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SOCIAL SECURITY AND LABOUR LAW

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I INTRODUCTION

IN 2024, the Supreme Court and high courts made several significant contributions to the arena of social security and minimum standards of employment. Numerous cases addressed critical issues concerning social security, wages, and minimum employment standards, reflecting significant legal developments. The Supreme Court's pronouncements on social security encompass provident Funds under the Employees' Provident Funds Miscellaneous Provisions Act, 1952, Pension, social insurance under the Employees' State Insurance Act, 1948 and wage determination and revision. Similarly, high court cases reported in 2024 covered a broad spectrum of social security, wages, and minimum employment standards.

This survey, however, focuses on almost all judgments of the Supreme Court on social security and minimum standards of employment legislation and selected judgments of high courts concerning compensation under the Employees' Compensation Act, 1923 (EC Act), gratuity under the Payment of Gratuity Act, 1972 (PG Act), maternity benefits under the Maternity Benefit Act, 1961 (MB Act), and the Factories Act, 1948. Broadly speaking, the courts generally adopted a beneficial interpretation of the provisions within social security, wages, and minimum employment legislation.

II EMPLOYEES 'PROVIDENT FUND'

In *Thankamma Baby* v. *The-Regional-Provident-Fund-Commissioner-Kochi-Kerala,*[1] the Supreme Court was called upon to interpret clause (b) of sub-section (3) of section 1 of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (EPF Act).

Factual matrix

In this case, the appellant was engaged in the business of manufacturing, assembling, and selling umbrellas. Following an inquiry dated March 7, 1962, conducted by the Regional Provident Fund Commissioner (respondent) under

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1 2024 LLR 176.

section 7A of the EPF Act, it was determined that the appellant was covered by a Central Government notification issued under clause (b) of sub-section (3) of section 1 of the EPF Act. Consequently, a notice was issued to the appellant on December 30, 1997, asserting the applicability of the EPF Act because the appellant was covered by the notification issued by the Central Government in the exercise of powers under clause (b) of sub-section (3) of section 1 of the 1952 Act. Thereupon, the appellant filed a review petition, which was rejected by the respondent. Against this order, the appellant filed an appeal to the Appellate Authority, which was dismissed. Being aggrieved by the said orders, the appellant filed a writ petition in the High Court of Kerala. The single judge dismissed the petition, and the same was confirmed by the impugned judgment by a division bench of the High Court of Kerala in a writ appeal. Thereupon, the appellant filed an appeal before the Supreme Court.

Contentions of the appellant

It was contended that establishments covered by clause (a) of sub- section (3) of section 1 are factories engaged in industries specified in Schedule I of the 1952 Act. Therefore, those factories not specified in Schedule I cannot be covered by clause (b) of sub- section (3) of section 1 of the EPF Act. It was further submitted that clause (b) of sub-section (3) does not refer to the factories. Thus, from the intention of the legislature, it is very clear that 'any other establishment' mentioned in clause (b) of sub-section (3) will not include any factory.

It was also pointed to an alleged admission by the respondent in the counter-affidavit before the high court's single judge was that the appellant's umbrella-making unit was not an industry included in Schedule I. The appellant further asserted that their establishment could not be reasonably classified as a trading and commercial establishment covered by the notification dated March 7, 1962.

Contentions of the respondents

The respondent contended that the appellant's business admittedly involved not only assembling or manufacturing umbrellas but also selling them. Therefore, the appellant's establishment fell within the category of trading and commercial establishments as specified in the relevant notification.

Response of the Supreme Court

To address the arguments presented by both parties, the Supreme Court referred to the provisions of Section 1(3) of the EPF Act, which outlines the Act's application:

Short title, extent and application.

(1) This Act may be called the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

(3) Subject to the provisions contained in section 16, it applies—

(a) to every establishment which is a factory engaged in any industry specified in Schedule I and in which twenty or more persons are employed, and

(b) to any other establishment employing twenty or more persons or a class of such establishments which the Central Government may, by notification in the Official Gazette, specify in this behalf:

Provided that the Central Government may, after giving not less than two months' notice of its intention so to do, by notification in the Official Gazette, apply the provisions of this Act to any establishment employing such number of persons less than twenty as may be specified in the notification.

The court interpreted the aforesaid provision by observing that while clause (a) applies only to those factories engaged in any industry specified in Schedule I clause (b) applies to all other establishments which are not covered by clause (a) of sub- section (3) provided such establishments are notified by a notification issued by the Central Government which is published in the Official Gazette. The court then clarified that clause (b) of sub-section (3) takes within its fold all establishments which are not covered by clause (a). Therefore, a notification under clause (b) can be issued in respect of factories engaged in any industry which is not specified in Schedule I. Based on this interpretation, the court rejected the argument that a notification under clause (b) cannot apply to a factory involved in an industry not included in Schedule I

Whether the establishment carrying on the business of assembling/ manufacturing umbrellas and selling the same is a commercial establishment?

The court observed that under the notification dated March 7, 1962, there is a category of 'trading and commercial establishments. "Admittedly, the appellant is carrying on the business of assembling/manufacturing umbrellas and selling the same. The respondent has recorded a finding of fact that the business of establishment of the appellant was of assembling umbrellas and selling the same in her own outlet." Therefore, the establishment of the appellant is a commercial establishment predominantly carrying on commercial activity and would fall in the category of 'trading and commercial establishments. In the aforesaid circumstances, the case of the appellant will be governed by the said notification issued under clause (b) of sub-Section (3) of Section 1.

The court accordingly held that there is absolutely no error in the view taken by the single judge and Division Bench of High Court of Kerala and dismissed the appeals with no order as to costs. However, if there is any monetary liability incurred by the appellant pursuant to the orders of the respondent confirmed by the high court, because the present appeals are of the year 2010, three months were granted to the appellant to pay the necessary amount.

Review

In the case under review, the Supreme Court held that assembling umbrellas and selling them in one's own outlet constitutes a commercial activity falling in the category of trading and commercial establishments to be governed by a notification issued under the EPF Act. This decision is based on the interpretation given by

the Constitution bench of the Supreme Court in *Mohmedalli* v. *Union of India* ,[2] wherein the court affirmed the Central Government's power to specify establishments or a class of establishments to be brought within the purview of the EPF Act.

III PENSION

Uttar Pradesh Roadways Retired Officials and Officers Association v. *State of Uttar Pradesh.,*[3] is a landmark judgment of the Supreme Court on the rights of former employees of Uttar Pradesh Roadways, a temporary department of the state government,before or after their absorption in the U.P. State Roadways Transport Corporation to claim pensionary benefits under the Pension Scheme.

Factual background

In this case, the claim of pension was made by the appellants, who had already received their entire post-retirement benefits immediately after their retirement decades ago, without any protest or claim that they held a pensionable post.

On a writ petition filed by the appellant, the single judge of the high court, although dismissed the writ petition on the ground of delay and laches, waiver and acquiescence, but at the same time also decided the petitions on merits and on examination of the applicable GOs and Regulations, rejected the claim on merits. The single judge distinguished the case from that of the *U.P.S.R.T.C.* v. *Mirza Athar Beg and U.P.S.R.T.C* v. *Shri Narain Pandey*[4] relied upon by the petitioners. On appeal, the division bench upheld the decision of the single judge of the high court. Being aggrieved, the appellants filed an appeal before the Supreme Court.

Issues

Whether the appellants, who were the former employees of Uttar Pradesh Roadways, a temporary department of the state government, are holding any pensionable post before or after their absorption in the U.P. State Roadways Transport Corporation?

Response of the Supreme Court

To deal with issues, the court segregated the appellants based on the date of appointment, namely, (i) those who were appointed in the Roadways before the G.O. dated September 16, 1960 and have retired. (ii) (Those who were appointed after 16.09.1960 but before the creation of the Corporation as on June 1, 1972 and have retired. (iii) Those who were appointed after June 1, 1972, when the Corporation was created and have retired.

The Supreme Court ruled that "pension is a right and not a bounty. It is a constitutional right to which an employee is entitled on his superannuation. However, a pension can be claimed only when it is permissible under the relevant rules or a scheme. If an employee is covered under the Provident Fund Scheme

2 1963 Supp (1) SCR 993.

3 2024 Latest Caselaw 470 SC.

4 Special appeal no. 40 of 2007.

and is not holding a pensionable post, he cannot claim a pension, nor can the writ court issue mandamus directing the employer to provide a pension to an employee who is not covered under the rules.[5]

Applying the aforesaid principle, in this case, the Supreme Court held that only those employees of the state government working absorbed in the Corporation in the roadways who have opted for the services of the corporation shall be entitled to pension and other retirement benefits in terms of GO dated July 5, 1972. This is so because they are covered by the expression "their service conditions shall not be inferior to the conditions as were available under the Government" occurring under the said GO. However, other employees of the corporation shall not be entitled to a pension, but they shall be entitled to the retirement benefits mentioned in sub- Regulations (1) and (2) of Regulation 39.

The Supreme Court accordingly set aside the order passed by the division bench and the single judge of the High Court of Allahabad.

Review

The court has ruled that pensions is constitutional right for which an employee is entitled on his superannuation. Having said so, the court held that employees of Roadways who were not holding any pensionable post before their deputation or absorption in the corporation are not entitled to pension, as their service conditions in the erstwhile Roadways did not provide that they were entitled to pension. Thus, they have not been put to any inferior service conditions on their joining the services in the Corporation.

As regards the application of the precedent, the court held that *U.P.S.R.T.C.* v. *Mirza Athar Beg*[6] and *U.P.S.R.T.C* v. *Narain Pandey* are distinguishable on facts. While in the former case, in view of articles 350 and 370 of the Regulations, his period of service in temporary capacity or on a temporary post was countable towards qualifying services for pension and gratuity, and he was never absorbed in the services of the corporation and, therefore, distinguishable on facts. In the latter case, the court has not considered the legal effect flowing from the GO dated September 16, 1960 and October 28, 1960, as also Note 3 of Article 350 of the Regulations.

IV EMPLOYEES' STATE INSURANCE

The Supreme Court *in Employees State Insurance Corporation Ltd.* v. *Nagar Nigam Allahabad*[7] ruled that in respect of a factory, which belongs to a local authority, unless the power of exemption is exercised by the government, it would be covered by provisions of section 1(4) of the ESI Act.

Factual background

In this case, the respondent-Nagar Nigam, Allahabad operated a Central Workshop, where activities of repairing and maintaining different types of vehicles

5 *Id*.,para 35.

6 W.P. No. 7728 (S/S) of 1996.

7 Civil Appeal No(s). 1833 of 2024.

are carried out, which, according to the appellant-corporation, was a 'factory' under the Factories Act, 1948. In 1964, respondent-Nagar Nigam was allotted Code No. 21-4404-74 under the ESI Act, and recovery certificates were issued from time to time by the appellant-corporation. The respondent, Nagar Nigam, continued to make statutory contributions under the ESI till the year 1978, where after it stopped paying statutory contributions without any reason. Thereupon, ESI Corporation issued notices, raised demands and ultimately directed it to pay Rs. 4,72,186/-, under section 45A of ESI Act. Based on the above-mentioned letter, the recovery officer issued a recovery notice dated February 3, 2009, to the respondent, Nagar Nigam, for payment of the amount as determined under section 85B of the ESI Act.The respondent-Nagar Nigam, however, neither appeared before the authorised officer nor did it file any response to the notice, whereupon the authorised officer of the appellant-corporation directed the recovery officer to recover the amount of contribution along with interest to the tune of Rs. 5,88,227/- under sections 45C to 45I of the ESI Act from the respondent-Nagar Nigam. Being aggrieved by the recovery notice dated February 3, 2009, the respondent, Nagar Nigam, filed a writ petition before the High Court of Allahabad. The single judge of the High Court of Allahabad allowed the writ petition by holding that Nagar Nigam (respondent herein) was not covered under the Factories Act, 1948. In view of this, he quashed the order of recovery notice and directed the appellant corporation to refund the amount already realised by it within three months. Being aggrieved, the ESI corporation filed a special leave petition in the Supreme Court.

Key issues

The Supreme Court was called upon to decide (i) whether the workshop of Respondent-Nagar Nigam was engaged in a manufacturing process while carrying out repairs and maintenance of the tractors, trailers, and loaders belonging to the respondent-Nagar Nigam by employing more than 20 workmen? (ii) Whether the workshop of respondent-Nagar Nigam was covered under the definition of 'factory' within the meaning of Factories Act, 1948,to enable the employees employed therein to avail the benefits of the Employees' State Insurance Act 1948(ESI Act)?

Response of the Supreme Court

To deal with the issue whether the workshop of the municipality/local body where the job of repairs of the machinery in undertaken, the Supreme Court referred to its earlier decision in *Employers' State Insurance Corporation* v. *Kakinada Municipality*[8] wherein like the instant case the issue was whether the workshop of the Municipality/local body where the job of repairs of the machinery, *etc.,* are carried out is a 'factory' within the meaning of the ESI Act. In that case, the on similar facts-situation the court held that the municipality/local body was covered under the ESI Act.

8 (2022) 2 SCC 56.

The Supreme Court then examined the definition of "factory"[9] and "manufacturing process" and its earlier decision in *J.P. Lights India* v. *Regional Director E.S.I. Corporation, Bangalore,*[10] wherein it was held that the job of repairing the machinery is covered under the definition of "manufacturing process", and that the first respondent was running a factory as it is undertaking manufacturing activities within the meaning of the expression "manufacturing process" as defined in section 2(14-AA)[11] of the ESI Act.

Having held that the municipality/local body was covered under the ESI Act and repairing the vehicle in the workshop of the municipality is covered under the definition of "manufacturing process and therefore "factory ", proceeded to examine the proviso to section 1(4) of the ESI Act, which was inserted by the very same amendment with effect from 20-10-1989. The court observed that the results of this legislative exercise cannot be overlooked. The position, therefore, is that in respect of a factory, which belongs to a local authority, unless the power of exemption is exercised by the government, it would be covered by provisions of section 1(4) of the ESI Act.

The court added that it was a fit case wherein, rather than interfering in the matter in exercise of the writ jurisdiction, the respondent-Nagar Nigam should have been relegated by the single judge to approach the insurance court by applying section 75(1)(g) of the ESI Act. The court accordingly set aside the order of a single judge of the high court.

An appraisal

A perusal of the aforesaid decision indicates that a public authority, such as a municipal corporation engaged in the repair and maintenance of tractors, trailers, and loaders owned by a local authority, qualifies as carrying out a manufacturing process under section 2(14-AA) of the ESI Act. If such an entity employs more

9 Section 2(12) of ESI Act defines **"**factory**"** to mean any premises including the precincts thereof whereon ten or more persons are employed or were employed on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on or is ordinarily so carried on, but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a railway running shed;

10 2023 SCC OnLine SC 1271.

11 S. 2(14AA) of the ESI Act says that "manufacturing process" shall have the meaning assigned to it in the Factories Act, 1948 (63 of 1948);]"

S.2(k) of the Factories Act, 1948 defines "manufacturing process" to mean any process for-

(i) making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal, or

(ii) pumping oil, water, sewage or any other substance; or

(iii) generating, transforming or transmitting power; or

(iv) composing types for printing, printing by letter press, lithography, photogravure or other similar process or book binding; or

(v) constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels; [or]

(vi) preserving or storing any article in cold storage."

than 20 workers, it would be considered a factory, making it eligible for the benefits under the ESI Act. However, under section 90 of the ESI Act, the appropriate government has the discretion to exempt any factory or establishment belonging to a local authority from the Act's provisions. This exemption is permissible if the employees of such a factory or establishment receive benefits that are substantially similar or superior to those provided under the ESI Act. Such an exemption may be granted following consultation with the Corporation, through a notification in the Official Gazette, and subject to specified conditions.

Santosh Choudhary and Associate v. *Employees' State Insurance Corporation*is another case on the ESI Act. In this case, the High Court of Calcutta has categorized chartered accountancy firms as professional establishments rather than commercial entities and thereby made the employees employed therein ineligible to claim the benefit of the Employees' State Insurance scheme.

The facts of the case were as follows: The respondents, on preliminary inspection of the office of Santosh Kumar Choudhary, a Chartered Accountant, found that 6 employees were in the rolls of the petitioner, out of which one is a casual. Further, on demand of record by the inspecting officer, the petitioner produced only the balance sheet.Pursuant to such inspection, a notice was issued by the respondent to the petitioner's firm, intimating that the said firm is covered under the ESI Act and accordingly allotting a Code number for registration of employees under section 1(3)/1(5) of the ESI Act. This was followed by as how-cause notice directing the petitioner to pay contributions as per the ESI Act for the period specified therein and appear before it on 16-10-2017.About a month later, the order under section 45A of the ESI Act was passed by the by ESIC wherein it was recorded that in the absence of any factual records, a sum of Rs. 3,07,679/- was held as statutory due being arrear of contribution payable by the employer in respect of the show cause notice for the period October 30, 2014 to July, 2017. Being aggrieved, the petitioner filed an appeal before the employees. State Insurance Court. Pending appeal, a writ petition was filed before the High Court of Calcutta.

Issues

The court was called upon to decide (i) whether the chartered accountant firm is covered under the ESI Act)? (ii) If so, whether the petitioner was having the required number of employees in the firm under the ESI Act. (iii) Can the authority or ESIC decide or determine the applicability of the ESI Act? (iv) Whether the writ petition is maintainable without exhausting the appellate remedy?

Judicial response

To decide the issue whether the chartered accountant firm is covered under the ESI Act, the court examined the definition of 'establishment'[12] and shop[13] and observed:

> A professional activity must be an activity carried on by an individual through their personal skill and intelligence. There is a fundamental distinction, therefore, between a professional activity and an activity of a commercial character.

The court accordingly held that a chartered accountant or a chartered accountant firm cannot be termed as a trader or businessman, and a professional firm cannot be equated to business or trade as within the ambit of "shop" under the ESI Act or the State Act, as held in numerous judgments.

Dealing with the issue of whether the petitioner was having the required number of employees in the firm under the ESI Act, the high court held that the petitioner does not have more than 10 employees, as an establishment is covered under the ESI Act only if it has over 10 employees. The court also held that. "Articles" do not qualify as employees under the ESIC Act, as Articles at the highest can get some money, which cannot be equated with wages to attract the provision of the ESIC Act. Hence, the petitioner does not qualify the conditions to fall as a "shop" .

Dealing with the issue whether the authority or ESIC decide or determines the applicability of the ESI Ac*t,* the court held that (i) ESIC does not decide the issue whether the provisions of the ESI Act apply to the petitioner. (ii) the authority under Section 45A of the ESI Act does not actually determine whether the petitioner falls under "shop" against which the provisions of the Act are applicable.

Dealing with the issue of whether a writ petition is maintainable without exhausting the appellate remedy, the high court observed that it is a settled principle that an alternative remedy is not an absolute bar in filing and maintaining a writ petition. That apart, only a legal issue is involved, and adjudication of the issues in the writ petition does not require adjudication of facts.

A review

A perusal of the aforesaid decision reveals that a professional activity requires personal skill and intelligence, distinguishing it from commercial activities

12 The expression 'establishment' is defined by s. 2(8) to mean a shop or a commercial establishment. Since by the definition contained in the first clause of s.2(4), a commercial establishment means an establishment, a place of work cannot be regarded as a commercial establishment unless the activity is conducted in a 'shop' or in a commercial establishment which is really tautological.

13 The definition of 'shop' which is contained in section 2(15) shows that in order that an establishment can be regarded as a shop, it is necessary that some 'trade' or 'business' must be carried on there or some service must be rendered to 'customers. The expression 'shop' also includes offices, warehouses, storerooms or godowns which are used in connection with the trade or business. It does not require any strong argument to justify the conclusion that the office of a chartered accountant's office or the office of a firm of chartered accountants is not a 'shop' within the meaning of s. 2(15).

the court held that the writ petition is maintainable because (i) without adjudicating whether the ESI Act applies to the petitioner the authority acted under section 45A of ESIC Act and thereby fell in error which is jurisdictional in nature and such an act can be challenged in the writ petition (ii) alternative remedy is not an absolute bar in filing and maintaining a writ petition. (iii) only a legal issue is involved, and adjudication of the issues in the writ petition does not require adjudication of facts.

V WAGE DETERMINATION AND REVISION

The Supreme Court in *VVF Ltd. Employees Union* v *M/s. VVF India Ltd.,*[14] was called upon to decide an important issue relating to wage revision, allowances and the jurisdiction of the high court to review factual findings of the industrial tribunal under Article 226 of the Constitution.

Factual aspects

The brief facts of the case were as follows**.**The union raised a charter of demands in respect to 146 workmen, out of which 80 were engaged at the employer's establishment at Sewree, and 66 of them were employed at Sion, both being situated within Mumbai, for wage adjustments, including revision of basic pay, allowances for housing, travel, and education, and enhanced gratuity for year 2008 to 2011. On a reference of the dispute by the appropriate Government, the Industrial Tribunal, in its award, partly acceded to their demands. Dissatisfied with the award, both the employer and the union filed separate writ petitions before the High Court of Bombay. The high court allowed the workmen's writ petition by setting aside the award of the Tribunal so far as the first four demands as per the charter are concerned, but upheld the tribunal's verdict regarding demands numbers 5-11. The high court later intervened, reassessing evidence under Article 226 of the Constitution and granting some of the union's rejected claims, which were opposed by the employer, citing financial constraints and the impropriety of the high court's re-evaluation of facts. Being aggrieved,two appeals were filed in the Supreme Court against the judgment of the single judge of the High Court of Bombay directing*, inter alia*, wage revisions for the workmen of VVF India Limited ("the employer") working in two units at Sewree and Sion. The employees' union also filed an appeal[15] against a judgment of the high court dismissing the union's petition for review of the judgment passed on July 25, 2019.

Key issue

Whether the high court travelled beyond its jurisdiction under article 226 by re-evaluating factual findings of the industrial tribunal, and in that process substituted the finding of the Tribunal with its own finding on facts?

Response of the Supreme Court

Determination of wage structure

The Supreme Court emphasized that the financial capacity of an employer is an important factor which could not be ignored in fixing wage structure.

14 2024 LiveLaw (SC) 299.

15 Civil Appeal No.2744 of 2023.

Standard criteria for revision of wages

The Supreme Court held that for revision of wages and other facilities, the standard criteria which is followed by the industrial adjudicator is to apply industry-cum-region test, which in substance implies that the prevailing pay and other allowances should be compared with equally placed or similarly situated industrial units in the same region. To determine the comparability of units applying the industry-cum-region test, *inter alia*, the financial capacity of the employer would be a strong factor.[16]

Scope of interference of the high court

The Supreme Court held that the high court ought not to reappreciate evidence and substitute its own finding for that of the tribunal. But the high court in the impugned judgment re appreciated the evidence led before the tribunal in identifying comparable concerns for applying the industry-cum-region test. This was so when, in the given facts, the employer seriously contested the use of the concerned units as comparable ones, and highlighted its difficult financial position.

Analysis of Evidence by the high court

The Supreme Court observed that the high court ignored the negative financial status of the company on the ground that the losses made by it were minuscule. The court also held that no proper analysis of the employer's evidence was made in this case. Likewise, in the case of workers the it was confined to the treatment of overtime wages in computing allowances admissible to them. These questions also ought to be re-examined.

The proper course to deal with the case by the high court

The court pointed out that the proper course would have been to remit the matter to the Industrial Tribunal rather than entering into this factual question independently in exercise of the writ jurisdiction. This exercise would have required leading evidence before the primary forum, the industrial tribunal in this case.

Findings of the Supreme Court

The court accordingly set aside the judgment of the high court, as also the tribunal's award. The Court directed the tribunal to re-examine the cases of the respective parties afresh. Within a period of six months.

VI EMPLOYEES COMPENSATION

Air India Charter Ltd v. *Tanja Glusica*[17] the High Court of Bombay decided an extremely important issue relating to the determination of the amount of salary, interest, penalty and exchange rate under the Employees Compensation Act, 1923 (EC Act) in the case of a foreign national employed by Air India Charter Ltd, an Indian company.

16 Reliance was placed on the decision in French Motor Car Co. Ltd. -vs- Workmen [(1962) 2 LLJ 744], *The Silk and Art Silk Mills Association Ltd.* v *Mill Mazdoor Sabha* [(1972) 2 SCC 253] and *Shivraj Fine Arts Litho Works* v *State Industrial Court, Nagpur* [(1978) 2 SCC 601].

17 2024: BHC -AS: 42319, Decided on Oct. 24,2024.

Factual background

In this case, Zlatko Glusica (workman), a Serbian national, was employed as a pilot in the Appellant-Company through an external agency, Sigmar Aviation Ltd. While on duty on May 22, 2010, the said workman died in a Mangalore air crash. Thereupon, the appellant on December 5, 2012, deposited an amount of compensation in Indian currency in accordance with the exchange rate as on the date of the accident in the office of the Labour Commissioner (Employees' Compensation). Again, on September, 27, 2012, it deposited a sum of Rs. 3,32,15,589- along with relevant Form "A" prescribed under Rule 6(1) of the Workmen's Compensation Rules in the office of Labour Commissioner (Employees' Compensation). On October 11, 2012, the respondents applied Section 8 of the EC Act before the Labour Commissioner (Employees' Compensation) for immediate distribution of the deposited compensation amount to the respondents. The appellant company, in its reply dated May 4, 2013, contended that it is not concerned with the issue of distribution and payment of compensation. It was also contended that it had made an excess payment as a deposit before the Commissioner on the basis of the estimated salary of USD 11,000, while the salary of the deceased as per the contract of 7th October, 2009, between the deceased and Sigmar Aviation Ltd was USD 9,170. The appellant, therefore, sought a refund of the excess amount. On December 20, 2012 the Labour Commissioner (Employees' Compensation) passed an order of distribution of compensation and apportionment between the legal heirs and directed the appellant to deposit in Court US Dollars 745580/-, *i.e.,* INR 463,37,797/- together with 50% penalty of the amount of compensation and 12% interest per annum on aforesaid amount of compensation from the date of accident till the date of depositing said amount in court. The appellant then deposited Rs. 332,15,589/- in the office of the court on September 27, 2012. Being aggrieved, the appellant filed an appeal before the High Court of Bombay.

Issues

The court was called to decide following substantial questions of law: "(i) Whether dependents of an employee engaged to provide services under a contract can be awarded compensation that is calculated at an amount higher than the amount actually payable to the deceased captain under the contract? (ii) Whether the said compensation can be calculated based on any agreement between the principal employer and the agent who supplies manpower, which the deceased employee was not privy to? (iii) When compensation payable under Section 4-A of the Employee's Compensation Act, 1923 falls due in cases where there is a bona fide dispute with respect to the amount of compensation payable? (iv) When compensation is payable in foreign currency, whether the exchange rate at which the compensation is calculated in Indian Rupees can be of the date on which the payment is actually made or the date of the order? (v) Whether interest and penalty on the amount of compensation is payable at all, in cases where the amount of compensation is in fact adjudicated pursuant to any inquiry conducted by the Labour Commissioner?

During the hearing of the appeal, two additional questions of law were raised, namely (vi) whether the findings of the Employees Compensation Commissioner about the monthly salary drawn by the deceased suffer from perversity? (vii) Whether the liability to pay interest and penalty under Section 4- A(3)(b) of the EC Act can be imposed on the appellant, who is the principal employer and has been held liable to pay compensation by virtue of section 12 of the EC Act were framed and the parties were duly heard.

Findings of the court

The High Court of Bombay reversed the findings of the Labour Commissioner (Employees Compensation) in respect to the amount of compensation determined on a monthly salary of USD 11,000 per month. This was all the more so when there was no pleading to that effect and no evidence on record in support of the said finding. The court ruled that the principle applicable is that the party should be placed in the same position in which he would be if the obligation is discharged by the appellant on the due date. However, in the present case, the deposit was made after a period of about two years and six months. Having said so, the court held that (a) the compensation is to be computed based on USD 9,170 multiplied by the relevant multiplier of 135.56. (b) The rate of exchange will be the higher of the rate of exchange on the date of the accident or the date of deposit by the appellant-company in accordance with section 4-A of the EC Act. (c) The appellant will be liable to pay interest @ 12% from the date of the accident till the date of depositing the compensation amount before the Commissioner under section 4-A(3)(a) of EC Act.[18] Section 4A (3) of EC Act (d) As per section 12(1) of the EC Act, there cannot be any imposition of a penalty upon the principal employer.

A review

The court ruled that the basis for computation of compensation (i) in cases of payment of compensation to the employee of a contractor is the wages of the employee, which are paid by the contractor to the employee. (ii) the employer's liability to pay compensation is not suspended till settlement of the dispute by Commissioner under Section 19 of EC Act as held by the four judge bench of the apex court in *Pratap Narain Singh Deo* v. *Shrinivas Sabata*[19] (iii) the interest is

18 Section 4A (3) of EC Act provides:

(3) Where any employer is in default in paying the compensation due under this Act within one month from the date it fell due, the Commissioner shall-

(a) direct that the employer shall, in addition to the amount of the arrears, pay simple interest thereon at the rate of twelve per cent. per annum or at such higher rate not exceeding the maximum of the lending rates of any scheduled bank as may be specified by the Central Government, by notification in the Official Gazette, on the amount due; and

(b) if, in his opinion, there is no justification for the delay, direct that the employer shall, in addition to the amount of the arrears and interest thereon, pay a further sum not exceeding fifty per cent of such amount by way of penalty:

Provided that an order for the payment of penalty shall not be passed under clause (b) without giving a reasonable opportunity to the employer to show cause why it should not be passed.

19 AIR 1976 SC 222.

liable to be paid in default of deposit of the admitted liability within period of one month from date of accident. The payment of interest is not suspended till adjudication of the claim under Section 19 of the EC Act.

In another case in Tata AIG General Insurance Company Ltd. v. *Shibi Devi,* under the EC Act, the Himachal Pradesh High Court decided the issue regarding the maintainability of claims arising out of an accident.

Factual background

The case arose after Raju, who was employed as a truck driver by the respondent. On October 3, 2013, when he was coming from Chandigarh to Theog in the truck, which was loaded with bricks,the truck suddenly rolled down near Housing Board Colony, Theog**.** Consequently, Raju sustained injuries. He was taken to Civil Hospital, Theog, wherefrom he was referred to PGI, Chandigarh. However, on the way to Chandigarh, he died at Solan. At the time of the accident, the deceased was about 43 years of age and was the only earning member of the family. In 2015, Raju's widow and daughter had settled their claim with the employer and the insurer, Tata AIG General Insurance Company Ltd., under an agreement approved by the Workmen's Compensation Commissioner. However, in 2023, the mother of the deceased, who was dependent upon the deceased, filed a separate claim petition before the Workmen's Compensation Commissioner alleging exclusion from the earlier settlement. This claim was contested by both the insurer and the employer.

Issues

The court was called upon to decide, *inter alia*. Maintainability of the subsequent petition filed by the mother, particularly in view of the fact that the claim petition filed by the widow and daughter of the deceased had already been allowed by the Commissioner.

Findings of the court

The court, on an examination of Section 167 of the Motor Vehicles Act and section 22 of the EC Act, found that they restrict multiple claims arising from the same cause of action. Referring to the proviso to section 166(1) of the Motor Vehicles Act, the court observed that compensation awarded under the aforesaid Act must be for the benefit of all legal representatives of the deceased. But observed that while Shibi Devi claimed exclusion from the 2015 settlement, she neither filed a case to be impleaded in the original proceedings nor challenged the settlement at the time. On her failure to act promptly, the court barred her from filing a separate claim almost eight years after the settlement. The court further observed that the settlement made in 2015 represented a comprehensive resolution of the claims of all legal dependents, and permitting subsequent claims would undermine the finality of such settlements. The court accordingly held that only one claim petition is maintainable in respect of one cause of action, and all the dependents/legal representatives of the deceased have to get impleaded in the said petition, and each one cannot file a separate application. Therefore, the subsequent petition filed by the mother of the deceased is not maintainable.

Review

The aforesaid decision reveals that failure to act promptly bars even the dependent from filing a separate claim after the settlement is arrived before the Workmen's Compensation Commissioner. Further, only one claim is maintainable per accident, and all dependents should have been included in the initial proceedings. To permit subsequent claims after years would undermine the finality of such settlements.

In Sant Kumar v. *General Manager, Northern Indian Railway,* the petitioner joined Northern Indian Railways as a Pointsman on February 15, 1989. While on duty, he met with an accident on 10.10.2021, which resulted in the amputation of both legs, which was recorded in the Railway Diary Accident Book on October 10, 2021. The Additional Chief Medical Superintendent, Northern Railway, Ambala Cantt. Issued a certificate dated July 18, 2022 wherein he recommended that the petitioner be offered alternative employment on medical grounds. The petitioner contended that he is suffering from 90% permanent disability, which was confirmed by the Ministry of Railways. The respondent, although he conceded that the petitioner was offered an alternative post, adjusted his salary against compensation payable under the EC Act as per instructions issued by the Railway Board. Against this order, the petitioner filed a writ petition before the High Court of Punjab-Haryana .

The court held that it is a settled proposition of law that rules can supplement statutory provisions but cannot supplant the statutory provisions. Further, the rules cannot be contrary to the mandate of the EC Act, as rules are a piece of delegated legislation. Applying this principle in this case, the court held that Rule 552(3) of 1949 is contrary to the mandate of the Rights of Persons with Disabilities Act, 2016 and EC Act. In support of its conclusion, the High Court referred to the decision of the Supreme Court in *Shree Bhagwati Steel Rolling Mills* v. *Commissioner of Central Excise,*[20] wherein it was observed that Rules or Regulations which are *ultra vires,* though not challenged, may be ignored.

The court accordingly directed the respondent to release compensation payable under the EC Act, without adjusting against salary payable up to the supernumerary period, within six weeks from the date of judgment. The court also clarified that the petitioner was entitled to salary till the supernumerary period and thereafter, on account of his non-joining, he is not entitled to salary.

Review

The High Court of Punjab and Haryana ruled that an employee who suffered a disability while on duty is entitled to compensation without any adjustment against the salary payable up to the supernumerary period or till the availability of alternative employment. Further, the rules or regulations, which are like subordinate legislation, if *ultra vires* is bound to be ignored by the courts when the question of their enforcement arises.

20 (2016) 3 SCC 643.

VII GRATUITY

Indian Institute of Technology, Bombay v. *Tanaji Babaji Lad* [21] decided that the principal employer is liable to pay gratuity to contract labour, although engaged by multiple contractors, if they rendered substantial years of service in the same establishment.

Factual background

In this case, one of the respondents worked for over 39 years in IIT, Bombay, initially as a contract worker of IIT and later through contractors. The other two respondents were employed by multiple contractors and have also rendered substantial years of service of 26 and 20 years, respectively, through contractors. On termination of their services, they demanded payment of gratuity as they had fulfilled the conditions of continuous employment under the Payment of Gratuity Act, 1972. The management denied such payment because the respondents-employees are contract labourers provided by various contractors engaged by it for the execution of various works at the campus, as well as on projects undertaken by IIT, Bombay. It is contended that respondents are employees of the concerned contractors and that there has been no employer-employee relationship between the petitioner and respondents at any point in time. Thereupon, the respondents filed applications before the controlling authority complaining about the non-payment of gratuity by the petitioner. The controlling authority held that petitioner-IIT, Bombay, being an employer, is liable to pay gratuity to the respondents. On appeal, the appellate authorities upheld the award of the controlling authority. Being aggrieved, the petitioner filed a writ petition before the High Court of Bombay.

Key Issue

Is the petitioner, as the principal employer, liable to pay gratuity to the employees of a contractor engaged by the petitioner?

Response of the High Court of Bombay

Finding based on continuous service in the IIT and supervision and control by IIT officials

The High Court of Bombay having observed that(i) respondents have continued to work at IIT, Bombay, for several years despite the change of multiple contractors. (ii) Supervision and control over the activities of respondents used to be exercised by engineers and officials of IIT, Bombay. (iii) Two out of the three respondents were initially engaged by IIT, Bombay and subsequently converted into contract workers. (iv) Only their salaries were routed through the contractors. (v) respondents served only at the campus of the IIT. The court, therefore, held that it cannot be held that the respondents were working on the establishment of the contractors and not on the establishment of the IIT, Bombay. The court added that only if petitioners were to work at various places where contracts are awarded to contractors, their services would be on the establishment of such contractors.

21 Writ Petition No .12746 OF 2024 decided on 4 October, 2024.

Jurisdiction of the controlling authority

The court held that the jurisdiction of the controlling authority to determine the amount of gratuity depends on the pre-existence of the relationship of employer and employee between the petitioner and the respondents 2 and 3. These jurisdictional conditions cannot be finally determined by the controlling authority. But this does not mean that the controlling authority cannot at all inquire into this issue or that the petitioner can disable the controlling authority from inquiring by merely denying that the respondents 2 and 3 are its employees. On the contrary, the legislature has intended that initially, the controlling authority may find out whether a relationship of employer and employee exists. The court accordingly held that the authority may determine (i) whether the applicant is an "employee" as defined in clause (e) of Section 2 of the Gratuity Act, (ii) whether the opponent is an "employer" as defined in clause (f) of Section 2, (iii) whether the conditions for entitlement to receive gratuity under sub section (1) of Section 4 of the Gratuity Act are satisfied, and (iv) what is the quantum of such gratuity and interest thereon, if any, having regard to sub sections (3), (4) and (5) of Section 7 of the Gratuity Act.

Relaxation of the minimum qualifying service

The court, having noted that there is a condition for continuous deployment of workmen for a maximum of 89 days excluding Sundays and holidays, held that it is not necessary to delve deeper into the terms and conditions of the work order to which respondents are not parties. The present case, the court said, involves peculiar facts and circumstances, under which some workmen have continued with IIT-Bombay through multiple contractors. Therefore, for the limited purpose of payment of gratuity, respondents are required to be treated as employees of IIT.The court accordingly held that the controlling and appellate authorities have rightly held petitioner-IIT, Bombay, to be the employer liable to pay gratuity to the Respondents.

Review

By holding that contract workers are entitled to gratuity regardless of their employment status, the High Court of Bombay ensures that institutions cannot evade their legal obligations by outsourcing their workforce. This judgment strengthens the legal framework protecting workers' rights and serves as an important precedent for future cases involving contract labour.

VIII MATERNITY BENEFIT

The Maternity Benefit (Amendment) Act 2017 has increased the duration of paid maternity leave from 12 weeks to 26 weeks, in case of women who have less than two surviving children and in other cases, the existing duration of twelve weeks of maternity leave shall continue**.**

In MRB Nurses Empowerment Association v. *The Principal Secretary,*[22] the High Court of Madras was called upon to decide whether women workers working on a contract basis are entitled to maternity leave and benefits, regardless of their employment status.

22 W.P.No.27556 of 2018 decided on Oct.18, 2024;2024 SCC OnLine Mad 5801.

In this case, a staff nurse who was working for over two years on a contract basis under the National Rural Health Mission (NRHM) in Tamil Nadu sought maternity benefits of 270 days with pay, as stipulated by the Maternity Benefits Act 1961. However, the state government denied these benefits, asserting that the nurses were contractual employees and, therefore, not entitled to any leave beyond casual leave. Being aggrieved, she filed a writ petition before the High Court of Madras.

The High Court of Madras relied on a three Judge bench of the Supreme Court *in Kavita Yadav v. The Secretary, Ministry of Health and Family Welfare Department,*[23] wherein *the Supreme Court ruled* that once the female employee appointed on contract fulfilled the eligibility criteria specified in the Maternity Benefit Act, 1961 (MB Act) she would be eligible for full maternity benefits, even if such benefits exceed the term of contract. The court further ruled that a combined reading of sections 5 ,12 and 27 of the MB Act "suggests that once the appellant fulfilled the entitlement criteria specified in section 5(2) of the MB Act, she would be eligible for full maternity benefits even if such benefits exceeded the duration of her contract. Any attempt to enforce the contract duration term within such period by the employer would constitute "discharge" and attract the embargo specified in section 12(2)(a) of the MB Act. The law creates a fiction in such a case by treating her as in employment for the sole purpose of availing maternity benefits under the MB Act.[24]

Relying upon the aforesaid decision of the apex court, the High Court of Madras held that as per Section 27 of the MB Act, employees' eligibility for maternity benefits would be governed by the said Act, notwithstanding anything inconsistent in any other law, contract or service that denies or offers lesser benefits.

IX FACTORIES ACT

In *Deepak Dokania* v. *The State of Jharkhand,*the High Court of Jharkhand decided an important issue relating to the prosecution of the occupier or managers of factories under the Factories Act, 1948, when the worker is injured despite being provided safety equipment.

The brief facts of the case were as follows: On receiving information of the accident, the factory inspector inspected the factory premises to find out the reasons of accident. During the inspection, it was found that the said employee started his duty on the date of the accident, but while changing a damaged sheet on the roof safety belt came down on the ground and being unstable, he got injured. It was also found that the management of the factory has not provided the safety equipment and due to a lack of safety measure the victim sustained injury. Further, the management failed to comply with the provisions of section 32(B) and 32(C) of the Factory Act, 1948 and Rule 56(c)(a) of Jharkhand Factory Rule, 1950.

23 2023 Live Law (SC)701.

24 For detail see S.C. Srivastava, "Social Security and Labour Law", *ASIL*, Indian Law Institute, New Delhi (2023).

On asking by the complainant, the management of the factory did not produce any record. A complaint was, therefore, filed before the Chief Judicial Magistrate, Seraikella, who took cognizance in the case. Being aggrieved, a writ petition was filed by one of the directors of the factory in the High Court of Jharkhand for quashing the order taking cognizance and also the entire criminal proceeding in the complaint Case pending before the Chief Judicial Magistrate, Seraikella.

Key issue

Whetheroccupiers or managers of factories are prosecuted under the Factories Act in an accident where a worker is injured when he did not use adequate safety equipment provided by the employer?

Judicial response

The court, having observed that this is not a case where management has not provided equipment safely to the workman, but observed that to fasten liability upon the management, one is required to look into sections 97 and 111 of the Factories Act, 1948, which impose certain obligations upon the worker. The court also found that the safety equipment had been supplied by the management, and by not taking advantage of the same, the workman is also liable under sections 97[25] and 111[26] of the Factories Act. On perusal of these two provisions of the Factories Act, the court observed that sections 97 and 111 were not looked into by the Inspector, as admitted in the complaint itself that the workman concerned had gone to the roof. Further, no case is made out against the petitioners in terms of the Factories Act in view of the judgment rendered in the case of *J.K. Industries Ltd.* v. *Chief Inspector of Factories and Boilers*,[27] wherein the Supreme Court held that *mens rea* is not a necessity in invoking the provisions of the Factories Act.

25 S. 97 of the Factories Act which deals with offences by workers provides:

(1) Subject to the provisions of section 111, if any worker employed in a factory contravenes any provision of this Act or any rules or orders made thereunder, imposing any duty or liability on workers, he shall be punishable with fine which may extend to five hundred rupees.

(2) Where a worker is convicted of an offence punishable under sub-section (1) the occupier or manager of the factory shall not be deemed to be guilty of an offence in respect of that contravention, unless it is proved that he failed to take all reasonable measures for its prevention.

26 S. 111 which deals with obligations of workers provides:

(1) No worker in a factory-

(a) shall wilfully interfere with or misuse any appliance, convenience or other thing provided in a factory for the purposes of securing the health, safety or welfare of the workers therein;

(b) shall wilfully and without reasonable cause do anything likely to endanger himself or others; and

(c) shall wilfully neglect to make use of any appliance or other thing provided in the factory for the purposes of securing the health or safety of the workers therein.

(2) If any worker employed in a factory contravenes any of the provisions of this section or of any rule or order made thereunder, he shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to one hundred rupees, or with both."

27 (1996) 6 SCC 685.

The court accordingly held that there was no material on record to *prima facie* suggest that the occupier or manager is in any manner responsible for the unfortunate accident. Therefore, the order taking cognizance suggest that there is a non-application of the judicial mind. Accordingly, the entire criminal proceeding pending before the Chief Judicial Magistrate, Seraikella, was quashed.

Review

The aforesaid case has highlighted that certain obligations are also cast upon the workers under sections and 111 of the Factories Act, making the workman also liable to use safety equipment provided by the occupier. Thus, when it is established that safety equipment was supplied, the occupier or manager is not liable if the accident takes place due to not using the safety equipment provided by the employer.

X CONCLUSION

An analysis of the aforesaid decisions leads us to the following conclusions:

i. The Supreme Court, while holding that the business of assembling and selling the same is trading and a commercial establishment covered under the EPF Act, stressed that the provisions of the EPF Act constitute social justice measures.

ii. The apex court made a significant contribution when it ruled that a pension is a right and not a bounty. Indeed, it is a constitutional right for which an employee is entitled on his superannuation. However, the court was cautious when it held that a pension can be claimed only when it is permissible under the relevant rules or a scheme.

iii. Like the provident funds, the apex court also made a significant contribution to the Employees' State Insurance Act 1948(EC Act) when it ruled that factories belonging to local authorities are subject to its provisions under section 1(4) unless a governmental exemption is specifically granted

iv. Another major contribution of the apex Court lies in defining the criteria for wage and benefit revisions.is to provide the criteria for revision of wages and other facilities. Thus, the establishment for industrial adjudicator is industry-cum-region, which necessitates comparing prevailing compensation and benefits with similarly situated industrial units within the same geographical area. Financial capacity of the employer is a significant factor in determining the comparability test.It is also a significant factor in determining comparability. Furthermore, the Supreme Court has adopted a policy of non-interference by holding that High Courts should generally refrain from exercising writ jurisdiction under Article 226 of the Constitution in cases involving disputed factual questions requiring witness testimony and evidence analysis.

v. Like the Supreme Court, High Courts have made a significant contribution in the arena of social security and minimum standards of employment. Let us examine them.

(a) The Calcutta High Court in *Santosh Choudhary&Associates*v. *Employees State Insurance Corporation*[28] classified chartered accountant firms as professional, not commercial, establishments, thus rendering their employees ineligible for ESI scheme benefits.

(b) The Bombay High Court in *Air India Charter Ltd* v. *Tanja Glusica & Ors* decided an extremely important issue under the EC Act in the case of a foreign national employed by Air India Charter Ltd by holding that *the* interest is liable to be paid in default of deposit of the admitted liability within a period of one month from the date of the accident. Further, the payment of interest is not suspended till adjudication of the claim under section 19 of the EC Act.

(c) The sensitivity and human approach have been displayed by the Punjab and Haryana High Court in Sant *Kumar v. General Manager, Northern Indian Railway and others.*While acknowledging the protective aims of both the EC Act and the Rights of Persons with Disabilities Act, 2016, the court directed the release of compensation under the Workmen's Compensation Act, 1923 (now repealed and replaced by the EC Act) without adjusting it against salary payable during a supernumerary period. The court clarified that the petitioner was entitled to salary until the supernumerary period but not thereafter due to non-joining.

(d) The Bombay High Court in *Indian Institute of Technology, Bombay* v. *TanajiBabaji Lad and Ors*adopted a worker-centric stance by ruling that contract workers are entitled to gratuity regardless of their employment status. This judgment aims to prevent institutions from circumventing their legal obligations through outsourcing and sets an important precedent for future cases involving contract labour.

(e) The Madras High Court in *MRB Nurses Empowerment Association* v. *The Principal Secretary and Ors*adopted a beneficial approach by holding that section 27 of the Maternity Benefit Act, 1961, governs employees' eligibility for maternity benefits, overriding any inconsistent provisions in other laws, contracts, or service conditions that deny or offer lesser benefits.

(f) The High Court of Jharkhand in *Deepak Dokania*v. *The State of Jharkhand*[29] emphasized the responsibilities of workers regarding safety. The court held that factory occupiers or managers would not be prosecuted under the Factories Act, 1948, when a worker is injured in an accident despite being provided with and failing to use safety equipment.

28 2024 LLR 1193.

29 2024 LLR 163.