KERALA HIGH COURT
Hon'ble Mr. Ramachandran Nair, CJ.
Hon'ble Mr. P.S. Gopinathan J.
W.A. No. 1502/2011,
D/-21-10-2011

Employees' Provident Fund Organisation
vs.
Employees' Provident Fund Appellate Tribunal

EMPLOYEES' PROVIDENT FUNDS AND MISC. PROVISIONS ACT, 1952 - Section 2(f) - Consultant doctors are not employees coverable under the Act - Since the performance of the consultant doctors are not controlled and administered by the Nursing Home(s) as they are to visit for providing consultancy service to different patients in different hospitals - However, regular doctors are 'employees' coverable under the Act - Treating the consultant doctors as employees thereby calculating the strength of the employees above 20 for covering the Nursing Home under the Act is not justified - Consequently appeal is dismissed. Para 3

For Appellant **:** Mr. N.N. Sugunapalan (Sr. Advocate) & Mr. T.N. Girja, Advocate.

For Respondent **:** None

IMPORTANT POINTS

Consultant doctors providing services for some hours or so to different establishments without control over them by that establishment would not come under the category of "employees" coverable under Section 2(f) of the Employees' Provident Funds & Miscellaneous Provisions Act, 1952.

ORDER

C.N. Ramachandran Nair, Ag. CJ.-

1. This Writ Appeal is filed by the Employees' Provident Fund Organisation challenging the judgment of the learned Single Judge declining to interfere with the order of the EPF Appellate Tribunal holding that the respondent Nursing Home has no liability to remit contribution for the consultant doctors engaged by them. The appellant's case is that the consultant doctors on facts were found to be "employees" within the meaning of section 2(f) of the Employees Provident Fund and Miscellaneous Provisions Act, 1952, and so much so, both the Tribunal as well as the learned Single Judge went wrong in declaring exemption to the respondent Nursing Home from the requirement of paying contribution.

2. We have heard learned counsel for the appellant and have gone through the judgment of the learned Single Judge and the order of the Tribunal, namely Ext. P8, and also the adjudication order that was challenged before the Tribunal.

3. The respondent Nursing Home is rendering medical service to patients. The appellant's Inspector conducted inspection of the hospital and verified the muster roll and on noticing the names of the consultant doctors, proceedings were initiated demanding contribution from the hospital for the employees including the 3 consulting doctors. Admittedly, if consultant doctors are excluded, the respondent Nursing Home is below the coverage limit, and so much so, the respondent Nursing Home has a claim of total exemption from EPF liability. The appellant, however, treated the consultant doctors also as employees and with the consultant doctors since the strength of employees is above 20, contribution was demanded, which was challenging in appeal before the Tribunal. In fact there is a previous round litigation, wherein a learned Single Judge of this Court held that *prima facie* consultant doctors are not employees as they are not employed on wages but are only paid charges for piece rate services rendered by them in the case of patients demanding it.

After hearing the appellant's counsel and after going through the orders, we are not satisfied that on facts the appellant has established that consultant doctors are employees within the meaning of section 2(f) of the Act. Normally consultant doctors are only visiting doctors and they are not confined to a single hospital. The hospitals, where the consultants reach for offering consultancy service to patients, are not subject to any control whatsoever by the hospitals, which just provide facility for patients to avail service from consultant doctors.

These doctors are paid only for the service rendered by them, and for hospitalisation, nursing, dispensation of medicine etc., hospitals collect charges separately from patients. All what we feel is that by camouflaging salary as consultancy charges, doctors regularly employed in hospitals cannot be taken out of the coverage. This is a matter which has to be proved with evidence and in our view, the appellant's employees have not made any earnest effort to establish the factual position, if at all the same is correct. In the first place no statement is recorded from the consultant doctors as to whether they are engaged full time in the hospital or whether they are working as consultants in other hospitals or in their houses. Further no enquiry is made to find out whether the hospital has other doctors employed on regular basis to take care of routine matters. If the doctors described in the records as "consultants" are regular doctors employed full-time in the respondent's hospital they are "employees" and the styling of payment as consultation charges makes no difference. However, there is no enquiry or finding in this regard. Certain inferences are drawn merely because the consultant doctors signed the muster-roll and strangely the acquittance roll which discloses payment to doctors was not even seen by the appellant's officers, who conducted the enquiry. Even though the appellant's counsel rightly pointed out that doctors employed regularly cannot be taken out of coverage merely because payment made is styled as "consultation charges", we do not think on facts the appellant could successfully establish regular engagement of the consultant doctors exclusively by the respondent Hospital. Since there is no material to prove the engagement of the consultant doctors by the respondent Nursing Home as employees, we do not find any ground to interfere with the judgment of the learned Single Judge and Ext. PS order of the Tribunal. Consequently, we dismiss the Writ Appeal.

Ref: LLR