KERALA HIGH COURT
Hon'ble Mr. Alexander Thomas, J.
W.P. (C) 14751/2017 and W.P.(C) No. 11852/2011,
Dt/-7-6-2018

Sivagiri Sree Narayana Medical Mission Hospital, Varkala
vs.
Regional Provident Fund Commissioner

A. EMPLOYEES' PROVIDENT FUNDS AND MISCELLANEOUS PROVISIONS ACT, 1952 - Section 2(f) - Whether trainee nurses are 'employees' - No - EPF Authority considered the trainee nurses as 'employees' and covered them under the Act, directing the petitioner to remit EPF dues - Appeal against the order of the EPF Authority failed - Petitioner filed writ petition challenging the orders passed by the EPF Appellate Tribunal and EPF Authority - Held, assisting qualified nurses by the trainee nurses while undergoing a learning process, receiving stipend or allowance, will not bring it within the jural relationship of 'employer' and 'employee' - Hence, trainee nurses are not employees - Petitioners not liable to remit EPF contributions in respect of trainee nurses - Writ petition allowed - Impugned orders are set aside - Amount already deposited, if any, be refunded to the petitioner by the EPF Authority. Paras 19 and 20

B. EMPLOYEES' PROVIDENT FUNDS AND MISCELLANEOUS PROVISIONS ACT, 1952 - Section 2(b) - Stipend is not 'Basic Wages' - Held, in the absence of any jural relationship of 'employer' and 'employee' between training provider and trainee/apprentice, any financial incentive or reward as a stipend or allowance paid to the trainee is not covered under the definition of 'basic wages'. Para 18

For Petitioner **:** Sri Sajan Vargheese K, Sri Liju, M.P., Advocates.
For Respondent **:** Sri Pirappancode V.S. Sudhir, Advocate.

IMPORTANT POINTS

- Trainee Nurses are not 'employees' covered under Section 2(f) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, attracting remittance of EPF contributions by the establishment providing them training.
- Trainee nurses, assisting qualified nurses, while undergoing a learning process, receiving stipend or allowance, will not bring them within the jural relationship of 'employer' and 'employee'.
- In the absence of any jural relationship of 'employer' and 'employee' between training provider and trainee/apprentice, any financial incentive or reward as a stipend or allowance paid to the trainee by the training-provider/establishment, would not be 'basic wages' as defined under Section 2(b) of the Act.

JUDGEMENT

PER ALEXANDER THOMAS, J.-1. The common question that arises in these cases is as to whether *"trainee nurses"* being engaged in hospitals, which also conduct nursing courses, would satisfy the definition of *"employee"* under Section 2(f) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

2. The petitioner in W.P.(C).No.14751/2017 is the Sivagiri Sree Narayanan Medical Mission Hospital, which is being run by the Sivagiri Madom, Varkala, Thiruvananthapuram District. According to the petitioner, it is running a Mission Hospital for effectuating charitable purposes of the Sivagiri Madam founded by Sree Narayana Guru and that the said hospital is also offering nursing courses, like B.Sc Nursing, etc. As per the regulations of the statutory regulatory authorities like the Nursing Council constituted as per the relevant Central Enactments and State Enactments, a nursing student, who completes the

Course of study, is also obliged to complete training, which is akin to internship as envisaged in MBBS/BDS students in order to equip them to become full fledged professional practitioners in the field of nursing. To effectuate the obligation of the training institutions like the petitioners, earlier they used to execute bond as between the hospital, which is a charitable institution, and the student concerned, laying down the terms and conditions of the training courses. Later, the Government of Kerala had issued G.O. (M.S.). No. 893/2013/LAB dated 23.5.2013 [Exhibit-P1 in W.P. (C) No. 14751 of 2017] wherein it is stipulated that the duration of such practical training is one year and that the number of such trainees shall not exceed 25% of the regular nursing staff of that institution and such trainees are not entitled for any of the benefits and allowances payable for regular employees. That students who have undergone General Nursing should be paid stipend. The stipend payable for General Nursing students is Rs. 5,100-6,000 and that for B.Sc Nursing is Rs. 5,310-6,500, etc. It is the case of the petitioner-Sivagiri Medical Mission Hospital that in view of the obligations which flow from the curriculum of such nursing course and in view of the obligation of the above said Government Order, they have offered training to about 28 nursing students at the relevant point. That the 1st respondent-Regional Provident Fund Commissioner had issued Exhibit-P2 dated 31.10.2016 calling upon the petitioner to given their explanation as to whether the said 28 trainees are to be covered for PF contribution as envisaged in the Employees' Provident Funds and Miscellaneous Provisions Act and the Employees' Provident Fund Scheme. The petitioner had given Exhibit-PS reply dated 13.12.2006 clearly stating therein that the training process was only on the basis of Government Order as stated above and that they are not regular employees, who are entitled for wages or salary and that the said training programme is only part of their course of study necessary for equipping them to full fledged practitioners in the nursing profession and further on completion of the training programme, the petitioner-hospital is not employing them in their establishment and that on leaving the hospital after training the institution is not aware about their further whereabouts. Accordingly, it was urged that none of the 28 persons concerned can be said to be employees within the meaning of Employees Provident Fund Act and Scheme as they are only trainees and requested the respondents to drop further action in that regard. Exhibit-P4 representation dated 7.2.2017 was also given by the petitioner in that regard. Thereafter, the 1st respondent had issued the impugned Exhibit-P7 order dated 8.3.2017 holding that such 28 persons are employees as understood in Sec. 2(f) of the Employees Provident Fund and Miscellaneous Provisions Act and the petitioner institution is legally liable to pay the PF contribution for these 28 persons as well. The prayers in W.P(C). No. 14751 of 2017 are as follows:

(i) call for records relating to Exhibits-P 1 to P4 and P7 and P8;

(ii) issue a writ of *certiorari* or other appropriate writ or order quashing Exhibits P7 and P8.

(iii) issue a writ of *mandamus* or other appropriate writ or order or direction, declaring that the petitioner is not liable to pay any amount in respect of the trainees as contemplated in exhibits P7 and P8 under Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and direct the respondents as not to make any attempt in the said respect."

3. The petitioner in W.P(C). No. 11852 of 2011 is the Holy Cross Hospital, Kottoyam, Kollam District, which is a Mission Hospital run by the religious order of Catholic Society of Sisters and which is offering services in the field of hospital and health care, etc. According to the petitioner, it has offered training facility for nursing students in terms of the obligation to give training in accordance with the curriculum requirements as well as mandatory requirements of the nursing council as per their regulation as per Exhibit-P1 bond agreement. It is also the case of the petitioner that they had framed certain standing orders as per Industrial Employees' (Standing Orders) Act, 1948, which has been duly certified by the competent authority of the said Act as per Exhibit-P2. Clause (2.5) of Exhibit-P2 Certified Standing Orders would deal with the definition clause of "employee" whereby it is specifically stipulated therein that house surgeons, trainees, students or bond period nurses and paramedical trainees, interns, graduates and post graduate trainers getting on the job training, etc., will not come within the scope and ambit of the definition "employee". Further it is clearly stipulated in clause (4.4) of Exhibit-P2 Certified Standing Orders that "Trainee/Apprentice is a person undergoing on job or otherwise training or learning and who is receiving lump sum payment towards stipend". That in view of the specific provisions for trainees in Exhibit-P2 standing orders, the petitioner-hospital had also imparted training facility to some of the nursing students as trainees purely to equip them to discharge professional duties as nurses. That altogether the petitioner had employed about 98 such trainees in these 2

categories. The 2nd respondent-Regional Provident Fund Commissioner had issued Exhibit-P3 summons dated 27.1.2009 directing the petitioner to show cause as to why the said 98 trainees should not be covered for the PF contribution as they are employees as understood in Sec.2(f) of the EPF Act. The petitioner has submitted Exhibits-P4 & P5 reply dealing with the above said aspect. Exhibit-P6 notice was issued to the authority under the Industrial' Employees' Standing Orders seeking certain 'clarifications in regard to Exhibit-P2. It appears that the said authority had given necessary clarifications as per Exhibit-P8 and the petitioner had also given necessary clarifications as per Exhibit-P7. Thereafter, the second respondent-EPF Commissioner has issued the impugned Exhibit-P9 order dated 28.4.2010 overruling the contention of the petitioner and holding that the said 98 trainees are to be covered for PF Contribution as they satisfy the definition of, "employee" under Section 2(f) of the Act. Thereafter, the petitioner had submitted Exhibit-P10 statutory appeal under Section 7(1) of the EPF Act before the Statutory appellate Tribunal which has been rejected by the Tribunal as per Exhibit-P12 order. It is these orders at Exhibits-P-9 & P12, which are under challenge in this Writ Petition and the main prayer in this Writ Petition is as follows:

"Call for the records and files leading to Ext.P-9 order passed by 2nd respondent and Ext.P-12 order passed by the 1st respondent, and quash Exts.P-9 and P-12 orders by issuance of a writ in the nature of certiorari or any other appropriate writ, order or directions."

4. Heard Sri. K. Sajan Vargheese, learned counsel appearing for the petitioner in WP.(C) No.14751 of 2017, Sri. Ashok. B. Shenoy, learned counsel appearing for the petitioner in W.P.(C) No.11852 of 2011 and *Sri. Pirappancode* v. *Sudhir,* learned Standing Counsel appearing for the respondent EPF authorities.

5. In W.P.(C) No.14751 of 2017, the persons sought to be covered as per the impugned order have been engaged as trainees by the petitioner therein after the teaching course in nursing offered by the petitioner institution and in terms of the obligations contained in the abovesaid Government Orders, which require training for students who completed the nursing courses, it is more or less akin to the internship scenario for MBBS and BDS students. In W.P.(C) No.11852 of 2011, some of the trainees concerned would come within the category of trainees covered in W.P.(C) No.14751 of 2017 and the other trainees have been engaged in terms of the provisions contained in Exhibit-P2 Certified Standing Orders being followed by the said petitioner's establishment. The main question that arises in these two cases as to whether such trainees would satisfy the definition of employees as envisaged in Section 2(f) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. Section 2(f) of the EPF Act provides 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."

6. The Apex Court in the decision in *Regional Provident Fund Commissioner, Mangalore* v . *Central Arecanut & Coca Marketing and Processing Coop. Ltd., Mangalore* reported in (2006) 2 SCC 381: AIR 2006 SC 971 has dealt with a case where the establishment had offered training facility at its chocolate factory on stipend basis and it was also provided that successful candidates, who had undergone the training process, could be considered later for regular posting in the factory. In the said establishment as Certified Standing Orders were not then framed, the provisions contained in the Model Standing Orders as envisaged in the Industrial Employment (Standing Orders) Act, 1946, (hereinafter referred for short as "the Standing Orders Act") were then statutory in force in view of the mandate of Section 12-A of the said Act. Clause 2(g) of the Model Standing Orders dealt with the definition of 'apprentice', which provides as follows:

2(g) "an 'apprentice' is a learner who is paid and employed allowance during the period of his training."

Section 2(aa) of the Apprentices Act, 1961 defines 'apprentice' to "a person who is undergoing apprenticeship training in pursuance of a contract or apprenticeship". The Apex Court held that as Certified Standing Orders of the said establishment was not then in force, the Model Standing Orders were applicable and that the said trainees could only be treated essentially as learners who were paid allowances or stipend during the period of such training and that therefore they would come within the exclusionary zone of the definition of S. 2(f) of the EPF Act and that accordingly, such trainees will not fulfill the definition of employee as per S.2(f) of the EPF Act.

7. This Court in the common judgment dated 29.9.2011 rendered in W.P. (C) Nos. 15453 of 2006 and 10644 of 2007 had dealt with a case which is almost similar to the present cases whereby the petitioner therein was a hospital establishment which had engaged certain trainees. The EPF authorities had insisted that such trainees would fulfill the definition of Section 2(f) of the EPF Act and that the establishment is liable to pay PF contribution for such trainees. Placing reliance on the judgment of the Apex Court in *Central Arecanut and Coca Marketing and Processing Co-op. Ltd.'s* case (supra) reported in (2006) 2 SCC 381: AIR 2006 SC 971, this Court held that such trainees would not come within the scope and ambit of the definition of the employee as per Section 2(f) of the EPF Act and had accordingly quashed the impugned orders passed by the PF authorities which had directed payment of PF contributions by the employer. It is not in dispute that no Writ Appeal has been filed as against the common judgment dated 29.9.2011 in W.P. (C) No. 15453 of 2006 and W.P. (C) No. 10644 of 2007 (produced as Exhibit-P6 in WP. (C) No. 14751 of 2017).

8. This Court had also occasioned to deal with an almost identical case in W.P. (C) No. 18692 of 2014 and in the judgment dated 7.6.2017 in that W.P.(C) it was held by this Court that the trainees employed by the hospital institution therein, cannot be said to be employees as per Section 2(f) of the EPF Act inasmuch as the matter in issue is covered fully in favour of the petitioner therein and against the respondent EPF authorities in view of the dictum laid down by the Apex Court in the aforesaid *Central Arecanut & Coca Marketing and Processing Co-op. Ltd.'s* Case (supra) reported in (2006) 2 SCC 381: AIR 2006 SC 971. It is also brought to the notice of this Court that no Writ Appeal has been filed as against the said judgment dated 7.6.2017 rendered by this Court in W.P.(C) No. 18692 of 2014. A copy of the said judgment has been produced as Exhibit-P12 in W.P.(C) No. 14751 of 2017.

9. Faced with the situation, learned Standing Counsel for the EPF organisation *Sri. Pirappancode* v. *Sudhir* , learned Standing Counsel appearing for the respondent EPF authorities would contend that a hospital cannot be said to be an industrial establishment as per S. 2(e) of the Industrial Employment (Standing Orders) Act, 1946 as has been held by the judgment dated 22.2.2006 in LP.A. No. 311 of 2011 dated 3.11.2001 of the Division Bench of the Delhi High Court in the case in *Indraprastha Medical Corporation Ltd.* v. *National Capital Territory of Delhi and others,* which has been followed by a learned Single Judge of this Court in the judgment dated 8.8.2008 in W.P.(C) No. 5306 of 2005 in the case in *Cosmo-politan Hospitals Pvt. Ltd.* v. *T.S. Anil Kumar and others.* Section (2)(e) of the Industrial Employment (Standing Orders) Act, 1946, provides as follows:

"2(e). 'Industrial Establishment' means-

(i) an industrial establishment as defined in clause (ii) of Section 2 of the Payment of Wages Act, 1936 (4 of 1936), or

(ii) a factory as defined in clause (m) of Section 2 of the Factories Act, 1948 (63 of 1948), or

(iii) a railway as defined in clause (4) of section 2 of the Indian Railways Act, 1890 (9 of 1890), or

(iv) the establishment of a person who, for the purpose of fulfilling a contract with the owner of any industrial establishment, employs workmen".

10. It was held in the abovesaid decision cited by the learned Standing Counsel for the EPFO that a hospital cannot be said to be a factory or railway or other establishment as envisaged in clauses (ii), (iii) and (iv) of Section 2(e) and that it cannot also

be treated as an Industrial Establishment as defined in Section 2(ii) of the Payment of Wages Act, 1936 and therefore, a hospital establishment will not come within any of the four limbs of Section 2(e) of the Standing Orders Act. Therefore, it is contended that since the hospital establishment does not fulfill the basic definition of S.2(e) regarding 'Industrial Establishment', there is no question of making applicable the provisions of the Standing orders Act and that therefore, the question of the relevance and applicability of the definition of 'apprentice' as per Section 2(g) of the Model Standing Orders or that of 'trainee' or 'apprentice 1 as per the above-referred Exhibit-P2, etc. looses its significance. On this basis, it is argued by the learned Standing Counsel for the respondent EPFO that therefore the exclusionary clause of the definition of S.2(f) of the EPF Act does not come into play and that therefore, the trainees in question should be treated as employees as envisaged in S.2(f) of the EPF Act. In this context, it is also relevant to note the provisions contained in S.2(ii) of the Payment of Wages Act, 1936, which is the first limb of the definition of Industrial Establishment as per S.2(e) of the Standing Orders Act. Section 2(ii) of the Payment of Wages Act, 1936, provides as follows:

"2. (ii)'industrial or other establishment' means any-

(a) tramway service, or motor transport service engaged in carrying passengers or goods or both by road for hire or reward;

(aa) air transport service other than such service belonging to, or exclusively employed in the military, naval or air forces of the Union or the Civil Aviation Department of the Government of India;

(b) dock, wharf or jetty;

(c) inland vessel, mechanically propelled;

(d) mine, quarry or oil-field;

(e) plantation;

(f) workshop or other establishment in which articles are produced, adapted or manufactured, with a view to their use, transport or sale;

(g) establishment in which any work relating to the construction, development or maintenance of buildings, roads, bridges or canals, or relating to operations connected with navigation, irrigation or the supply of water or relating to the generation, transmission and distribution of electricity or any other form of power is being carried on;

(h) any other establishment or class of establishments which the appropriate Government may, having regard to the nature thereof, the need for protection of persons employed therein and other relevant circumstances, specify, by notification in the Official Gazette;

(iia) "mine" has the meaning assigned to it in clause (j) of sub-section (I) of Section 2 of the Mines Act, 1952 (35 of 1952)."

11. Both sides do not have any dispute that the factual scenarios covered by clauses (a) to (g) of S. 2(ii) of the Payment of Wages Act do not arise in the case of a hospital establishment. Therefore, what remains is clause (h) of S. 2(ii) of the Payment of Wages Act which deals with "any other establishment or class of establishments which the appropriate Government may, having regard to the nature thereof, the need for protection of persons employed therein and other relevant circumstances, specify by notification in the Official Gazette. In the facts of the Delhi case in *Indraprastha Medical Corporation Ltd.'s* case (supra), there was no contention for any of the parties therein that a notification as envisaged in clause (h) of S. 2(ii) of the Payment of Wages Act, 1936 was issued by the appropriate Government of the National Capital Territory of Delhi. However, in the instant case, it is to be noted that the Government of Kerala has issued statutory notification as per SRO No.485 of

2013 as contained in G.O.(P).No. 74/2013/LBR dated 7.6.2013, wherein it has been ordered in exercise of the statutory powers conferred under sub-clause (h) of clause (ii) of S.2 of the Payment of Wages Act, 1936 that the Government of Kerala notifies that having regard to the nature of the establishments and need for protection of persons employed therein that all commercial establishments coming under the Kerala Shops and Commercial Establishments Act, 1960 would be establishments under the Payment of Wages Act, 1936. The said notification has been produced as Exhibit-P9 in W.P.(C) No.14751 of 2017 and the said notification and its explanatory note read as follows:

"GOVERNMENT OF KERALA

Labour and Rehabilitation (E) Department

NOTIFICATION

G.O.(P) N0. 74/2013/LBR Dated Thiruvananthapuram 7th June, 2013

S.R.O. No. 485/2013: In exercise of the powers conferred by sub-clause (h) of clause (ii) of Section 2 of the Payment of Wages Act, 1936 (Central Act 4 of 1936), the Government of Kerala having regard to the nature of the establishments and the need for protection of persons employed therein, hereby specify all Commercial Establishments coming under the Kerala Shops and Commercial Establishments Act, 1960 (34 of 1960) as establishments under the Payment of Wages Act, 1936."

By order of the Governor,

Dr. Nivedha P. Haran

Additional Chief Secretary to Government"

Explanatory Note

(This does not form part of the notification, but is intended to indicate its general purport)

The Government of Kerala have decided to include all commercial establishments coming under the Kerala Shops and Commercial Establishments Act, 1960 under the Industrial Employment (Standing Orders) Act, 1946. Only the industrial establishments included in the Payment of Wages Act, 1936 come under the purview of the Industrial Employment (Standing Orders) Act, 1946. Section 2 clause (ii)(h) of the Payment of Wages Act empowers the State Government to include any other establishments for the protection of persons employed therein by notification in the Official Gazette.

The notification is intended to achieve the above purpose."

In this context, it is also relevant to note the definition of commercial establishment. Section 2(4) of the Kerala Shops and Commercial Establishments Act, 1960 provides as follows:

"2(4) *"commercial establishment" means a commercial or industrial or trading or banking or insurance establishment, an establishment or administrative service in which the persons employed are mainly engaged in office work, hotel, restaurant, boarding or eating house, cafe or any other refreshment house, a theatre or any other place of public amusement or entertainment and includes such other establishment as the Government may, by notification in the Gazette, declare to be a commercial establishment for the purpose of this Act, but does not include a factory to which all or any of the provisions of the Factories Act, 1948 (Central Act 63 of 1948) apply;"*

Section 2(4) of the Kerala Shops and Commercial Establishments Act means a commercial or industrial or trading or banking or insurance establishment, establishment or administrative service in which the persons employed are mainly engaged in office work, hotel, restaurant, boarding or eating house, cafe or any other refreshment house, a theatre or any other place of public amusement or entertainment and includes such other establishment as the Government may, by notification in the Gazette, declare to be a commercial establishment for the purpose of this Act, but does not include a factory to which all or any of the provisions of the Factories Act apply. This Court in the decisions as in Sr. *Tarcisia* v. *State of Kerala,* reported in 2005 (3) KLT SN 2 (C. No.2) and *Lourdes Hospital* v. *Dr. Abraham Mathew* reported in 2013 (4) KLT 402, has held that the activities of a hospital are multifarious, which involves participation of several persons, such as doctors, paramedical staff, etc. and that such an organised activity is an industry and should, definitely, be treated as an industrial establishment as envisaged in Section 2(4) of the Kerala Shops and Commercial Establishments Act, 1960. It is also not in dispute that earlier the Government of Kerala had issued notification under the abovesaid Kerala Act granting exemption to hospitals from the applicability of the said Act.

12. Therefore, in the light of these aspects, the fall out of the abovesaid statutory notification issued by the Government of Kerala under clause (h) of S. (2)(ii) of the Payment of Wages Act, 1936 is that the hospital should be treated as a establishment within the meaning of the Payment of Wages Act as well. Further consequential fall out of this aspect is that hospital establishment would be an establishment as envisaged in S. 2(ii)(h) of the Payment of Wages Act, 1936 and therefore, such a hospital establishment would satisfy the definition of Industrial Establishment as per S. 2(e)(i) of the Standing Orders Act, 1946. Therefore, in view of the abovesaid statutory notification, which is prevalent in the State of Kerala, the dictum laid down by the Division Bench of the Delhi High Court in *Indraprastha Medical Corporation Ltd.'s* case (supra) will not have its efficacy.

13. *Sri. Pirappancode* v. *Sudhir* , learned Standing Counsel appearing for the respondent EPFO, would then contend that the said position would have prospective effect only from 18.6.2013, the date of coming into force of the SRO No.845 of 2013 issued by the Government of Kerala under Section 2(ii)(h) of the Payment of Wages Act, 1936. The abovesaid contention urged on behalf of the respondent EPFO, though may appear to be quite attractive, is bereft of any substance and merit.

14. This Court in the judgment in *Lord Krishna Bank Ltd.* v. *Regional Provident Fund Commissioner* reported in 1980 KLT 182, this Court has dealt with a similar question arising under Section 2(f) of the EPF Act and as to whether an apprentice is to be enrolled as a member of the Employees Provident Fund scheme. It was held by this Court in paragraphs 6 and 8 thereof that "an apprentice is not an employee as defined in Section 2(f) of the EPF Act in so far as 'the purpose of the engagement is only to offer training under certain terms and conditions' wherefore he 'cannot be said to be employed in the work' of the employer in the Bank or in connection with the work of the Bank." The term 'wages' is not defined in the Act, and in the absence of any such definition it should be understood in its ordinary meaning and it is that which is paid for services or as money payable by a master in respect of services. Under the contract of apprenticeship, a trainee is entitled only to receive the stipulated stipend agreed upon, and not the wages payable to those in regular service. Therefore, it was held by this Court categorically that no scheme can be framed under Section 5 of the EPF Act for establishment of provident funds under the said Act for apprentices. Apart from that under Section 5 of the Act, a scheme can be framed for establishing provident fund only for employees or for any class of employees as defined in Section 2(f) of the Act.

15. The decision of the learned Single Judge in the aforesaid *Lord Krishna Bank Ltd.'s* case (supra) reported in 1980 KIT 182 was taken up in appeal by the Regional Provident Fund Commissioner by filing Writ Appeal No. 56 of 1980. The said Writ Appeal was dismissed by a Division Bench of this Court confirming the abovesaid judgment of the learned Single Judge. The said judgment of the Division Bench in the case in *Regional Provident Fund Commissioner, Mangalore* v. *Lord Krishna Bank Ltd.* reported in 1983 KIT 647: 1983 KLJ 249, has specifically considered the question as to whether trainees would be employees as conceived in Section 2(f) of the EPF Act so as to attract coverage under the Act. It was clearly held by the Division Bench of this Court that an apprentice is engaged mainly for learning work and it may or may not be that in that process, he works in connection with the work of the person who had engaged him for training and he may even contribute his labour during the training. That aspect is only incidental. But that the main or predominant objective in that process is

that he should learn his work during the period of training. On facts it was held that the predominant object with which the trainees are taken is only to equip them for their livelihood and hence, if that is the position they cannot be treated as employees as per the Act, but would only be merely trainees. The Division Bench of this Court has placed reliance on the abovesaid judgment of the Apex Court in *The" Employees State Insurance Corporation and Anr.* v. *Tata Engineering & Locomotive Co. Ltd. and Anr.* reported in AIR 1976 SC 66 as well as the judgment of this Court in *President, K.P. Cooperative Society* v. *ESI Corporation,* reported in 1975 KLT 670. It will be profitable to refer to paragraphs *5* and 7 of the judgment of the Division Bench of this Court in *Lord Krishna Bank Ltd.'s* case (supra) reported in 1983 KLT 647, which read as follows :

"5 . *An apprentice is engaged mainly for learning work. It may or may not be that in the process he works in connection with the work of the person who had engaged him as an apprentice. He may contribute his labour during training towards the work of the person who engages him for training. That is incidental. The main or predominant objective is that he should learn his work during the period of training.*

6. xxxxxxxxxxxxxx

7. In the case before us the Bank had pleaded categorically the circumstances which would justify the conclusion by the decision making authority that the predominant object with which the trainees are taken is only to equip them for their livelihood. If that be true they would be merely trainees. The fact that they are paid stipend would make no difference at all. In the Original Petition there is an elaborate job description of the trainee which evidently is intended to establish the case of the petitioner Bank that the trainees cannot be employees but are only trainees pure and simple. This is stated in para 3 of the Original Petition. It is in para 4 of the counter-affidavit that there is a reference to this and we do not find any denial of the factual description of the work of the trainees nor is there any evidence which would justify the assumption that the trainees are really not taken in order to be trained for their jobs and to equip themselves as stated in the petition but are really intended to supplement the work of the regular staff so that they are in fact and in truth employees of the Bank. No attempt has been made to establish this and therefore whatever may be their case that must fail as rightly found by the learned Single Judge. We think therefore there is no scope for interference with the judgment of the learned Single Judge. The appeal is dismissed. No costs.

Dismissed.

Learned counsel for the appellants make an oral application under Art. 134-A of the Constitution for certificate for leave to appeal to the Supreme Court. We do not find any substantial question of law of general importance which needs to be decided by the Supreme Court arising for decision in this appeal. Leave declined. Leave refused."

16. In this regard, it will be profitable to refer to paragraphs 5 and 6 of the judgment of the Apex Court in *The Employees State Insurance Corporation and another* v. *Tata Engineering & Locomotive Co. Ltd. and another,* reported in AIR 1976 SC 66, which read as follows:

"5. *The word 'apprentice' is not defined in the Act, nor is it specifically referred to in the definition of 'employee' by either inclusion or exclusion. We are unable to hold that in ordinary, acceptation of the term apprentice a relationship of master and servant is established under the law. Even etymologically, as a matter of pure English, "to serve apprenticeship means to undergo the training of an apprentice" (Chamber's Dictionary). According to the Shorter Oxford English Dictionary apprentice is* "a *learner of a craft; one who is bound by legal agreement to serve an employer for a period of years, with a view to learn some handicraft, trade, etc. in which the employer is reciprocally bound to instruct him". Stroud's judicial Dictionary puts it thus:*

"In legal acceptation, an apprentice is a person bound to another for the purpose of learning his Trade, or calling: the contract being of that nature that the master teaches and the other services the master with the intention of learning".

While dealing with the nature of the relationship of master and servant in comparison with other relationships in Halsbury's Laws of England. Third Edition, Volume 25, the following passage appears at para 877, pages 451-452:

"By a contract of apprenticeship a person is bound to another for the purpose of learning a trade or calling, the apprentice undertaking to serve the master for the purpose of being taught, and the master undertaking to teach the apprentice. Where teaching on the part of the master or learning on the part of the other person is not the primary but only an incidental object, the contract is one of the service rather than of apprenticeship but, if the right of receiving instruction exists, a contract does not become one of service because, to some extent, the person to whom it refers does the kind of work, that is done by a servant, or because he receives pecuniary remuneration for his work. "

6. The heart of the matter in apprenticeship is, therefore, the dominant object and intent to impart on the part of the employer and to accept on the part of the other person learning under certain agreed terms. That certain payment is made during the apprenticeship, by whatever name called, and that the apprentice has to be under certain rules of discipline do not convert the apprentice to a regular employee under the employer. Such a person remains a learner and is not an employee. An examination of the provisions of the entire agreement leads us to the conclusion that the principal object with which the parties enter into an agreement of apprenticeship was offering by the employer an opportunity to learn the trade or craft and the other person to acquire such theoretical or practical knowledge that may be obtained in the course of the training. This is the primary feature that is obvious in the agreement."

17. In the judgment of the Division Bench of this Court in *President, K.P. Co-operative Society* v. *E.S.I. Corporation,* reported in 1975 KLT 670, it was held by this Court in paragraph-4 thereof that 'employment 1 denotes a larger concept than what is denoted by the term 'engagement' and that an apprentice is allowed to work in order that he may learn the trade and that in fact he is a student and the premises are his training ground and even if he is paid any allowance, it would not be 'wages'. It will be profitable to refer to paragraph-4 of the judgment of the Division Bench of this Court in *President, K.P. Co-operative Society's* case (supra) reported in 1975 KLT 670, which reads as follows:

" *4."Employment" denotes a larger concept than what is denoted by the teen "engagement" This court had occasion to consider this question and to observe that in the case of a casual worker it may be said that he is engaged whereas employment connotes a master and servant relationship and the concept of a non-casual service. An apprentice is allowed to work in order that he may learn the trade. In fact he is a student and the premises are his training ground. Even if he is paid any allowance it would not be 'wages' as the term is defined in S. 2(22) of the Act for such wages should be remuneration paid or payable in terms of the conditions of employment. This necessarily suggests the idea that the payment is that which the person executing the work can claim as of right as return for the work he does. In the case of an apprentice though be may also assist in the work of the factory and he may also turn out work it is not to get such out-turn that he is permitted to work but to enable him to learn the trade. He may be given some incentive such as the prospect that he may be absorbed in the establishment and his training in the establishment may stand him in good stead elsewhere. While it may be said that he is working in the factory it cannot possibly be said that he is employed for wages in the factory as in the case of a workman in the factory. It is in this context that we have to notice that the legislature which was aware of the definition of the term 'workman' in the Industrial Disputes Act, 1947 did not include the term 'apprentices' also in the definition in another subsequent enactment relating to labour relations. Possibly, this circumstance may be of assistance in considering the scope of the term 'factory'. We are not to be understood as stating that in every situation where the term 'apprentice' is used what we have said would necessarily follow for there may be instances where a workman or employee may be disguised as an apprentice. Should there be any controversy that though such a one is styled as apprentice he is really not one as the term is understood but is really a workman or an employee that would necessitate the examination of the relationship between such apprentice and employer in that case to determine whether the real relationship is of master and servant or of teacher and pupil. Since there is no controversy in the case before us that the apprentice who was entertained was really not an apprentice but was 'employed' as is generally understood we need not go into the question."*

18. In the light of the abovesaid well settled legal principles regarding the aspects of the trainee or apprentice, etc., so long as the aspect of training or apprenticeship is essentially given by an agency or institution which is otherwise offering employment to many other regular employees, is essentially for the benefit of that person as a learning process and merely because work may also be extracted from him incidentally in this process and merely because he may also be given as an incentive some reward or allowance or stipend, it will not bring the relationship between the agency giving training/apprenticeship and the trainee/ apprentice as the one which is substantially in the realm of jural relationship of employer and employee as understood in employment law. If in this process merely because he is also getting a financial reward as an incentive by way of stipend or allowance, the same therefore cannot partake the jurisprudential nature and character of wages. In this context, it is also relevant to note that the wages understood in general employment law or in any statutory provisions as in the EPF Act. In this regard, it is relevant to note that S. 6 of the EPF Act envisages that contribution which shall be paid by the employer to the Employees Provident Fund shall be the prescribed percentage of the basic wages, etc. The "basic wages" has been defined in S. 2(b) of the EPF Act, which reads as follows:

"2.(b)'basic wages" means all emoluments which are earned by an employee while on duty or on leave or on holidays with wages in either case in accordance with the terms of the contract of employment and which are paid or payable in cash to him, but does not include-

(i) the cash value of any food concession;

(ii) any dearness allowance (that is to say, all cash payments by whatever name called paid to an employee on account of a rise in the cost of living), house-rent allowance, overtime allowance, bonus commission or any other similar allowance payable to the employee in respect of his employment or of work done such employment;

(iii) any presents made by the employer."

Therefore, it cannot be countenanced even for a moment that the so called financial incentive or reward paid to a trainee or apprentice as a stipend or allowance as envisaged in the Model Standing Orders or in the Certified Standing Orders, etc., can be said to be an emolument which is earned by an employee while on duty from the employer in accordance with the contract of employment. As mentioned herein above, in view of the well settled rudimentary principles of employment law as dealt with in the aforecited judgments, there is no question of any jural relationship of "employer" and "employee" arising between the training provider and the recipient of the trainee/apprenticeship in such a situation. This would be the position in all cases where in fact, the situation is one where the so called employer is offering training facility as a learning process to the trainee and even if in that process, work is extracted from him incidentally and even if financial reward by way of stipend or allowance reward to him. Of course, there could be many cases, where employers for the sake of evading the liabilities and various labour welfare legislations, may allege a case which is masquerading as training or apprenticeship, but where in fact it is extraction or work from skilled or unskilled worker. Of course, the statutory authorities concerned and the courts will then have to lift the veil and examine the situation and find out whether it is a case of masquerading of training and apprenticeship or whether it is one in substance one of training and apprentice as envisaged in the situation mentioned hereinabove and has dealt with in the aforecited judgments referred to hereinabove. The respondent EPF authorities do not have a case for a moment that the situation is one created by the hospital establishment which is one substantially of masquerading as training or apprenticeship and that infact extracting work from qualified nursing practitioners. It is clear from the abovesaid factual aspects that what is offered by the petitioner hospital establishment is training to the students who have undergone courses of study in that teaching institutions in accordance with the requirements of the Nursing Council and the State Government which mandate that such students should be given the requisite period of training in order to equip them as full-fledged provisionals who could be effective practitioners from the profession of nursing. The other category of cases dealt with in W.P. (C) No.11852 of 2011, relates to training given in terms of trainees as envisaged in Clause 4.4 of Exhibit-P2 Certified Standing Orders. That situation is also equally covered by the abovesaid legal principles governing the field.

19. The respondent EPF authorities had raised certain doubts about the applicability of Exhibit-P2 Certified Standing Orders to the establishment of the petitioner in W.P.(C) No. 11852 of 2011 for which requisite clarifications are also be given by the statutory authorities under the said Standing Orders Act. This Court is not in a position to fathom the competence and logic of the attitude shown by respondent PF authorities in even questioning the Certified Standing Orders issued to the petitioners establishment. Presumably this may be on the basis of the aspects borne out from the Delhi High Court judgment in *Indraprastha Medical Corporation Ltd.'s* case (supra). Therefore, irrespective as to whether the provisions of the Standing Orders Act apply to a hospital establishment or not, the position of law is that so long as the training facility is one to equip the trainee to undergo a learning process and even if a reward by way of stipend or allowance is given in the process and even if work is also extracted incidentally in that process, it will not bring it within the jural relationship of "employer" and "employee" and such a scenario cannot be said to satisfy the definition of Section 2(f) of the EPF Act. The primary aspect of the matter is as to whether the jural relationship of "employer" and "employee" established or whether the employment is through a contractor and in such case there is a "principal employer", "contractor employer" and the "employee" and whether wages are payable to the employee concerned in accordance with the contract of employment, etc. In the fact of this case, none of the abovesaid requisite aspects regarding employment are satisfied as in substance what is offered in the training process is only an opportunity of training which is given to the nursing students after completion of the course in order to equip him or her to become a full-fledged professional practitioner in the field of nursing. Merely because the person concerned during that process may be assisting the qualified nurses and work is extracted incidentally in that process and merely because they are getting stipend or allowance in that process will not bring that scenario within the definition of employee as per S.2(f) of the EPF Act. Therefore, the abovesaid contentions of the respondent EPFO regarding the applicability or otherwise of the Industrial Standing Orders Act, may not have much bearing for the determination of the main issue in this case. In this view of the matter, it is only to be held that the impugned adverse orders issued against the petitioners herein are illegal and *ultra vires*

20. Accordingly, it is ordered that the impugned Exhibits-P7 and P-8 proceedings in W.P.(C) No.14751 of 2017 and the impugned Exhibit-P9 and P12 proceedings in W.P.(C) No.11852 of 2011 and all further consequential proceedings taken thereon in pursuance of those impugned proceedings will stand quashed. It is submitted by Sri. Ashok. B. Shenoy, learned counsel appearing for the petitioner in W.P.(C) No.11852 of 2011 that when the petitioner had, challenged Exhibit-P9 proceedings before the statutory appellate Tribunal, he was called upon to pre-deposit a certain portion of the amount demanded before consideration of the appeal on merit and he had in fact deposited the said amount, etc. and that the said amount may be directed to be refunded to the petitioner. If the petitioner has in fact deposited any amount in pursuance of the impugned orders referred to herein above, then the competent authority of the respondents shall ensure that the said amount is refunded to the petitioner within' two weeks from which he submits an application for refund in that regard along with a certified copy of this judgment.

With these observations and directions, the aforecaptioned Writ Petitions (Civil) with stand finally disposed of.

Ref: LLR