

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

WPA 11596 of 2011

Regional Provident Fund Commissioner and another

Vs.

**Employees Provident Fund Appellate Tribunal, Ministry of Labour &
Employment Government of India & Ors.**

For the Petitioners : Ms. Aparna Banerjee.

For the Respondents : None.

Hearing concluded on : 30.01.2026

Judgment on : 20.02.2026

Shampa Dutt (Paul), J.:

1. The writ petitioners being the statutory authorities working under the Employees Provident Fund Organisation and discharging their statutory functions under the Employees Provident Fund and Miscellaneous Provisions Act, 1952 and the scheme framed thereafter, have filed the instant writ petition challenging the order dated 24th March, 2011 passed by the learned Employees' Provident Fund Appellate Tribunal, New Delhi in ATA No. 497 (15) of 2009 under Section 71 of the Employees Provident Fund and

Miscellaneous Provisions Act, 1952. The learned Tribunal has allowed the appeal being ATA No. 497(15) of 2009 filed by the respondent no. 2, M/s. Klar Sehen Pvt. Ltd., the appellate tribunal set aside the order passed by the petitioners/provident fund authorities under Section 7A of the Employees Provident fund authorities under Section 7A of the Employees Provident Fund and Miscellaneous Provisions Act, 1952.

- 2.** The petitioners on 7th November, 2006 received a complaint against the respondent no. 2, from the secretary of AAL West Bengal Sales Representatives Union, stating that respondent no. 2 had deprived the trainee medical representatives working in respondent company from the legitimate right of becoming a member under the Employees Provident Fund and Miscellaneous Provisions Act, 1952.
- 3.** As such Enforcement Officers were appointed to inspect the office of the respondent no. 2 and the said Enforcement Officers submitted a report on 21st December, 2006.
- 4.** The Petitioners on the basis of the said report dated 29th December, 2006 initiated the proceedings under Section 7A of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 and summon was issued to the respondent company on 12th March, 2007.
- 5.** Pursuant to the said summon, hearing under Section 7A of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 took place on several dates and after giving several opportunity of hearing to the respondent company, an order under Section 7A of

the Employees Provident Fund and Miscellaneous Provisions Act, 1952 was passed on 6th February, 2009, by holding that the trainee medical representatives working in the respondent company were neither apprentices under the Apprentice Act of 1961 or under standing orders and as such they had to be considered as “employee” within the meaning of Section 2(f) of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 and paragraph 26 (1) (a) of the Employees Provident Fund Scheme, 1952 and would be entitled for all benefits under the Employees Provident Fund and Miscellaneous Provisions Act, 1952.

- 6.** An amount of Rs. 18, 74, 239/- as the total dues in respect of the said trainee medical representatives working under the respondent no. 2 for the period 5/1999 to 3/2007 was demanded.
- 7.** The respondent no. 2 did not submit the assessed amount of Rs. 18, 74, 239/- and as such the petitioners passed an attachment order to the banker of the respondent company under Section 8F of the of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 on 6th March , 2009 and 19th March, 2009.
- 8.** The respondent company in the mean time filed an application under Section 7B of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 for review of order dated 6th February, 2009, passed under Section 7A of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 pursuant to the leave granted by the Hon’ble High Court, Calcutta by an

order dated 23rd March, 2009 in writ petition being WPA No. 5303 (W) of 2009, filed by the respondent company.

- 9.** The petitioners after giving reasonable opportunity of hearing to the respondent company rejected the review application by an order dated 25th June, 2009, by upholding the order passed under Section 7A of the Employees Provident Fund and Miscellaneous Provisions Act, 1952.
- 10.** An order under Section 7Q of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 was passed on 5th August, 2009, for the delay in making payment of the amount of Rs. 18, 74, 239/- assessed under Section 7A of the Employees Provident Fund and Miscellaneous Provisions Act, 1952, for the period 5/1999 to 3/2007.
- 11.** The respondent company filed an appeal under Section 71 of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 before the Employees Provident Fund Appellate Tribunal, New Delhi being ATA No. 497 (15) of 2009 and in the said appeal, the impugned order was passed wherein the Appellate Tribunal set aside the order passed under Section 7A of the EPF Act, 1952.
- 12.** Hence the writ application, on the ground that the learned Tribunal failed to consider that there was no standing order of the respondent company in respect of the said trainee medical representatives and as such the said trainees were the employees as per the definition of 'employee' as per Section 2 (f) of the EPF Act.

- 13.** It is further stated that the respondent company had filed a writ petition, being WPA No. 10858 of 2011 before the Hon'ble High Court, Calcutta against the petitioners to get back the amount of Rs. 18, 74, 239/-, the amount assessed under Section 7A of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 and already recovered by the petitioners by way of attachment orders passed under Section 8F of the Employees Provident Fund and Miscellaneous Provisions Act, 1952. The said writ petition has been dismissed for default on 20th June, 2025, as no one appeared on behalf of the writ petitioner.
- 14.** On hearing the learned counsel appearing for the parties and on perusal of the materials on record including the impugned order, it appears that the case of the respondent before the tribunal was that the appellant was engaging the employees in the guise of trainees, who were doing the work of a regular employee, so they cannot be treated as trainees.
- 15.** Vide his order dated 06.02.2009 the Regional P.F. Commissioner (Compliance) Regional Office, Kolkata, held:-
- “.....In the present case, however it is clear that the trainees under question are neither apprentices under the Apprentices Act, 1961 or under standing orders of the establishment. Hence, they cannot be called apprentices to whom the protection shall apply and they will have to be considered "employee" within the meaning of Section 2(f) of the EPF & MP Act, 1952 and Para 26(1)(a) of EPF Scheme 1952 and eligible for all benefits provided under EPF & MP Act, 1952.....”*
- 16. In appeal the EPFAT vide order dated 24th March, 2011, held:-**

“4. It is contended that the trainees are not the employee of the appellant. Reliance is placed in the case of *RPFC vs. M/s. Central Aercanut & Coca Marketing and Processing Coop. Ltd.* reported in AIR 2006 Supreme Court at page 971.

5. The learned advocate for respondent supported the impugned order.

6. Section 2(f) defines the word ‘employee’ as follows:-

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;”

The perusal of the definition makes it clear that person appointed under Apprenticeship Act or under a Certified Standing Order cannot be treated as employee of the establishment. In the absence of Certified Standing Order, the Model Standing Order will govern the case and there is no dispute to this position. Trainee is a person who has no right to work and is under no obligation to accept the job if offered. **In the case of of Regional PF Commissioner Vs. M/s. Central Aercanut and Coco Marketing & Processing Corporation Ltd.,** the lordship held that, “the trainees were apprentice engaged under the standing order of the establishment. Since, the trainees are treated as apprentice, the appellant is not liable to pay the PF for them.” In the case in hand, the report of the Enforcement Officer reveals **that the persons concerned were the “trainees” and there is no finding showing that they are doing the work of regular employee.**

7. Thus, in view of the discussion held above, the order of the authority cannot be sustained. Hence ordered, the appeal is allowed. The order of the EPF Authority is hereby set aside. Copy of order be sent to the parties and the file be consigned to record room.

Sd/-

PRESIDING OFFICER, EPFAT”

17. In ***The Regional Provident Fund Commissioner, Mangalore vs. M/s. Central Arecanut & Coca Marketing and Processing Co-op. Ltd., Mangalore (2006) 2 SCC 381***, the Supreme Court held:-

“.....Undisputedly, the respondents are trainees. The question as rightly noted by the Division Bench is whether an apprentice can be deemed to be an employee within the meaning of Section 2(f) of the Act in the case at hand.

Section 12-A of the Standing Orders Act, inter-alia provides as follows:

"12A. Temporary application of model standing orders. (1) Notwithstanding anything contained in Sections 3 to 12, for the period commencing on the date on which this Act becomes applicable to an industrial establishment and ending with the date on which the standing orders as finally certified under this Act come into operation under Section 7 in that establishment, the prescribed model standing orders shall be deemed to be adopted in that establishment, and the provisions of section 9, sub-section (2) of section 13 and section 13-A shall apply to such model standing orders as they apply to the standing orders so certified.

(2) Nothing contained in sub-section (1) shall apply to an industrial establishment in respect of which the appropriate Government is the Government of the State of Gujarat or the Government of the State of Maharashtra."

From a bare reading of Section 12-A it is manifestly clear that until the Standing Orders are finally certified and come into operation, the prescribed model standing orders shall be deemed to be adopted in the concerned establishment. The Model Standing Orders prescribed under Rule 3(1) of the Industrial Employment (Standing Orders) Central Rules, 1946 (in short the 'Central Rules') are contained in Schedule I to the said Rules. Standing Order No.2 thereof classified workmen as follows:

- 1) Permanent

- 2) Probationers
- 3) badlis
- 4) temporary
- 5) casual
- 6) apprentices.

'Apprentice' is defined in clause (g) of Standing Order No.2 as follows:

"An 'apprentice' is a learner who is paid an allowance during the period of his training."

The Apprentices Act defines an 'apprentice' as follows:

"2(aa): 'apprentice' means a person who is undergoing apprenticeship training in pursuance of a contract of apprenticeship."

In the present case, admittedly the Standing Orders were not at the relevant point of time certified. Therefore, in terms of Section 12-A of the Standing Orders Act, the Model Standing Orders are deemed to be applicable. Section 2(f) of the Act defines an employee to include an apprentice, but at the same time makes an exclusion in the case of an apprentice engaged under the Apprentices Act or under the Standing Orders. Under the Model Standing Orders an apprentice is described as a learner who is paid allowance during the period of training.

In the case at hand, trainees were paid stipend during the period of training. They had no right to employment, nor any obligation to accept any employment, if offered by the employer. Therefore, the trainees were 'apprentices' engaged under the 'Standing Orders' of the establishment.

Above being the position, it cannot be said that the concerned 45 trainees were employee in terms of Section 2(f) of the Act. In other words, an apprentice engaged under the Apprentices Act or under the Standing Orders is excluded from the definition of an 'employee' as per Section 2(f) of the Act....."

18. In the present case, the complainant was a “trainee” and as such in view of the judgment in ***Coca Marketing (Supra)***, the impugned order dated 24th March, 2011, passed by the learned employees provident fund appellate tribunal, New Delhi in ATA No. 497 (15) of 2009, being in accordance with law, calls for no interference.
19. **WPA 11596 of 2011 is disposed of.**
20. Connected application, if any, stands disposed of.
21. Interim order, if any, stands vacated.
22. Urgent photostat certified copy of this Judgment, if applied for, be given to the learned Advocates for the parties on the usual undertakings.

(Shampa Dutt (Paul), J.)