Insurance Act, 1948 and Factories Act,1948. The high court cases covered almost every important area of social security and minimum standards of employment. The courts generally adopted cautious approach to deal with the provisions of social security and minimum standard legislation. Indeed the apex court at times evolved new strategies to deal with various issues on social security and minimum standard legislation.

II BUILDING WORKERS (REGULATION OF EMPLOYMENT AND CONDITIONS OF SERVICE) ACT, 1996 AND BUILDING AND OTHER CONSTRUCTION WORKERS' WELFARE CESS ACT, 1996

A. Prabhakara Reddy and Co. v. *State of Madhya Pradesh*,[1] a question arose whether Building Workers' (Regulation of Employment and Conditions of Service) Act, 1996 or the Building and Other Construction Workers' Welfare Cess Act, 1996 (BOCW Act) warrant setting up of welfare board prior to the date of contract/agreement for construction by builder it (welfare board) in order to demand cess from the employer? In this case the appellants, who were engaged in building and other construction work entered into agreements/ contracts for construction of projects belonging to departments and instrumentalities of Government of Madhya Pradesh.

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1 2015(9) SCALE 226.

The work orders were issued to contractors (the appellants) between December 2002 to March 2003. However there was no provision in the contracts as to who shall pay cess under the Cess Act. On constitution of the Madhya Pradesh Building and Other Construction Workers' Welfare Board on April 9, 2003 the welfare board made a demand for cess from the appellants. Aggrieved by the order the appellant challenged the demand order to pay cess in a writ petition was dismissed by the Division Bench of High Court of Madhya Pradesh. Against this order, the appellant filed a special leave to appeal before the Supreme Court. It was contended by the appellant that no cess could be levied for the tenders, contracts and work orders for construction by the welfare board that came into existence before the board was constituted and if demand of cess is made on construction works undertaken or even contemplated on account of issue of work order before the constitution of the board, then such demand would amount to making the Cess Act operate retrospectively. However, that would be unwarranted, illegal and unjust. On the other hand the counsel for the State of Madhya Pradesh and other respondents pointed out that after the Union of India through a notification bearing SO No. 2899 dated September 9, 1996 specified the rate of cess as 1% of cost of construction, the liability of concerned employers under the Cess Act became fully ascertainable on the basis of section 3 of the Cess Act and also there can be no estoppel against statute. Hence, even if a contract or work order does not provide for payment of recovery of cess by the contractor or the principal, the statute providing for cess cannot become ineffective. The court rejected the contention of the appellant and observed: [2]

> …[A]fter the Cess Act and the Rules came into effect and the Board was constituted, with the notification specifying the rate of cess to be levied upon the cost of construction incurred by the employer already in place, the Respondents were duty bound to collect the cess by raising the demands in respect of the on going construction works if the workers in such construction activities were eligible for benefits under the BOCW Act.

The court also observed that:[3]

> The cess is a fee for service and hence, its calculation, as per settled law is not to be strictly in accordance with *quid pro quo* rule and does not require any mathematical exactitude. The scheme of the BOCW Act, the Cess Act and the rules warrant that the lawfully imposable cess should be imposed, collected and put in the statutory welfare fund without delay so that the benefits may flow to the eligible workers at the earliest. The scheme of the BOCW Act or the Cess Act does not warrant that unless all the workers are already registered or the welfare fund is duly credited or the welfare measures are made available, no

2 *Id.* at 230.

3 *Ibid.*

> cess can be levied. In other words the service to the workers is not required to be a condition precedent for the levy of the cess. The rendering of welfare services can reasonably be undertaken only after the cess is levied, collected and credited to the welfare fund.

Accordingly, the court directed that, all dues of cess remained payable should be paid by the appellants as per law at the earliest and in any case within eight weeks. But the court permitted the appellant to raise the issue in appropriate authority under law that if liability to pay cess should be borne by the principal, *i.e.*, Government of Madhya Pradesh.

It is submitted that the liability to pay cess under the Cess Act and BOCW Act lies upon the employer. But the court without determining as to who is the employer directed the appellant to pay the cess because the appellant did not press the issue. Be that as it may in *Builders Association Of India* v. *Union of India*,[4] the court held that employer, in relation to an establishment means the owner thereof, and includes the contractor in case where the building or other construction work is carried on by or through a contractor. This view also requires re-examination in view of specific mention in clauses (i) and (iii) of section 2(i) which defines 'employer'.

In *National Campaign Committee* v. *Union of India*,[5] the Supreme Court was called upon to decide with regard to ineffective implementation of the BOCW Act as well as the Cess Act. The petitioner alleged that many of the state governments have collected the cess as contemplated under the Cess Act. But these amounts have not been passed on to the welfare boards to extend the benefits to the workers as contemplated by the Act. Even the registration of building workers as beneficiaries under the Act has been taken up. The court felt that overall, the implementation of the provisions of the Act is far from satisfactory and there is an urgent need to extend the benefits of the Act to unorganised section of building workers in a meaningful manner.

In view of this the court directed to initiate measures to be taken by the states without further delay which includes constitution of welfare boards by each state with adequate full time staff within three months, that welfare boards will have to meet at least once in two months or as specified in the rules, to discharge their statutory functions, that awareness should be built up, about the registration of building workers and about the benefits available under the Act. There should be effective use of media AIR and Doordarshan, for awareness programmes regarding the Act, the benefits available thereunder and procedures for availing the benefits, each state government shall appoint registering officers and set up centres in each district to receive and register the applications and issue receipts for the applications, registered trade unions, legal service authorities and NGOs are to be encouraged to assist the workers to submit applications for registration and for seeking benefits, all contracts with governments shall require registration of workers under the Act and extension of benefits to such workers under the Act, that steps to be taken to collect the cess under

4 2007 DLT 578.

5 2015(3) SCALE 146.

the Cess Act continuously, that the benefits under the Act have to be extended to the registered workers within a stipulated time frame, preferably within six months, that the member secretary of the welfare boards and the labour secretary shall be responsible for due implementation of the provisions of the Act. The labour ministry of each state shall carry out special drives to implement the provisions of the Act, that the Comptroller and Auditor General of India (CAG) should audit the entire implementation of the Act and use of the funds, that all boards shall submit comprehensive reports as required under the Act and Rules to the respective government. The court further directed the secretary in the Ministry of Labour, Government of India to convene a meeting of all the secretaries in the Ministry of Labour or the corresponding ministry of all the states and union territories on or before January 16, 2015 and to discuss with them the modalities for effective implementation of both the statutes and arrive at a consensus, particularly, since they involve the living conditions of the construction workers and collection of huge amounts for their benefit.

III EMPLOYEES' STATE INSURANCE ACT, 1948 AND EMPLOYEES' COMPENSATION ACT, 1923

Dhropadabai v. *Technocraft Toolings*,[6] the Supreme Court was called upon to decide the question whether legal heirs would be entitled to get compensation under Employees Compensation Act, 1923 as deceased was insured person under the Employees' State Insurance Act,1948 (ESI Act)? The court also examined the effect of section 53 of the ESI Act.

In this case an employee of *Technocraft Toolings* had suffered a chest pain at the work place. He was immediately taken to the Medical College Hospital, Ghati, Aurangabad, where he was declared dead. Thereupon the appellant no.1 (Dhropadabai) approached the respondent-employer for grant of compensation but the same was not granted. Being aggrieved she along with her children, filed an application for grant of compensation to the commissioner /labour court under the Employees' Compensation Act, 1923. The respondent- employer resisted the claim on two grounds, , namely, (i) that the legal heirs of the deceased-employee were not entitled to get any compensation under the Employees' Compensation Act 1923 as the deceased-employee was an insured person under the ESI Act and (ii) the accident did not occur in the course of his employment as the death took place due to coronary disorder, which has nothing to do with the work place. The labour court framed two principal issues, namely; (i) whether the accident had occurred during course of employment of the deceased-employee, and (ii) whether the legal heirs of the deceased were entitled for of compensation amounting to Rs. 3 lakhs along with 50% penalty and interest at the rate of 18% per annum on the total amount of compensation from the date of accident till realisation of compensation amount as per law. The labour court held that the deceased-employee had died in course of employment while remaining on duty with

6 2015(4) SCALE 165.

the respondent-employer. Thereafter, it examined the applicability of the Employees' Compensation Act, 1923 in the backdrop of section 53 of the ESI Act and came to conclusion that there was no justification to deny the compensation under the Employees' Compensation Act,1923 Act solely because the employee was an insured person under the 1948 Act. The labour court accordingly directed that a sum of Rs. 4,07,700/- shall be awarded towards the payment of compensation on the death of deceased Ambadas Lahane to his legal heirs. It further held that if the employer failed to pay such compensation within a stipulated period, that is, within one month, it will be open to the legal heirs of the deceased-employee to file an application under section 4(a) of the Employees' Compensation, 1923. Aggrieved by the aforesaid award, the employer approached the high court and reiterated both the contentions raised before the labour court. The high court affirmed the view taken by the labour court that the deceased was an employee under the respondent-firm and he has breathed his last during the course of employment. As far as the applicability of the Employees' Compensation Act,1923 Act is concerned, the single judge held that the legal heirs are not entitled to get compensation under the Employees' Compensation Act,1923 Act as he was an insured person under the Employees' State Insurance Act, 1948.Thereupon an appeal was filed before the Supreme Court. The Supreme Court upheld the findings of labour court and high court about the status of the employee and the factum of his breathing last during the course of employment. Having said so, it examined the issue whether the high court was justified in denying the benefit under the Employees Compensation Act, 1923. In order to deal with this issue the court referred to the provisions of section 53 of the Employees State Insurance Act,1923 also the court referred to its earlier decisions[7] wherein scope of the aforesaid provision were interpreted and observed: [8]

> The aforesaid authorities make it eminently clear that once an employee is an "insured person" Under Section 2(14) of the 1948 Act, neither he nor his dependents would be entitled to get any compensation or damages from the employer under the 1923 Act. We are obliged to hold so as the plain language used in the Act clearly conveys so. Therefore, we do not find any flaw in the view expressed by the High Court.

The court further observed that: [9]

> At this juncture, we may state that while this court granted leave on February 22, 2014, had directed the respondent to deposit Rs. 4 lakhs in the registry of this court within four weeks and permitted the

7 *De Costa Regional Director, ESI Corporation* v. *Francis*, 1993 Supp. 4 SCC 100; In *Bharagath Engineering* v. *R. Ranganayaki* (2003) 2 SCC 138; *National Insurance Co. Ltd.* v. *Hamida Khatoon* (2009) 13 SCC 361.

8 *Supra* note 6 at 168.

9 *Ibid*.

> appellants to withdraw the said sum on furnishing a personal bond. We have been apprised that the amount has been deposited by the employer and also has been withdrawn by the legal heirs of the deceased employee. Though the Respondent is getting the benefits under the 1948 Act, yet we do not intend that the amount that has already been withdrawn by the legal heirs of the deceased-employee, should be recovered by the employer by way of deducting the periodical sum that is paid to the family members of the deceased employee.

A perusal of the aforesaid decision reveals that even though the legal heirs of the deceased-employee was held not entitled to get benefit under the Employees' Compensation Act, 1923 because the deceased employee was insured under the Employees State Insurance Act, 1948 Act but the apex court did not allow recovery of amount withdrawn out of the amount deposited by the employer under the Employees' Compensation Act, 1923. This view appears to have been taken because the court felt that the cause of justice should be best sub-served as the appellants have been fighting the litigation since a decade.

IV EMPLOYEES' COMPENSATION ACT, 1923 AND MOTOR VEHCLES ACT, 1988

The Supreme Court in *Praveenbhai S. Khambhayata* v. *United India Insurance Company Ltd*.,[10] decided an extremely important issue as to when it will exercise its extra-ordinary jurisdiction under article 142 of the Constitution.

In this case a cleaner and the driver were employed by the appellant and respondent no. 5 for the vehicle belonging to them. On the day of incident cleaner was filling water in the radiator of the vehicle bearing No. GJ-3U-5391.Suddenly the bonnet of the vehicle fell down on his head and as a result of which he fell down and died. Thereupon father, mother and wife of the deceased cleaner filed a claim petition before the Commissioner for Workmen's Compensation/Labour Court, Rajkot, They contended that the cleaner died in the course of his employment and, therefore, claimed compensation of Rs. 4,15,093/- from the appellant and respondent no.1 (insurance company).The labour court/commissioner held that the insurance policy produced before him was in respect of the vehicle GJ-3V-7785 which was not involved in the vehicular accident and, therefore, insurance company(first respondent) was not liable to pay the compensation. However, the commissioner held that the appellant and respondent no. 5 being the owner of the vehicle, were jointly and severally liable to pay the compensation of Rs. 3,25,365/- along with 10% penalty and annual interest at the rate of 6%. Being aggrieved, the appellant(owner of the vehicle)filed an appeal in the High Court of Gujarat. The high court dismissed the appeal. The court observed that since vehicle no. GJ-3V-7785 was not involved in the accident and that only vehicle no. GJ-3U-5391 was involved and since the deceased was employed as a

10 (2015) 11 SCC 417.

cleaner only for vehicle no. GJ-3V-7785, the insurance company was not liable to indemnify the appellant for the accident caused by the vehicle bearing no. GJ-3U-5391. Against this order the appellant–owner filed an appeal before the Supreme Court. A question arose whether the first respondent-insurance company is liable to indemnify the owner of the vehicle for death of a person who was employed by him in another vehicle. in which deceased-cleaner was not an employee but he was only a third party? Dealing with this issue the Supreme Court held that the (i) deceased-cleaner was filling the water in the radiator of vehicle no. GJ-3U-5391 only on the direction of the employer and thus the cleaner was working in the course of employment (ii) both the vehicles were insured with the first respondent-insurance company and (iii)the owner was one and the same and the deceased -cleaner and the claimants hailed from the lowest strata of society exercised its jurisdiction under article 142 of the Constitution of India and directed the first respondent-insurance company to indemnify the appellant for the death of deceased. The apex court then reviewed the quantum of compensation awarded by the labour court(workmen's compensation commissioner) and observed that as per section 4-A(3)(a) of the Workmen's Compensation Act, 1923 where any employer commits default in paying the compensation due under the Act within one month from the date it fell due, the commissioner shall direct the employer to pay simple interest thereon at the rate of 12% per annum or at such higher rate not exceeding maximum of the lending rates of any scheduled bank as may be specified by the Central Government. Having said so the court held that as per section 4-A(3)(b), in addition to the amount of arrears and the interest thereon, the commissioner shall direct the employer to pay further sum not exceeding 50% of such amount by way of penalty. In view of this the court ordered that the legal representatives of the deceased employee are thus entitled to the statutory interest at the rate of 12% and penalty not exceeding 50% of the amount of compensation.

The court also remarked that compensation award made by the commissioner for workmen's compensation of only 6% interest and 10% penalty is against the statutory entitlement of the dependents of the deceased employee in terms of section 4-a(3) of the Act. The court felt that to the passage of time and in the interest of justice statutory rate of penalty *i.e.*, 15% be paid in addition to the statutory interest payable at the rate of 12% per annum. The court noted that the appellant has deposited Rs. 3,25,365/- *i.e.*, the principal amount with the labour court/commissioner for Workmen's Compensation, Rajkot on February 18, 2014. The appellant was further directed to deposit the balance amount. The court also directed first respondent-insurance company to deposit the balance compensation being 15% penalty and the interest at the rate of 12% after one month from the date when the compensation amount fell due and also 15% penalty with the labour court/commissioner for workmen's compensation within a period of six weeks from today. On such deposit, the court directed that the same shall be disbursed to respondents no. 2 to 4. After disbursing the amount to the dependents no. 2 to 4, the Commissioner for Workmen's Compensation, Rajkot was directed to submit a report to the court regarding compliance at an early date preferably not exceeding four months from today. The court also

directed the first respondent-insurance company to reimburse the amount of Rs. 3,25,365/- to the appellant which has been deposited towards compensation within a period of six weeks.

The aforesaid decision shows the concern of the apex court to protect the interest of the lowest strata of society. Thus in order to protect their interest the aforesaid section of society and also to justice to the appellant the apex court exercised the extra-ordinary jurisdiction under article 142 of the Constitution of India. It, therefore, directed the first respondent-insurance company to indemnify the appellant-owner of vehicles for the death of the cleaner. The court gave two reasons for making such direction. (i) both the vehicles were insured with the first respondent-insurance company and the owner being one and the same and since the deceased being the cleaner of one such vehicles and (ii) the claimants hailed from the lowest strata of society. The court remarked that in a situation of this nature, for doing complete justice between the parties it has always exercised the jurisdiction under article 142 of the Constitution of India.

V EMPLOYEES' STATE INSURANCE ACT, 1948

*Zuari Cement Ltd.*v. *Regional Director, E.S.I.C. Hyderabad,*[11] the Supreme Court was called upon to determine the scope of the expression "any other matter" occurring in section 75(1) (g) of the ESI Act.The apex court was called upon to decide as to who is empowered under the ESI Act to exempt any factory or establishment or class of factories or establishments in any specified area from the operation of the ESI Act.

Here the appellant was engaged in the manufacture and sale of cement located at Yerraguntla in Cuddapah district. With effect from March 1, 1986 the said area was brought within the purview of ESI scheme. But the Government of Andhra Pradesh granted exemption to the appellant-cement factory from the operation of the Act for the period from March 1,1986 to March 31, 1993.However after the expiry of the aforesaid period it rejected the application of appellant for exemption for further period from April 1, 1993 to March 31, 2001. After rejection of the claim for further exemption, the Regional Director, ESI Corporation, issued various demand notices cumulatively demanding a sum of Rs. 65,38,537/- towards contributions for the period from April 1, 1993 to March 31, 1999.Aggrieved by these orders the appellant filed a number of writ petitions in the high court challenging the order of appropriate government rejecting its claim for exemption and also the demand notices issued by the Regional Director, ESI Corporation. The high court directed the appellant to approach the ESI Court constituted under section 74 of the Act. Thereupon the appellant filed the review petition before the high court, *inter alia*, praying to remit the matter back to the government directing them to provide hearing opportunity to the appellant in respect to grant of exemption under section 87 of the ESI Act for the period from April 1, 1993 to March 31, 1999. The court dismissed the review petition by observing that the appellant has an alternative remedy before the ESI Court

11 (2015) 7 SCC 690.

constituted under ESI Act which shall decide all matters. The court also examined the scope of the expression "any other matter" occurring in section 75(1)(g) and held that ESI Court has jurisdiction to decide the issue and all questions including the applicability of the Act. The appellant accordingly approached the ESI Court, Hyderabad under section 75(1)(g) of the Act challenging the demand notice. The ESI Court on the basis of affirmative report was filed by the commissioner appointed by it granted future exemption to the appellant from the coverage of the ESI Scheme. The ESI Court also set aside the impugned demand notices for the period between1993 to 2001 and the interest thereon. Against this order of ESI Court the ESI Corporation filed an appeal before the high court contending that ESI court does not have power under section 75 of the Act and it is only the appropriate government which is empowered under section 87 of the Act to exempt anyone from the application of the Act. By the impugned judgment on September 21, 2007, the high court allowed the appeals of the corporation holding that ESI Court does not have the power to grant exemption under section 75(1)(g) of the Act. Aggrieved by this order the appellant filed an appeal before the Supreme Court. It was contended on behalf of the appellant that (i) it approached the ESI court as per the directions of the high court issued in different writ petitions that the ESI Court has jurisdiction (ii) the high court was not right in holding that ESI Court has no jurisdiction.(iii) section 75(1)(g) of the Act specifically empowers the ESI Court to decide the matter which is in dispute between the principal employer and the corporation in respect of any contribution or benefit or other dues payable or recoverable under the Act. Thus it has jurisdiction to adjudicate any dispute under section 75(1)(g) of the Act and therefore the high court was not right in holding that ESI Court has no jurisdiction. (iv) the appellant has a full-fledged hospital with medical officers and para medical staffs and has spent around 4.09 crores towards establishment of hospital and the appellant is providing better medical and other benefits to the workers than available under the Act and considering those aspects, ESI Court rightly granted exemption and set aside the demand notice sand thus the high court erred in reversing the order of the ESI. On the other hand it was contended on behalf of the respondent-corporation that (i) under section 87 of the ESI Act, only the appropriate government can grant exemption and under section 75 of the Act, ESI Court has no jurisdiction to grant exemption and since ESI Court has acted beyond its jurisdiction, high court rightly reversed the said order of ESI Court. (ii)the jurisdiction to ESI Court can be conferred only in accordance with the statute and therefore, neither the order of the high court nor the consent of the parties can confer the jurisdiction in the ESI Court. The court also examined the scheme of the Act, and observed that the power to grant exemption is a plenary power given to an appropriate government. Therefore the ESI Court constituted under section 74 of the Act has no jurisdiction to grant exemption validity of an exemption notification. The court ruled that order granting or denying exemption is no doubt open to judicial review under article 226 of the Constitution. Further where there is want of jurisdiction the order passed by the court/tribunal is a nullity.The court accordingly held that the order passed by the ESI Court was non- est and therefore the high court rightly set aside the said order. The court, however, did not go to the merit and the plea of

appellant they have a full fledged hospital and are providing various medical facilities and better health schemes to its employees and their family members.

VI FACTORIES ACT, 1948

Like previous year this year also the issue relating to the status of persons employed in the statutory canteen was raised in *Mohan Singh* v. *The Chairman Railway Board*,[12] whether the existing canteen at Moradabad Division of the Northern Railway (the subject canteen) is located in a 'factory' within the meaning of section 46 of the Factories Act, 1948; and consequently, whether the services of the staff employed in the subject canteen ought to be regularized?

Here the appellants was employed in the subject canteen, which was running in the precincts of the Divisional Railway Manager (DRM"), Moradabad since 1940. The subject canteen had been catering to more than 100 employees, (in fact, well over 500) ever since its establishment. In 1963, the Chairman, Railway Board (respondent no. 1) issued a circular for setting up of canteens as a welfare measure, whenever and wherever the staff strength exceeds 100. The then existing staff canteen, (subject canteen) continued to operate smoothly, even thereafter. However when the subject canteen underwent severe financial losses the DRM of Northern Railways, Moradabad Division (respondent no.3) decided to constitute a committee of three senior Railway Divisional Officers to examine whether the affairs of the subject canteen could be taken over by the Railways. It was decided by the said committee that the affairs of the subject canteen be revived; and an *ad hoc* committee comprising five railway officers, which was to be replaced later on by a regular management committee, be appointed to manage the affairs of the said canteen. It was in these circumstances that the subject canteen was formally taken over by the respondent railways. Subsequently, respondent no. 1 issued a circular laying down that prior approval of the railway board would be mandatory for setting up of a new canteen as well as for increasing the staff strength of existing canteens. The appellants asserted that the mandate laid down in the circular was not applicable to the subject canteen as it was validly operational since 1940, and was also in consonance with the other. Ergo, no prior approval was required to be taken from the railway board since the subject canteen was not a new canteen. Thereafter General Manager of Northern Railways (respondent no. 2) wrote a letter to the railway board requesting it to accord recognition to the subject canteen in the interest of the welfare of the employees. However, the Ministry of Railways rejected this request on the premise that if recognition were to be granted to the subject canteen, the existing staff would nevertheless not be absorbed automatically, and they would have to compete with other eligible candidates. The ministry then ordered status quo to be maintained in respect of the subject canteen. The said proposal was thereafter discussed in the Permanent Negotiating Machinery (PNM) meeting wherein it was decided that since the railway board had already rejected the proposal for recognition due to the changed priorities of railways and cutting

12 2015(8) SCALE 499.

down of non-planned expenditure, the proposal for recognition of any canteen under the Factories Act, 1948, or the railway manual could not be considered. Being aggrieved the appellants filed a writ petition before the High Court of Delhi seeking directions to the railways to recognize the subject canteen and regularise the services of the permanent staff, who were the then canteen staff, as employees of Railways. The single judge held that since the subject canteen has been operational for over seven decades and by then employed more than 900 employees, and there was no other canteen in the Moradabad Division, the Railways could not be permitted to take advantage of their failure to comply with the requirements of section 46 of the Factories Act, 1948 and treat this canteen at Moradabad as a 'Non-Statutory Canteen'. Against this order a review petition was filed by the respondents which was dismissed . Thereupon the respondents filed an appeal wherein it was contended , *inter alia*, that the subject canteen was a 'non-statutory and non-recognized' canteen and that it could not be treated as a 'statutory canteen' under the Factories Act, 1948 as no manufacturing process was being carried on in the DRM Office at Moradabad. The division bench reversed the decision of the single judge and held that section 46 of the Factories Act, 1948 would not get attracted because the number of the persons employed in the DRM Office, Moradabad, exceeded 250, unless the concerned establishment is a 'factory' under section 2(m) of the Factories Act, 1948. The division bench held that the subject canteen is a 'non recognised and non statutory' canteen. Aggrieved by this order an appeal was filed before the Supreme Court. The court after referring to its earlier decision in *M.M.R. Khan* v. *Union of India*,[13] wherein the basic characteristics and difference between a 'Non-Recognized and Non-Statutory Canteen' were stated.[14] The court then quoted the provisions of section 46[15] of the Factories Act, 1948 in

13 1990(1) SCALE 324.

14 The difference between the non-statutory recognised and non-statutory non-recognised canteen is that these canteens are not started with the approval of the Railway Board as required under paragraph 2831 of the Railway Establishment Manual. Though, they are started in the premises belonging to the railways they are so started with the permission of the local officers. They are not required to be managed either as per the provisions of the Railway Establishment Manual or the Administrative Instructions (supra). There is no obligation on the railway administration to provide them with any facilities including the furniture, utensils, electricity and water. These canteens are further not entitled to nor are they given any subsidies or loans. They are run by private contractors and there is no continuity either of the contractors or the workers engaged by them. More often than not the workers go out with the contractors. There is further no obligation cast even on the local offices to supervise the working of these canteens. No rules whatsoever are applicable to the recruitment of the workers and their service conditions. The canteens are run more or less on ad-hoc basis, the railway administration having no control on their working neither is there a record of these canteens nor of the contractors who run them who keep on changing, much less of the workers engaged in these canteens. In the circumstances we are of the view that the workers engaged in these canteens are not entitled to claim the status of the railway servants.

15 Factories Act, 1948, s. 46. Canteens.

(1) The State Government may make rules requiring that in any specified factory wherein more than two hundred and fifty workers are ordinarily employed, a canteen or canteens shall be provided and maintained by the occupier for the use of workers.

order to determine whether the subject canteen is a 'statutory canteen' and observed that it is evident from a perusal of the definition of canteens and factories that government factories have not been conceived of as beyond the concept of a 'factory', nor do we find any justification for it to be otherwise. Thus, what emerges from the above provision is that when an establishment is a 'factory' within the meaning of section 2(m) of the Act, and there are more than 250 workers employed therein, the occupier is obliged to set up a canteen and conform to the statutory rules made in that behalf. Section 2(n) of the Factories Act, 1948 defines 'Occupier' of a factory 'as a person who has ultimate control over the affairs of the factory'. Sub-section (iii) of section 2(n) states that 'in the case of a factory owned or controlled by the Central Government or any state government, or any local authority, the person or persons appointed to manage the affairs of the factory by the Central Government, the state government or the local authority, as the case may be, shall be deemed to be the occupier'. It cannot be controverted that each of the five units of the Northern Railways, including the Moradabad Division, is managed by a respective divisional railway manager. Thus, for the purposes of section 2(n) of the Act, it can be fairly inferred that the DRM, by virtue of being in control of the affairs of Moradabad Division, should be deemed to be the 'Occupier' of that unit of the Northern Railways. Having said so the court examined the question whether the Moradabad Division of the Northern Railways is a factory under section 2(m) of the Factories Act, 1948 and held that all the requirements of the term "factory" are fulfilled and therefore the premises of DRM, Moradabad should also be treated as a factory under the Factories Act, 1948 in which case Moradabad Canteen shall *ipso* facto corresponded to a 'Statutory Canteen' within the meaning of section 46 of the Act. The court also held that manufacturing activities were carried on within the premises of DRM Office, Moradabad. The court accordingly held that the employees in the statutory canteens of the railways should be treated as railway servants. Accordingly the relationship of employer and employee stands created between the railway administration and the canteen employees from the very inception. But the court, in view of the fact that the appellants were not appointed as per the regular recruitment procedure directed the respondents to consider regularising the services of the appellants presently serving as canteen workers in consonance with the principles laid down in *Secretary, State of*

(2) Without prejudice to the generality of the foregoing power, such rules may provide for-

(a) the date by which such canteen shall be provided;

(b) the standards in respect of construction, accommodation, furniture and other equipment of the canteen;

(c) the foodstuffs to be served therein and the charges which may be made thereof;

(d) the constitution of a managing committee for the canteen and representation of the workers in the management of the canteen;

(dd) the items of expenditure in the running of the canteen which are not to be taken into account in fixing the cost of foodstuffs and which shall be borne by the employer;

(e) the delegation to the Chief Inspector, subject to such conditions as may be prescribed, of the power to make rules under Clause (c)

Karnataka v. *Uma Devi*,[16] and take requisite action within six months of the receipt of this Judgment. The court further ordered that as and when the posts fall vacant the respondents shall fill the posts by a regular process of selection. The appellants in the present case shall be allowed to compete in the regular recruitment and the respondents shall grant them appropriate age relaxation as well as proper weightage for their having worked in the subject canteen.

VII EMPLOYEES PROVIDENT FUNDS AND MISCELLANEOUS PROVISIONS ACT, 1948

The High Court of Delhi in *M/S. Road Transport Corporation* v. *Central Board of Trustees, EPF Organisation*,[17] was called upon, *inter alia*, to consider (i) whether the Central Provident Fund Commissioner under section 14B of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (EPF Act) is empowered to raise demands after a lapse of three years, a period of limitation provided in the departmental circular on November 28, 1990.? (ii). Is the petitioner liable to pay interest on default under section 7Q of the EPF Act? (iii) Can any damage be levied on the petitioner under section 14B of the EPF Act in the absence of arrears of provident fund contributions on the date of issue of notice? In this case the petitioner had been depositing its provident fund contributions on time immediately after it was covered under the provisions of the EPF Act. However later the petitioner establishment was closed and no business were being conducted from the official address available with the respondent and no contribution under the EPF Act was deposited. Thereupon the respondent initiated the proceedings under the EPF Act against the petitioner and levied damages to the tune of Rs. 5,87,953/- (Rupees Five lakhs eighty seven thousand nine hundred and fifty three) under Section 14B of the EPF Act along with a sum of Rs.2,91,706/- (Rs. Two lakhs ninety one thousand seven hundred and six) under Section 7Q of the EPF Act. However, the entire proceedings were carried out ex-parte against the petitioner. Against this order the petitioner preferred an appeal which was dismissed. Aggrieved by this order a writ petition was filed in the High Court of Delhi on five grounds, namely, (i) the impugned order was passed ex-parte against the petitioner. (ii) the said order was a non speaking order as it did not disclose as to how the amount of damages as well as interest was arrived at and calculated. Further charging of interest in addition to damages for the same period is against the Constitutional provisions (iii) the petitioner is not liable to pay interest charged under section 7Qof the EPF Act as no amount of damages was due from the petitioner. Further provisions of section 7Q are prescribing in nature and not charging (iv) proceedings against the petitioner establishment were initiated after a lapse of three years which is clearly beyond the limitation period and is barred by departmental circular dated November 28, 1990. As per the said circular, the regional provident fund commissioners were directed to ensure that all pending cases were disposed off within a period of three

16 AIR 2006 SC 1806.

17 (2015)3 LLJ 135.

years from the date of the said circular. In cases of fresh defaults, damages were directed to be levied within a period of the subsequent three financial years. (v) the language of section 14B of the EPF Act read with para 32 of the Employees' Provident Fund Scheme, 1952 reveals that the levy of damages on the EPF contributions will not be legal if there remains no default or arrears on the date when the damages are levied as there has been no delay in the deposit of the provident fund dues and no amount of provident fund dues were payable on the day of show cause notice. The court rejected all the contentions and said that damages under section 14-B of the Act are leviable not only for arrears but also for belated payments. Thus under the said section the employer is duty bound to make the provident fund contribution on time and in the default of it, the provisions of said section are attracted. The court having held while section 14 B of the EPF Act is a penal provision section 7Q provides for levy of interest on the defaulter till the amount is deposited. Referring to the amendment the court said that prior to the amendment of section 14 B of the EPF Act the maximum rate at which the damage could have been 25 % under para 32A whereas as per the 1988- amendment penalty can be up to the equivalent amount of arrears, say 100%.The court added that no scheme, rule or regulation can nullify the provisions of the Act. Thus, no fetters can be placed on the power of the competent authority to pass an independent order for levy of damages under section 7Q of the EPF Act.

So far as the circular dated November 28, 1990 is concerned, the court held that the said circular is in a nature of an administrative direction and has not taken form of a statute. Moreover till date there has not been any amendment in section 14B of the EPF Act prescribing the period of limitation. The court held that it is not mandatory on the date of computation of damages under section 14B of the EPF Act that the provident fund dues must be in "arrears". Accordingly the petition was dismissed .

VIII MINIMUM WAGES ACT, 1948

Suja Issac, Proprietrix, Hotel Fort Heritage v. *The Deputy Labour Commissioner, Ernakulam* (The Authority under the Minimum Wages Act)[18] the High Court of Kerala decided an important issue as to whether compensation can be imposed upon employer even when he has paid the excess amount under clause (i) of section 20(3)of the Minimum Wages Act, 1948 during the pendency of the proceedings before the assistant/deputy. labour commissioner (ii) whether any dispute exists as to the rate of wages and(iii) whether the first respondent has jurisdiction to decide the case after the payment is made by the employer during the pendency of proceeding before the 1st respondent. In this case the 2nd respondent filed an application under the Minimum Wages Act, 1948 before the 1st respondent alleging that the petitioner has not paid minimum wages to the employees referred to in the claim petition and that employer is liable to pay arrears of wages amounting to 41,654.55 to those employees, for the period from 3/99 to 8/99. On receipt of notice in the claim petition, the petitioner

18 (2015) 1 LLJ 73.

entered appearance and filed counter stating that, the arrears referred to in the claim petition were paid to the employees by way of cheques dated December 31, 1999 and requested the 1st respondent to dismiss the claim petition. The second respondent filed rejoinder stating that, even though notices were issued to the employees, no reply was received regarding the payment made by the petitioner. The 1st respondent therefore directed the management to deposit a compensation amounting to 20,827/- under section 20(3)(i)of the Act (50% of the arrears of wages for the period from 3/99 to 8/99 amounting to 41,654.55) within 30 days from the date of order, failing which action as envisaged under the Act would be initiated against the management for realisation of the said amount. It further directed that the compensation amount will be disbursed among the beneficiaries included in the claim petition. Aggrieved by this order the petitioner filed a writ petition before the High Court of Kerala.

The court held that section 20(3)(i) of the Minimum Wages Act, 1948 enables the authority in the case of payment of wages less than the minimum rates of wages to direct compensation to be paid, as the authority may think fit, not exceeding ten times the amount of such excess. But this discretion has to be exercised judicially. The purpose of making this provision is to see that an employer do not refuse to implement the provisions of the Minimum Wages Act,1948 as non-payment of wages notified under the Act will result in forced labour prohibited under article 23 of the Constitution of India.[19] The court accordingly dismissed the petition.

IX CONCLUSION

In the year under survey the apex court has shown its concern about the unsatisfactory implementation of the provisions of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 and Building and other Construction Workers' Welfare Cess Act, 1966 in a meaningful manner. The court remarked that the scheme of the BOCW Act or the Cess Act does not warrant that unless all the workers are already registered or the welfare fund is duly credited or the welfare measures are made available, no cess can be levied. The court, therefore, directed the state government to take immediate steps to implement the above Acts.

The sensitivity and human approach has been displayed by apex court in case of legal heir of the deceased- worker. Thus the court having held that deceased was insured person under section 2(14) of ESI Act, and neither he nor his dependents would be entitled to get any compensation or damages from employer under the Employees' Compensation Act, 1923 ordered that the amount deposited by employer under the Employees Compensation Act, 1923 and withdrawn by legal heirs, could not be recovered as legal heirs had been fighting litigation since decade**.**

Another trend is to protect the interest not only of workers but also of the employer. Thus in case of death of an employee caused by accident in a vehicle belonging to the employer –owner where the vehicle was insured but it is not clear as to whether the

19 *Id*. at 80-81.

particular vehicle was insured the apex court exercised its extraordinary jurisdiction under article 142 of the Constitution and directed the employer to recover from insurance company the compensation money deposited by him in the court.

Unlike previous year the apex court in the year under survey held that workmen employed in statutory canteen would be worker for the purposes of Factories Act and not a worker of the establishment, this year the apex court held that the appellants in the statutory canteens of the railways will have to be treated as railway servants. However in view of the fact that the appellants were not appointed as per the regular selection procedure the employer was directed to consider them by a regular process of selection recruitment procedure.

The court is equally concerned to protect the interest of employees when it held that the defaulter cannot be permitted to escape his liability on the ground that the demand under section 14B of the EPF Act was raised belatedly. To allow the plea the court said would amount to allowing a defaulter to take benefit of his own wrong which no court of law can permit. Likewise the court upheld the order of the competent authority to impose compensation on the defaulting employer in cases where the employer paid the excess amount referred to in clause (i) of section 20(3) of the Minimum wages Act, 1948 during the pendency of the proceedings.