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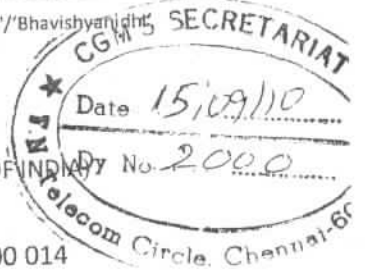
कर्मचारी भविष्य निधि संगठन /

EMPLOYEES' PROVIDENT FUND ORGANISATION

(श्रम एवं रोजगार मंत्रालय, भारत सरकार / MINISTRY OF LABOUR AND EMPLOYMENT, GOVT. OF INDIA)

क्षेत्रीय कार्यालय / Regional Office

37, रायपेट्टा हाई रोड, चेन्नै - 600 014 / 37, Royapettah High Road, Chennai - 600 014



CC-II/TN/RO/CHN / 50267 / Regl/2010

Date: 01.09.2010

BEFORE THE REGIONAL PROVIDENT FUND COMMISSIONER,
EMPLOYEES' PROVIDENT FUND ORGANISATION
REGIONAL OFFICE, CHENNAI: 600 014

PRESENT: **SHRI RAMAN DHANASEKAR,**
Regional Provident Fund Commissioner

In the matter of deciding under Para 26B of the Employees' Provident Fund Scheme, 1952, the date from which **Shri. Surinder Kumar, Junior Accounts Officer** working in M/s. Chennai Telephones (BSNL) having Code No. **TN/50267**, is entitled or required to become a member under the Employees' Provident Fund Scheme, 1952.

The above establishment has been covered under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and the Schemes framed thereunder.

ORDER

WHEREAS a grievance had been registered under Bhavishya Nidhi Adalat conducted during January 2010 from **Shri. Surinder Kumar, Junior Accounts Officer** and others about non-extension of membership from their pre-induction training period among other grievances.

AND WHEREAS the enforcement officer visited the Deputy General Manager, M/S.BSNL, Telecom Sub-Region, Flower Bazaar Exchange Building, V Floor, Chennai 600 001 on 09/02/2010 had issued an Inspection Report Part II vide letter no. TN/PF/50267/EO/2010 dated 09/02/2010 intimating various defects noticed on inspection for rectification. Further the Enforcement Officer had reported vide letter No. TN/50452/EO/Regl/2010 dated 11/2/2010 that with regard to the issue of non-extension of membership for the pre-induction period it was stated by the office of Deputy General Manager, M/S.BSNL, Telecom Sub-Region that the direct recruits working there are all posted to their office only after training period and no training is given at their office. In addition the Enforcement Officer also issued a show cause notice vide letter No. TN/50267/EO/Div-23/Regl/2010 dated 11/2/2010 addressed to the Deputy General Manager, M/S.BSNL, Telecom Sub-Region, Flower Bazaar Exchange Building, V Floor, Chennai 600 001 highlighting the defects noticed on inspection for rectification.

AND WHEREAS the Deputy General Manager, Maintenance, Southern Telecom Sub Region had vide letter No.DGMM/STSR/EPF Corres/2009-10 dated 16.02.2010 , dated 25.02.2010 and followed by 3rd March, 2010 had replied their stand to the observations communicated vide the above inspection report part II. On the issue of non-recovery of contribution for the pre-induction training nothing was seen to be stated therein.

AND WHEREAS for the purpose of resolving the doubt as to from which date **Shri. Shri.Surinder Kumar, Junior Accounts Officer** is entitled or required to become a member of the Employees' Provident Fund Scheme, 1952 as to whether from the date of joining the establishment for pre-induction training or from the date of joining the place of posting, both employer and employee including the office bearers of the concerned Union were advised to appear on 01.07.2010 either in person or through an authorised representative to provide them with an opportunity as stipulated under Section 26B of the Act before resolving the above doubt.

AND WHEREAS Shri. K. Satish Babu, DGM(Maintenance), Shri.Ponnuswamy, DGM(Finance), Shri.Kamalasekar DGM(Corporate Accounts), Shri.H.Prasad, SAO and Shri.S.Ganesh JAO (STR) had appeared from Southern Telecom Region/Tamil Nadu Circle.

AND WHEREAS Shri. Surinder Kumar, Junior Accounts Officer was also present.

AND WHEREAS Shri.Sashi and Shri.Jayaseelan Enforcement Officers were also present.

AND WHEREAS Shri.K.Satish Babu had stated that the candidates will be imparted a training of 14 weeks in their field of training and they are required to clear the exams and on successful completion of the training they would be given an appointment on probation. After successful completion of probation, They would be appointed on regular basis. During the training period, the candidates would be given hostel facility and a stipend would be given for their subsistence. The Provident Fund contribution would start on the date of appointment on probation. Shri. G.Kamalasekar, had added that the training is also part of a selection process. However, this training period would be taken as qualifying service, in case the official is appointed on a regular basis.Shri.Satish Babu had also submitted a copy of service register in respect of Shri.Surinder Kumar to show that his service has started only after successful completion of training. The other representatives of BSNL also accepted the above and confirmed.

AND WHEREAS Shri.Surinder Kumar, Junior Accounts Officer had argued that the appointment, posting and confirmation is immaterial under EPF & MP Act, 1952. The only requirement is employment, either directly or through a contractor. The training was conducted in three phases. The first training is phase I, which is the pre-Induction training, and as per the definition of employee under Section 2(f) of the above Act, even training period would be taken. He further added, that such training period is included for purpose of increment and purpose of gratuity under payment of gratuity Act, 1972. He further stated that he has not been covered by the apprentices Act, 1961 or the standing orders, and that, he is an employee under Section 2(f).

AND WHEREAS Shri. Shilohu Rao had stated that the above training is to be termed as 'duty' as per Fundamental Rules 9(6)(b)(2) which is applicable to Junior Telecom Officer/Junior Accounts Officer in view of Memorandum of Understanding signed between Government of India & BSNL. The training period will be counted for increment, promotion, for eligibility for departmental exams.

AND WHEREAS the representatives of BSNL stated that these people i.e. Junior Telecom Officer/Junior Accounts Officer were not employees and their actual employment starts only on completion of training period on appointment of probation.

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AND WHEREAS Shri. Jayaseelan, Enforcement Officer had stated that the Provident Fund contributions are to be made for the pre-induction period as this period is counted for promotion, increment etc. These trainees are to be considered as employee under Section 2(f) of the Act, as they are not an apprentice engaged under Apprentices Act, 1961 or standing orders of the establishment. Shri. Sashi, Enforcement Officer had agreed on the above views.

AND WHEREAS The representatives of BSNL had stated that these trainees are not apprentices under Apprentices Act, 1961 as they had not been registered and they are required to verify with their Corporate Office about the existence of a standing orders if any.

As per Section 2(f) of the EPF & MP Act, 1952 "employee" means any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an establishment and who gets his wages directly or indirectly from the employer, and includes any person, -

- iii. Employed by or through a contractor in or in connection with the work of the establishment;
- iv. Engaged as an apprentice, not being an apprentice engaged under the Apprentices Act, 1961 (52 of 1961) or under the standing orders of the establishment;

From the above definition it is very clear that even apprentices, subject to the above exclusions, are employees for the purposes of this Act. Further, the representatives of the M/s. BSNL had not provided any proof that these trainees are apprentices covered under the Apprentices Act, 1961 or the M/s. BSNL has any standing orders. It is clear from the depositions made by the representatives of the M/s. BSNL that they consider the training period for the purposes of qualifying service as well as for the purpose of annual increment. Moreover, such period is also considered as qualifying service for the purposes of the Gratuity Act, 1972. Being so, it is clear that M/s. BSNL for the purpose of commencement of PF contributions, has inadvertently considered these newly recruited JTOs similar to their earlier employees (recruited while M/s. BSNL was under Department of Telecommunications and accordingly were governed by the rules of FR&SR, DoPT instructions and other rules applicable for Government Employees) and accordingly had so far commenced the PF contributions only from the date on which they were actually posted in their regular place of duty. Whereas, these JTOs are governed by the EPF & MP Act, 1952 and as per the definition of employee under Section 2(f) of the Act, their membership would need to commence from their date of joining in the pre-induction training itself, which incidentally is considered as their date of joining service for the purposes of determining their qualifying service as well as for the increment calculations.

Moreover, as per Nazeena Traders (Private) Limited V. The Regional Provident Fund Commissioner – 1966 (1) LJ.334: AIR .1965 AP.200:1965(2) An.W.R.326 it was held that **the Employees Provident Funds and Miscellaneous Provisions Act of 1952 is a beneficial legislation enacted as a measure of social justice and should be construed liberally so as to confer benefit on the employees to the maximum extent.** As per Balbir Kaur and another v. Steel Authority of India ., and others; T.K.Meenakshi (Smt) and another v. Steel Authority of India Limited., and others - 2000 (6) SCC. 493: AIR.2000 S.C. 1596 it was held that **The Employees Provident Funds and Miscellaneous Provisions Act of 1952 is a beneficial piece of legislation and can amply be described as a social security Statute. The object of the Act is to ensure better future of the employee concerned on his retirement and for the benefit of the dependants in case of his earlier death** and as per the Regional Provident Fund Commissioner, Punjab v. Shibu Metal Works _ 1965(1) LJ.473 it was held that **In construing the provisions of the Act, if two views are reasonably possible, the courts should prefer the view which helps the achievement of the object though for such purpose the straining of the words to an unreasonable degree is not proper.** Further, as per Otis Elevator Employees' Union, Southern Region and others v. Union of India and others – 2003(99)FLR.1179: 2004 (1) LJ.217: 2004 (1) LLN.450:2004 LLR.63: 2004 AIR.SC.3264 it was held by the two members bench of the Supreme Court that **this scheme is for the welfare of the employees, and the same cannot be held to be violative of the Constitution.**

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Now therefore, I, RAMAN DHANASEKAR, Regional PF Commissioner, in exercise of the powers conferred on me under para 26B of the Employees' Provident Fund Scheme, 1952, and keeping in view the submissions made by both the parties read with the above broad principles held by various judicial forums resolve that **Shri. Surinder Kumar, Junior Accounts Officer** and other similarly placed employees working in M/s.Chennai Telephones (BSNL) having Code No.TN/50267, are entitled to become members under the Employees' Provident Fund Scheme, 1952 & other schemes from their individual date of joining or reporting for their pre-induction training and accordingly their contributions are to be regulated. The contributions in respect of both the employee and employer due for this period need to be worked out and remitted forthwith.

Please note that all belated remittances will attract levy of damages under Section 14B of the Act, on a graded scale depending upon the period of delay besides levy of simple interest at the rate of 12% per annum as per Section 7Q of the Act.

In case if you fail to remit the above balance amount as per the above order within 15 days of receipt of this order, action will be initiated to determine the said dues under Section 7A of the EPF & MP Act, 1952 without any further notice. Besides, action will also be initiated to file complaints in the Court of Law as per Section 14 of the Act. These actions will be without prejudice to any other action that may be initiated under the provisions of law for which the Establishment has rendered itself liable.

Issued under my seal and signature on the 1st day of September, 2010.



To

Shri. S. Raghavan
The Chief General Manager Maintenance,
Southern Telecom Region, BSNL,
11-Link Road, Guindy,
Chennai-600 032.

✓ **Shri.A.Subramaniam**
The Chief General Manager (Telecom),
82, Anna salai,
Chennai.600 002.

Copy to:

Shri. Surinder Kumar, JAO,
Flat No.B/SI, Temple View Apartments,
2 Sannadhi Street, Villivakkam,
Chennai – 600 049.

Shri.S.S. Karthikeyan,JTO,
Circle Secretary, AIGETO, A,
No.7, Anna Street,Dr.R.K.Nagar,
Kathirkaman,
Pondicherry 605 009.

(RAMAN DHANASEKAR)

REGIONAL PROVIDENT FUND COMMISSIONER

RAMAN DHANASEKAR
Regional Provident Fund Commissioner-II
Employees' Provident Fund Organisation
37, Royapettah High Road,
Chennai - 600 014.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.06.2011

CORAM

THE HONOURABLE MR. JUSTICE J. CHANDRA

W.P.Nos.21520, 21782 and 21783 of 2010 and
M.P.Nos.1,1,1 and 2 of 2010

Thiruvananthapuram Nigam Ltd.,
Chennai Telephones,
Rep. by its Chief General Manager,
No. 70, Purasawalkam High Road,
Chennai - 600 010.

Filed for admission
W.P. Nos. 21520, 21782 and 21783

Thiruvananthapuram Nigam Ltd.,
Mandil Nagar Circle,
Rep. by its Chief General Manager,
No. 30, Anna Salai, Chennai - 600 002.

Filed for admission
W.P. Nos. 21520, 21782 and 21783

Thiruvananthapuram Nigam Ltd.,
Southwest Telecom Region (Maintenance)
Rep. by its Chief General Manager,
No. 11, Kank Road, Ganapathy Colony,
Chennai - 600 032.

Filed for admission
W.P. Nos. 21520, 21782 and 21783

Vis.

1. Union of India,
Rep. by Secretary to Government,
Ministry of Labour and Employment,
New Delhi.

2. Employees' Provident Fund Organisation,
Rep. by Regional Provident Fund Commissioner - II,
Employees' Provident Fund Organisation,
37, Royapettah High Road, Chennai - 600 014.

3. The Regional Provident Fund Commissioner - II,
Employees' Provident Fund Organisation,
37, Royapettah High Road,
Chennai - 600 014.

Filed for admission
W.P. Nos. 21520, 21782 and 21783

4. M. J. P. Shilohu Rao
5. P. Kannan
6. K. Senthil Kumar
7. V. S. Chokkalingam
8. S. S. Sathyanarayanan

9.K.Sandeep

....Respondents 4 to 9 in
W.P.No.21520/2010

10.Surinder Kumar

11.S.S.Karthikeyan

...Respondents 4 and 5 in
W.P.Nos.21782 and 21783/2010

Writ Petitions preferred under Article 226 of the Constitution of India praying for the issue of a writ of certiorari, to call for the records in CC-II/TN/RO/CHN/50452, 50267 and 50267/Reg1/2010 respectively on the file of the third respondent and quash the impugned order dated 01.09.2010 passed by the respondent therein.

For Petitioners : Mr.Manoj Sreevatsan (in all Wps)

For Respondents : Mr.P.V.Sudakar, CGSC for R1
(in all Wps)

Mr.Vibhishanan for R2 and R3
(in all Wps)

Ms.V.Srividya for R4,R5,R6 and R9
(in W.P.No.21520/2010)

Mr.V.P.Raman for R4 and
Ms.C.S.Monica for R5 in
(W.P.Nos.21782 & 21783/2010)

C O M M O N O R D E R

In these three writ petitions, the question that arises for consideration is whether the pre-induction training period undergone by the petitioners in the Bharat Sanchar Nigam Limited (for short BSNL) is covered for the purpose of deducting subscription towards Employees Provident Fund in terms of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (for short EPF Act)?

2.When the third respondent had conducted an Adalat in respect of provident fund matters during January, 2010, some of the contesting respondents who are working either as Junior Telecom Officers or Junior Accounts Officers, made a grievance that their training period was not counted for the purpose of coverage under the Act and therefore, they were aggrieved by the non coverage. The said matter was taken for giving ruling by the third respondent in terms of Paragraph 26B of the Employees' Provident Fund Scheme, 1952. Under the said paragraph, if any question arises whether an employee is entitled or required to become or continue as a member or as regards the date from which he is so entitled or required to become a member, a decision of the Regional Commissioner was made final. But proviso to the said

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paragraph made that no such decision can be rendered unless both the employer and employee were heard on the said issue.

3. After taking notice on the complaint projected by the contesting respondents, the Regional Provident Fund Commissioner gave notice to the parties. After hearing both sides, he has passed an order, dated 1.9.2010 and directed the contesting respondents and other similarly placed employees working in M/s. Chennai Telephones (BSNL) to be made as members of EPF Scheme and other schemes from the date on which the individuals joined or reported for their pre-induction training and that their contribution should be regulated accordingly. The contribution in respect of both employees and employer due for that period was to be worked out and remitted immediately. In case, no remittance was done, the petitioner BSNL was informed that it will attract damages and consequential interest on delayed payment.

4. When the first writ petition came up on 23.9.2010, notice was directed to be taken by the official respondents and private notices were ordered to the contesting private respondents. Thereafter, the BSNL filed subsequent two writ petitions. In that cases also, similar orders were made on the same day. Pending the writ petition, it was recorded that for a period of two weeks, no coercive steps will be taken by the department. Aggrieved by the said order, one of the contesting respondent filed M.P.No.2 of 2010 seeking to vacate the interim direction. On behalf of the PF Department, a counter affidavit, dated 4.1.2011 was also filed in all the three writ petitions. The fourth respondent in W.P.Nos.21782 and 21783 of 2010 by name Surinder Kumar had filed a common counter affidavit, dated 20.11.2010 together with supporting typed set of documents.

5. In normal circumstances, the petitioner will be directed to file an appeal in terms of Section 7A to the EPF Tribunal if an order is passed under paragraph 26B of the EPF Scheme. But, however without going into the said controversy, this Court heard the matters on merits.

6. The contention made by Mr. Mani Sreevatsan, learned counsel appearing for the petitioner was that pre-induction training given to persons cannot be said to be coming within the term Section 2(f). The said person is not employed for any wages and for doing any kind of work manually or otherwise and that he also cannot be described as an apprentice. He also submitted that the JTOs and JAOs were trained in any one of their training centers. They never made to perform any duty on site. Even the work done on site by the trainees are purely for the purpose of equipping such trainees with necessary skills to enable them to clear the tests that are conducted at the end of the training to make them fit for appointment as JTOs or JAOs and that the same cannot be called as duty. The stipend paid to them cannot be equated with the wages or salary of regular employees and it is only for personal maintenance of the trainees. It is not a compensation for any productive work done for their employer.

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They will have no lien over the post for which they had applied. In case they failed in the test at the end of the training, they will be straight-away discharged. The training programme is clearly covered by the codified guidelines. The authorities did not take note of the judgment of the Supreme Court in Employees State Insurance Corporation Vs. The Tata Engineering and Locomotive Company Ltd. reported in (1975) 2 SCC 835.

7. Controverting the said submission, Mr. V.P. Raman, learned counsel appearing for the fourth respondent in W.P. Nos. 21782 and 21783 of 2010 submitted that the contesting respondents were recruited in terms of the recruitment rules. They were provided pre-induction training for a period from 16.2.2004 to 23.05.2004. The training was under the control and supervision of the Tamil Nadu Circle of BSNL. After completion of the training, they were directed to be posted in the Southern Telecom Region. They had also executed a bond and that medical fitness was also obtained from them. The pre-induction training was conducted in three phases. The EPF contribution was paid for the second and third phases. The so-called stipend paid to them was linked with their pay scales. For the purpose of EPF under the EPF Scheme, when it was extended to the contesting respondent, joint undertakings between the petitioner BSNL and the contesting respondents were also executed. In that undertaking, it was jointly agreed that the contribution will be paid from the date of joining the pre-induction training period. It is also stated that the contesting respondents are employees within a meaning of Section 2(f) of the EPF Act and they are not apprentices in terms of the Apprentices Act, 1961. Since they were recruited directly as employees of BSNL and only directed to undergo training for the purpose of later posting, that period cannot be diverted from the period which came subsequent to the regular posting.

8. It was further stated that FR 9(6)(b)(2) clearly states that the period of training will be treated as duty for the purpose of promotion, fixing increment, eligibility for departmental examination. It was further stated that the BSNL Employees' Gratuity Trust Rules provides for qualifying service. The definition of "qualifying service" as found in Rule 1(vii) reads as follows:

"Qualifying service" means the un-interrupted service rendered in the Company after completion of 18 years of age, excluding period of service rendered as apprentice or as casual but includes the period of training followed by regular appointment in the case of trainees. The period will also include service which was uninterrupted by authorized leave and cessation of work not due to any fault of the employee concerned."

In the context of the same, it was argued that there is no gain saying that the pre-induction training cannot be considered for the purpose of subscription of EPF Act.

9. Since the petitioners have referred to the judgment of the Supreme Court in *Tata Engineering and Locomotive Company Ltd.* case (cited supra) in support of their contentions as found in the affidavit, it is necessary to refer to the said judgment. That case arose out of Employees State Insurance Act (for short ESI Act). In the ESI Act, the definition of the term "employee" is found under Section 2(9). The Supreme Court has held that while the legislature has competence to enlarge the definition of the term "employee" even to include the apprentice, in the case of the ESI Act, the legislature did not make any amendment to include the term "apprentice" within a meaning of Section 2(9). The Supreme Court also took note of the fact that the term "workman" found under the Industrial Disputes Act, 1947 (for short ID Act) was cautiously worded and specifically included 'apprentices' also to come within the term under Section 2(s), but did not choose to do so in terms of Section 2(9) of the ESI Act. Therefore, the term "employee" under Section 2(9) will not include the apprentice. In paragraphs 8, 10 and 11, the Supreme Court had observed as follows:

"8. Again we find that where the Legislature intends to include apprentice in the definition of a worker it has expressly done so. For example, the Industrial Disputes Act, 1947, which is a piece of beneficial labour welfare legislation of considerable amplitude defines "workman" under Section 2(s) of that Act and includes apprentice in express terms. It is significant that although the legislature was aware of this definition under Section 2(s) under the Industrial Disputes Act, 1947, the very following year while passing the Employees' State Insurance Act, 1948, it did not choose to include apprentice while defining the word "employee" under Section 2(9) of the Employees' State Insurance Act, 1948. Such a deliberate omission on the part of the Legislature can be only attributed to the well-known concept of apprenticeship which the Legislature assumed and took note of for the purpose of the Act. This is not to say that if the Legislature intended it could not have enlarged the definition of the word "employee" even to include the "apprentice" but the Legislature did not choose to do so.

10. We may, therefore, turn to the definition of "employee" under Section 2(9) of the Act. So far as it is material, Section 2(9) reads as follows:

" 'Employee' means any person employed for wages in or in connection with the work of a factory or establishment to which this Act applies and—

(i) who is directly employed by the principal employer on any work of, or incidental or

preliminary to or connected with the work of, the factory or establishment, whether such work is done by the employee in the factory or establishment or elsewhere...."

It is clear that in order to be an employee a person must be employed for wages in the work of a factory or establishment or in connection with the work of a factory or establishment. Wages is defined under Section 2(22) and

"means all remuneration paid or payable in cash to an employee, if the terms of the contract of employment, express or implied, were fulfilled and includes any payment to an employee in respect of any period of authorised leave, lock-out, strike which is not illegal or layoff and other additional remuneration, if any, paid at intervals not exceeding two months, but does not include...."

11. From the terms of the agreement it is clear that apprentices were mere trainees for a particular period for a distinct purpose and the employer is not bound to employ them in their works after the period of training is over. During the apprenticeship they cannot be said to be employed in the work of the company or in connection with the work of the company. That would have been so if they were employed in a regular way by the company. On the other hand the purpose of the engagement under the particular scheme is only to offer training under certain terms and conditions. Besides, the apprentices are not given wages within the meaning of that term under the Act. If they were regular employees under the Act, they would have been entitled to additional remuneration such as daily allowance and other allowances which are available to the regular employees. We are, therefore, unable to hold that an apprentice is an employee within the meaning of Section 2(9) of the Act.
(Emphasis added)

10. The said judgment was pronounced on 08.10.1975. Subsequent to the said judgment, the Parliament had amended Section 2(9) of the ESI Act by Central Act 29/1989 with effect from 20.10.1989. In that amendment, it was stated that all apprentices, except the apprentices engaged under the Apprentices Act, 1961, are covered by the provisions of the Act. Therefore, the said judgment can have no relevance for coverages after 20.10.1989. Similarly, the definition of the term "employee" under Section 2(f) of the EPF Act was also amended. Under Section 2(f)(ii), the term "employee" includes person engaged as an apprentice but not being an apprentice engaged under the Apprentices Act, 1961. The amendment was made by the Central Act 33/1988 with effect from 1.8.1988. Therefore, after these two

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amendments, the definition of the terms "employee" found in the ESI Act and EPF Act are in paramateria with each other. Even assuming that in the traditional sense, the contesting respondents during the period of pre-induction training cannot be described as employees by the extended definition, but as per the definition of the term "employee", they are also covered. That was why the Supreme Court in Tate Engineering and Locomotive Company Ltd. case (cited supra) had stated that the legislature can always enlarge the definition of the term "employee" and can include "apprentices" also under the definition.

11.The definition being wide enough to cover the pre-induction training. It must also be noted that among the training period, for the second and third phases, the petitioners BSNL covered the contesting respondents for the purpose of the Act and that there is no reason why they should not be covered even for the first phase of training. As rightly contended by Mr.V.P.Raman, the fundamental rule took note of the training given before the regular appointment as "duty". In the joint agreement, the BSNL and the employees have agreed to cover the training period for the purpose of EPF.

12.The gratuity rule also provides for taking note of the said period as qualifying service for the purpose of granting gratuity. Therefore, it is too late for the BSNL to contend that the pre-induction training cannot be considered for the purpose of EPF Act. This Court vide its judgment in Sree Mangayarkarasi Mills (P) Ltd. Vs. The Assistant Provident Fund Commissioner reported in 2011 (1) CTC 851 has held that an apprentice, who is not apprentice under the Apprentices Act, is also covered by the EPF Act.

13.Therefore, there is no case made out to interfere with the impugned orders. Hence all the three writ petitions will stand dismissed. However, there will be no order as to costs. Consequently, connected miscellaneous petitions stand closed.

vvk

Sd/-
Asst. Registrar

//True Copy//


Sub Asst. Registrar

To

1.The Secretary to Government,
Union of India,
Ministry of Labour and Employment,
New Delhi.

bb0078400

2.The Regional Provident Fund Commissioner - II
Employees' Provident Fund Organisation,
Employees' Provident Fund Organisation,
37, Royapettah High Road, Chennai - 600 014.

3.The Regional Provident Fund Commissioner - II,
Employees' Provident Fund Organisation,
37, Royapettah High Road,
Chennai - 600 014.

+ 1 cc to Mr. V.P. Raman, Advocate SR No.35047

+ 1 cc to M/s. C.S. Monica, Advocate SR No.34888

+ 3 ccs to Mr. V. Vibhishanan, Advocate SR No.34658, 34657, 34656

+ 3 ccs to Mr. Manoj Srivatsan, Advocate SR No.34554,34554,34553

TS(CO)
SR/23.6.2011

ORDER IN
W.P.Nos.21520, 21782 and
21783 of 2010

bb0078401

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.03.2015

CORAM

THE HON'BLE MR. JUSTICE V. RAMASUBRAMANIAN
AND
THE HON'BLE MR. JUSTICE P.R. SHIVAKUMAR

W.A.Nos.463 to 465 of 2013

Bharat Sanchar Nigam Limited,
Chennai Telephones, rep. by its
Chief General Manager,
No.78, Purasawalkam High Road,
Chennai - 600 010.

... Appellant

Versus

1. Union of India, rep. by
Secretary to Government,
Ministry of Labour & Employment.
2. Employees' Provident Fund Organization
rep. by Regional Provident Fund Commissioner-II,
Employees' Provident Fund Organization,
37, Royapettah High Road, Chennai - 600 014.
3. The Regional Provident Fund Commissioner-II,
Employees' Provident Fund Organization,
37, Royapettah High Road, Chennai - 600 014.

... Respondents 1 to 3 in all W.As.

4. N.J.P. Shilothu Rao
5. P. Kannan
6. K. Senthilkumar
7. V.S. Chockkelingam
8. S. Jaikumar
9. K. Sandeep

... Respondents 4 to 9 in W.A.463/2013

4. Surinder Kumar
5. S.S. Karthikeyan

... Respondents 4 & 5 in W.A.464/2013
and W.A.No.465/2013.

Writ Appeals under Clause 15 of Letters Patent to set aside the order passed by the learned Single Judge in W.P.No.21520, 21782 and 21783 of 2010 dated 16.06.2011.

Writ Petitions praying to issue a writ of certiorari, to call for the records in CC-II/TN/RO/CHN/50452, 50267 and 50267/Regl/2010 respectively on the file of the third respondent and quash the impugned order dated 01.09.2010 passed by the respondent therein.

For Appellant : Mr.N.C.Ramesh, Senior Counsel
for Mr.P.Sidharthan

For Respondents-2&3 : Mr.V.Vibhushanan
in all the Ws

For 4th Respondent : Mr.V.P.Raman
in MA Nos.464 & 465 of 2013

R5 in all the Appeals : No Appearance

COMMON JUDGMENT

(Made by V.Ramasubramanian, J)

Bharat Sanchar Nigam Limited, has come up with the above writ appeals, questioning the correctness of the order passed by the learned single Judge in three writ petitions, challenging the validity of the determination made by the Regional Provident Fund Commissioner in terms of para 26B of the Employees Provident Fund Scheme, 1952.

2. We have heard Mr.N.C.Ramesh, learned Senior Counsel appearing for the appellants, Mr.V.Vibhushanan, learned counsel appearing for the Employees Provident Fund Organization and Mr.V.P.Raman, learned counsel appearing for the individual employees who are respondents.

3. The private respondents in these writ appeals, were provisionally selected for direct recruitment as Junior Telecom Officers or Junior Accounts Officers in Bharat Sanchar Nigam Limited, in the year 2001. By the proceedings of the Assistant General Manager dated 6.12.2001 and the like, all persons who were provisionally selected for direct recruitment, were sent for a Pre-Induction Training for a period of fourteen weeks. Thereafter, a test was conducted and almost all candidates, except those who had not passed the test, were regularly absorbed as Junior Telecom Officers or Junior Accounts Officers.

4. Upon coming to know that the Management of Bharat Sanchar Nigam Limited, enrolled the employees as members of the Employees Provident Fund Scheme, only from the date of completion of the orientation training, the Regional Provident Fund Commissioner initiated an enquiry in terms of para 26B of the Employees Provident Fund Scheme, 1952. After giving opportunities to the Management as well as employees, the Regional Provident Fund Commissioner passed an order holding that they are liable to be covered from the date on which they were sent for Pre-Induction Training.

5. Aggrieved by the said order of the Regional Provident Fund Commissioner, the Management of Bharat Sanchar Nigam Limited, filed a batch of writ petitions in W.P.Nos. 21520, 21782 and 21783 of 2010. These writ petitions were dismissed by the learned Judge by a common order dated 16.6.2011. Aggrieved by the said order, the Management has come up with these writ appeals.

6. The main plank of the argument of Mr.N.C.Ramesh, learned Senior Counsel appearing for the appellants is that the period of training undergone by the employees was actually a Pre-Induction Training and that therefore, the said period cannot be counted for the purpose of enrolling them as members of the Provident Fund Scheme. In this regard, the learned Senior Counsel relies upon the decision of the Supreme Court in Haryana Power Generation Corporation vs. Harkesh Chand [2013 (2) SCC 29].

7. We have carefully considered the above submissions.

8. At the outset, it should be pointed out that the decision of the Supreme Court in Haryana Power Generation Corporation, related to the engagement of apprentices under the Apprentices Act. In so far as the Employees Provident Fund Scheme is concerned, the very definition of the expression "employee" under Section 2(f), includes within its purview, all Apprentices other than those Apprentices covered by the Apprentices Act. The definition to the expression "employee" in Section 2(f) of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 reads as follows:-

"Section 2(f):- "employee" means any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an establishment and who gets his wages directly or indirectly from the employer, and includes any person,--

- (i) employed by or through a contractor in or in connection with the work of the establishment;
- (ii) engaged as an apprentice, not being an

apprentice engaged under the Apprentices Act, 1961 (52 of 1961) or under the Standing Orders of the establishment."

9. Therefore, fundamentally, the provisions of the Employees Provident Fund and Miscellaneous Act, 1952 includes every person engaged as an Apprentice, within the purview of the definition to the expression "employee", except those who are Act Apprentices.

10. It is not the case of the appellant Management that the employees concerned in these cases were Apprentices under the Apprentices Act, 1961. On the contrary, the orders issued while sending them for Orientation Training makes it clear that these employees were: (a) provisionally selected and (2) directly recruited as Junior Telecom Officers or Junior Accounts Officers. In such circumstances, the contention that the employees are excluded from the purview of the Act, stares at the face of the definition under Section 2(f) of the Employees Provident Fund and Miscellaneous Act, 1952.

11. As rightly pointed out by the learned Judge, the employees in these cases, were not only recruited directly after a process of selection, but their period of training was also included both for the purpose of gratuity as well as for the purpose of promotion. This fact was recorded by the Regional Provident Fund Commissioner himself in his order dated 1.9.2010. The learned Judge has also noted that under fundamental Rule 9(6)(b)(2), the period of training undergone by these employees are to be treated as duty for the purpose of promotion.

12. In addition, the appellant Management has a set of rules governing the question of gratuity. These rules are known as BSNL Employees' Gratuity Trust Rules. These rules define the expression "Qualifying Service" in Rule 1(vii) to include the period of training followed by regular appointment. This definition reads as follows:-

"Qualifying Service" means the un-interrupted service rendered in the Company after completion of 18 years of age, excluding period of service rendered as apprentice or as casual but includes the period of training followed by regular appointment in the case of trainees. The period will also include service which was uninterrupted by authorized leave and cessation of work not due to any fault of the employee concerned."

13. Therefore, there are three things that make the cases on hand stand out from the one decided by the Supreme Court in Maryana Power Generation Corporation. They are:

- (1) the very definition of the expression "employee" under Section 2 (f) of the Act includes these persons;
- (2) these persons are entitled to count the period of training both for the purpose of increments as well as for the purpose of promotion; and
- (3) these employees are also entitled to take the period of training as part of "qualifying service" for the purpose of gratuity.

14. Apart from all the above, the appellant Management themselves have counted the entire period of the second and third phase of training, which commences after the expiry of the initial period of fourteen weeks training, as the period during which the employees are liable to become the members of the Scheme. Therefore, there is no rhyme or reason for the Management not counting the first phase of training. Thus, we find no justification for interfering with the order of the learned Judge. As a matter of fact, the Appellants ought not to have come up with the writ appeals at all. In any case, since the Employees Provident Fund Organization has got teeth in terms of other provisions, we are not imposing any costs upon the appellants. We simply dismiss the writ appeals, leaving it open to the Employees Provident Fund Organization to proceed further in terms of Section 7A of the Employees Provident Fund and Miscellaneous Act, 1952. There will be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

To

1. The Secretary to Government,
Union of India,
Ministry of Labour & Employment,
New Delhi.

2. The Regional Provident Fund Commissioner-II,
Employees' Provident Fund Organization,
37, Royapettah High Road,
Chennai - 600 014.

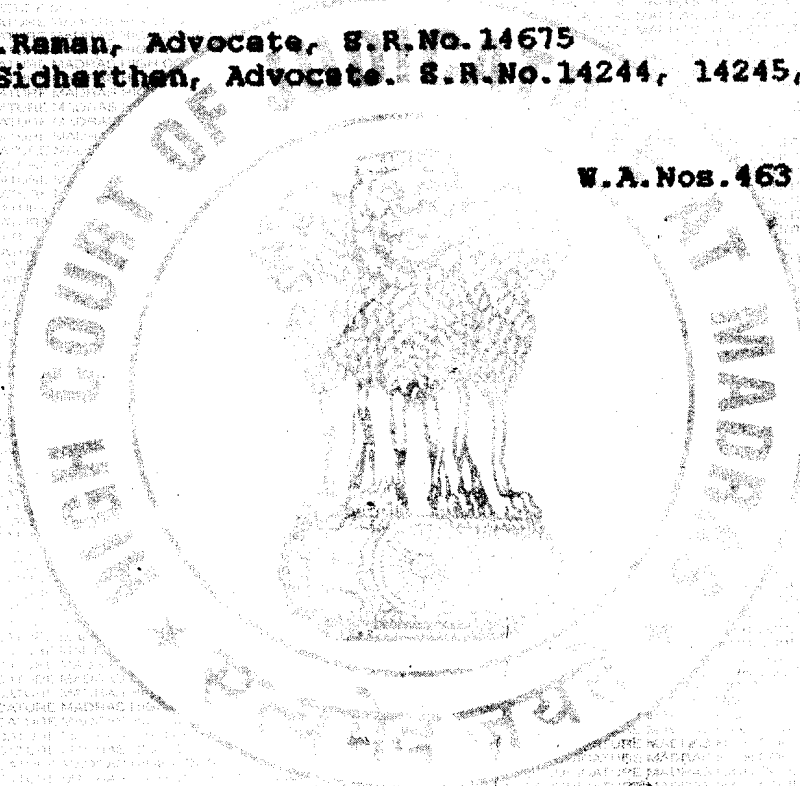
3. The Regional Provident Fund Commissioner-II,
Employees' Provident Fund Organization,
37, Royapettah High Road,
Chennai - 600 014.

+1cc to Mr.V.P.Raman, Advocate, S.R.No.14675

+6cc to M/s.P.Sidharthan, Advocate. S.R.No.14244, 14245, 14246.

W.A.Nos.463 to 465 of 2013

MC(CO)
CA(08/04/2015)



AW 101212