

A THE REGIONAL PROVIDENT FUND COMMISSIONER, MANGALORE

v

M/S. CENTRAL AERCANUT AND COCA MARKETING AND
PROCESSING CO-OP LTD., MANGALORE

JANUARY 30, 2006

B

[ARIJIT PASAYAT AND R.V. RAVEENDRAN, JJ.]

Labour Laws:

C *Employees Pr.vident Fund & Misc. Provisions Act, 1952—Section 2(f)—'Employee'—Definition of—Apprentice engaged under the Apprentices Act or under the Standing Orders excluded from the definition—Concerned trainees were paid monthly stipend during training and had no right to employment, nor any obligation to accept employment, if offered by employer—*

D *Therefore, they were 'apprentices' engaged under the 'Standing Orders' of the establishment and not employee in terms of S.2(f) of the Act—Hence not entitled to provident fund—Apprentices Act, 1961—Section 2(aa)—Industrial Employment (Standing Orders) Act, 1946—Section 12A—Industrial Employment (Standing Orders) Central Rules, 1946—Standing Order No. 2, clause (g).*

E

Industrial Employment (Standing Orders) Act, 1946—Section 12-A—Standing Orders not certified in the concerned establishment—Hence, model Standing Orders prescribed under the Rules deemed applicable—Industrial Employment (Standing Orders) Central Rules, 1946—Rule 3(1) and Schedule 1 to the Rules.

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45 persons were selected to undergo training at the Chocolate factory of the Respondent on a monthly stipend. It was clearly stipulated that the said 45 trainees were not entitled to claim any right of appointment after completion of training period and that any trainee leaving the factory within one year was required to refund the amount received by him as stipend. High Court held that the said 45 trainees were not covered by the Employees Provident Fund & Misc. Provisions Act, 1952 as they cannot be called "employees" as defined under Section 2(f) of that Act.

In appeal to this Court the question which arose for consideration is

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whether an apprentice can be deemed to be an employee within the meaning A of Section 2(f) of the Employees Provident Fund and Misc. Provisions Act, 1952.

Dismissing the appeal, the Court

HELD: 1.1. From a bare reading of Section 12-A of the Industrial B Employment (Standing Orders) Act, 1946 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 are contained in Schedule 1 to the said Rules. 'Apprentice' is defined in clause (g) of Standing Order No.2. [896-B, E]

1.2. In the present case, 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. [896-F] D

2.1. Section 2(f) of the Employees Provident Fund & Misc. Provisions 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. [896-G] E

2.2. 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. F [896-H; 897-A]

2.3. Hence, it cannot be said that the concerned 45 trainees were employee in terms of Section 2(f) of the Employees Provident Fund & Misc. Provisions 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 Employees Provident Fund & Misc. Provisions Act. [897-B] G

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 978 of 2000.

From the Judgment and Order dated 12.8.1999 of the Karnataka High H

A Court in Writ Appeal No. 6143 of 1998.

Harish Chandra, Ms. Anita Sahani and Shail Kumar Dwivedi for the Appellant.

Devender Singh and Sushil Balwada for the Respondent.

B The Judgment of the Court was delivered by

ARIJIT PASAYAT, J. Challenge in this appeal is to the judgment of a Division Bench of the Karnataka High Court affirming the judgment of the learned Single Judge. Both the learned Single Judge and the Division Bench C held that 45 persons who were selected as trainees were not covered by Employees Provident Fund & Misc. Provisions Act, 1952 (in short the 'Act') as they cannot be called as "employees" as defined under Section 2(f) of the Act.

D Background facts in a nutshell are as follows:

The respondent invited applications from the intending applicants for undergoing training at its Chocolate Factory, Puttur on a stipend of Rs.600/- per month which may be increased to Rs.800/- per month after six months. It was also provided that the successful candidates may be considered for E regular posting in the factory. By its resolution dated 21.1.1990 after interviewing 270 applicants, 45 persons were selected. By a combined order dated 3.2.1990, Managing Director notified the 45 persons who were selected. It was clearly indicated therein that the training in the factory does not entitle any trainee to claim right of appointment after completion of training period. It was also stipulated that if any trainee leaves the factory within one year, F he was required to refund the amount received by him as stipend. Notice was issued by the appellant purportedly under Section 7-A of the Act in respect of the said 45 trainees. By order dated 15.5.1991 the appellant held that the trainees were employees for the purpose of the Act and the respondent is liable to pay the quantified amount.

G Writ application was filed by the respondent questioning the determination. A learned Single Judge with reference to various provisions of Industrial Employment (Standing Orders) Act, 1946 (in short 'Standing Orders Act') and The Apprentices Act, 1961 (in short the 'Apprentices Act') held that the demand was unsustainable. A writ appeal was filed before the Division H Bench which as noticed above dismissed the same.

In support of the appeal Mr. Harish Chandra, learned senior counsel submitted that both the learned Single Judge and the Division Bench have failed to notice the true import of Section 2(f) and have erroneously held that the 45 trainees were not covered by the Act. It was also submitted that the Act is a beneficial legislation and a wider meaning has to be given to the expression 'employee'. A

In response, learned counsel for the respondent supported the judgments of the learned Single Judge and the Division Bench. B

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. C

For this purpose it is necessary to take note of the definition of 'employee' as given in Section 2(f) of the Act. It reads as under:

"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 D

- (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."

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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. G

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A (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."

B 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 C No.2 thereof classified workmen as follows:

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

E '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:

F "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.

G 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.

H 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 A 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, B an apprentice engaged under the Apprentices Act or under the Standing Orders is excluded from the definition of an 'employee' as per Section 2(i) of the Act.

That being so, the view of the learned Single Judge as affirmed by the Division Bench of the High Court cannot be faulted. C

The appeal fails and is dismissed. No costs.

B.B.B.

Appeal dismissed.