

Supreme Court of India

Pawan Hans Ltd. vs Aviation Karmachari Sanghatana on 17 January, 2020

Author: Hon'Ble Ms. Malhotra

Bench: Hon'Ble Ms. Malhotra, Ajay Rastogi

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No. 353 of 2020
(Arising out of SLP (C) No. 381 of 2019)

M/S. PAWAN HANS LIMITED & ORS.

APPELLANTS

Versus

AVIATION KARMACHARI SANGHATANA
& ORS.

RESPONDENTS

JUDGMENT

INDU MALHOTRA, J.

Leave granted.

1. The issue which arises for consideration is whether the contractual employees of the Appellant Company are entitled to provident fund benefits under the Pawan Hans Employees Provident Fund Trust Regulations or under the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (EPF Signature Not Verified Digitally signed by RAJNI MUKHI Act) and the Employees Provident Fund Scheme, 1952 (EPF Date: 2020.01.17 16:20:21 IST Reason:

Scheme) framed thereunder.

2. The background facts in which the present Civil Appeal has been filed are as under :

2.1 The Company was incorporated on 15.10.1985 under the Companies Act, 1956, and is registered as a Government of India company with the Registrar of Companies, Delhi. The Government of India holds 51% shareholding in the Appellant Company and the remaining 49% is held by Oil and Natural Gas Company Ltd. (ONGC).

The Company was incorporated with the primary objective of providing helicopter support services to the oil sector for its offshore exploration operations, services in remote and hilly areas, and

charter services for promotion of tourism. It is classified as a non-scheduled operator under Rule 134 of the Aircraft Rules, 1937. 2.2 On 01.04.1986, the Appellant Company framed and notified the Pawan Hans Employees Provident Fund Trust Regulations (hereinafter referred to as the PF Trust Regulations) for giving provident fund benefits to all the employees of the Appellant Company.

Regulations 1.3 and 2.5 of the PF Trust Regulations are set out hereunder for ready reference: 1.3 These Regulations shall apply to all the employees of the Corporation.

2.5. Employee means any person who is employed for wages/salary in any kind of work, monthly or otherwise, in or in connection with the work of the Corporation and who gets his wages/salary directly or indirectly from the Corporation, and excludes any person employed by or through a contractor or in connection with the work of the Corporation but does not include any person employed as an apprentice or trainee. [emphasis supplied] 2.3 On 26.03.1987, the Appellant Company instituted the Pawan Hans Employees Provident Fund Trust (PF Trust) wherein the management started depositing its share towards the provident fund contribution with respect to employees on the regular cadre of the Company; correspondingly, the regular employees started depositing the matching contribution with the PF Trust. 2.4 Out of a total workforce of 840 employees, the Company had engaged 570 employees on regular basis, while 270 employees were engaged on contractual basis. The Company implemented the PF Trust Regulations only with respect to the regular employees, even though the term employee had been defined to include any person employed directly or indirectly under the PF Trust Regulations.

2.5 The Company having framed its own PF Trust Regulations, was claiming exemption from the applicability of the EPF Act and EPF Scheme under Section 16 of the EPF Act. 2.6 On 08.01.1989, the Ministry of Labour, Government of India, issued a communication to the Central Provident Fund Commissioner, New Delhi, pertaining to the grant of exemption to departmental undertakings under the control of the Central/State Government statutory bodies. The Central Provident Fund Commissioner was directed to instruct the Regional Provident Fund Commissioners to carefully review the cases of departmental undertakings and statutory bodies falling under the categories specified in Section 16(1)(b) and 16(1)(c) of the EPF Act, and take further action as indicated in the said letter. Clause (iv) of the said letter dated 08.01.1989 is of relevance, and is extracted hereunder for ready reference: (iv) There may be establishments which employ large member of casual/contingent staff, who are not entitled to the benefit of provident fund or pension. The casual/contingent staff of such establishment will continue to be covered under the Act, but their regular employees who are entitled to the benefit of provident fund or pension should be excluded from the purview of the Act. [emphasis supplied] 2.7 The Central Government, in exercise of the powers under S.1(3)(b) of the EPF Act, issued a Notification dated 22.03.2001, making the provisions of the EPF Act applicable to aircraft or airlines establishments employing 20 or more persons, excluding aircraft or airlines establishments owned or controlled by the Central or State Government.

The Gazette Notification No. SO 746 dated 22.03.2001 (Notification) is extracted for ready reference: S.O. 746 In exercise of the powers conferred by clause (b) of sub section (3) of Section 1 of the Employees Provident Fund and Miscellaneous Provisions Act 1952 (19 of 1952), the Central

Government hereby specifies the following establishment employing 20 or more persons as the class of establishments to which the said Act shall apply with effect from 1st April 2001 namely:

- (i) An establishment engaged in rendering courier services;
- (ii) An establishment of aircraft or airlines other than the aircraft airlines owned or controlled by the Central or State Government.
- (iii) An establishment engaged in rendering cleaning and sweeping services. [emphasis supplied]
The said Notification was brought into force w.e.f 01.04.2001.

2.8 Correspondingly, amendments were made to the EPF Scheme framed under Section 5 of the EPF Act. Clause 3

(b)(ci) was inserted vide Notification No. S-35016/1/1997-SS II dated 22.07.2002, by which the EPF Scheme was made applicable to aircraft or airlines establishments other than the aircraft or airlines establishments owned or controlled by the Central or State Government. 2.9 The members of the Respondent-Union made several representations on 18.09.2012, 29.09.2012, 13.03.2013, 19.11.2014 to extend the benefit of the PF Trust Regulations since they were directly engaged by the Company on contractual basis, some of whom were working for almost 20 years.

The Company failed to respond to the representations. 2.10 Being aggrieved by the inaction of the Company, the Respondent-Trade Union, filed CWP No.325 of 2017 on 20.12.2016 against the Company praying for the following reliefs:

(a) A declaration that the members of the Respondent-Trade Union and other similarly situated employees, employed on contract basis by the Appellant-Company are entitled to the benefit of Provident Fund as per the EPF Act and the EPF Scheme, and that the Appellant-Company be directed to forthwith enrol all such eligible contract employees under the EPF Scheme and deposit their contribution with the Respondent No. 3-Regional Provident Fund Commissioner, Employees Provident Fund Organisation, from the date they are eligible till remittance, and thereafter, till they are in the employment of the Appellant-Company.

(b) Alternatively, the Appellant-Company forthwith be directed to suitably amend the PF Trust Regulations to permit the enrolment of contract workers as members of the PF Trust instituted by the Appellant-Company and to make all eligible contract employees members of the PF Trust from their respective dates of entitlement and continue to contribute amounts to the PF Trust in respect of contract employees. 2.11 During the pendency of the Writ Petition, the Regional Provident Fund Commissioner, Bandra issued a letter dated 24.05.2017 to the Company wherein it was stated that even though the EPF Act would not apply to establishments owned/controlled by the Central Government as per S.16(1)(b) and (c), however social security benefits such as provident fund must be provided to all employees/workers who are engaged on contractual/casual/daily wages basis since there is no distinction between a person employed on permanent, temporary, contractual, or

casual basis under S.2 (f) of the EPF Act.

2.12 The High Court vide the impugned Judgment & Order dated 12.09.2018 allowed the Writ Petition in terms of prayer (a), with the direction that the benefits under the EPF Act be extended to the members of the Respondent Trade Union, and other similarly situated employees. It was held that a liberal view must be taken in extending social security benefits to the contractual employees. The High Court directed the Company to enrol all eligible contractual employees under the EPF Scheme, and deposit their contribution with Respondent No.3 Regional Provident Fund Commissioner from the date they became eligible till remittance, and thereafter till they are in employment of the Company. This was to be carried out latest by 31.12.2018.

3. Aggrieved by the impugned Judgment, the Appellant Company filed the present Civil Appeal.

This Court vide Order dated 14.01.2019 issued notice and granted stay of the impugned Judgment subject to the Company depositing a sum of Rs.5,00,00,000/-(Rupees Five Crores) within 3 months in this Court.

Pursuant thereto, the Company deposited the said amount on 09.04.2019, which has been invested in a Fixed Deposit.

4. We have heard the learned counsel for both the parties, and have considered the oral and written submissions made on their behalf.

4.1 Ms. Pinky Anand, learned Additional Solicitor General of India, appearing for the Appellant Company inter alia submitted that:

a) The Company is excluded from the applicability of the EPF Act since it neither falls under Schedule I of the EPF Act, nor is it covered by Notification dated 22.03.2001 issued under Section 1(3)(b) of the EPF Act, since the Notification itself expressly excludes airline companies owned or controlled by the Central Government from the purview of the EPF Act.

b) The Notification 22.03.2001 was inapplicable to the Appellant Company since Section 16(1)(b) of the EPF Act, excludes an establishment owned or controlled by the Central Government from the scope of the EPF Act.

c) The Central Government holds 51% of the shareholding in the Appellant Company, and the Board of Directors of the Appellant Company have been appointed by the Ministry of Civil Aviation. The Appellant Company is governed by the guidelines issued by the Department of Public Enterprises, Government of India. The Appellant Company is thus an establishment owned and controlled by the Central Government. Even after the EPF Act became applicable to the airlines industry, the Appellant Company being an establishment owned and controlled by the Central Government, was excluded from the purview of the EPF Act.

d) The High Court committed a grave error in giving retrospective application to the provisions of the EPF Act, i.e., from the date of the members joining the Respondent's Trade Union, given that several contractual employees had superannuated, passed away, resigned, or ceased to be in the employment of the Company. The extension of benefits under the EPF Act to contractual employees irrespective of their status of employment with the Company was wholly illegal, arbitrary, and liable to be set aside.

e) The members of the Respondent's Union and other similarly situated employees have already been paid in full their monthly financial benefits/emoluments. The direction of the High Court to the Company to contribute to the provident fund of the contractual employees would amount to burdening the Company with twice the liability.

4.2 Mr. P.S. Narasimha, learned Senior Counsel appearing on behalf of the Respondent's Union inter alia submitted that:

a) The term employee defined by Clause 2.5 of the PF Trust Regulations is widely defined to cover all employees, including those engaged on contractual basis, who are in the direct or indirect employment of the Company. The members of the Respondent's Union are in direct employment of the Company, since they have not been engaged through any contractor. The contractual workers are paid directly as evidenced by the pay slips issued by the Company. The benefits under the PF Trust Regulations, or the EPF Act, are required to be provided to even contractual employees from the date of their joining till the date of remittance.

b) The Company is not controlled by the Central Government since its affairs are managed and controlled by a Board of Directors. The Company is not a company controlled by the Central Government.

The Notification dated 22.03.2001, specified certain establishments including the airlines industry, other than airlines owned or controlled by the Central or State Government, to be covered under the EPF Act. Consequently, the Company was obligated to extend the benefits under the EPF Act to all its employees.

c) The EPF Act is a beneficial piece of legislation, which has to be liberally construed. The denial of statutory benefits and entitlements like provident fund to the members of the Respondent's Union is *ex facie* illegal, arbitrary, discriminatory and in violation of the provisions of the EPF Act and the Constitution of India.

5 The issue which arises for consideration in the present Civil Appeal is whether the Appellant's Company is under a statutory obligation to provide the benefit of provident fund to its contractual employees under the PF Trust Regulations or the EPF Act?

If so, the date from which the aforesaid benefit is to be extended to the contractual employees.

6 Discussion and Analysis 6.1 It is first required to be seen whether the Appellant Company is excluded from the applicability of the provisions of the EPF Act and the EPF Scheme framed thereunder as contended by them.

6.2 As per Section 1(3) of the EPF Act, the EPF Act is applicable to every establishment in which 20 or more persons are employed, which is either a factory engaged in any industry specified in Schedule I, or an establishment which the Central Government may by notification in the Official Gazette specify in that behalf. Section 1(3) of the EPF Act reads as:

Section.1(3) : Subject to the provisions contained in section 16, it applies

(a) to every establishment which is a factory engaged in any industry specified in Schedule I and in which twenty or more persons are employed, and

(b) to any other establishment employing twenty or more persons or class of such establishments which the Central Government may, by notification in the Official Gazette, specify in this behalf:

Provided that the Central Government may, after giving not less than two months notice of its intention so to do, by notification in the Official Gazette, apply the provisions of this Act to any establishment employing such number of persons less than twenty as may be specified in the notification. [emphasis supplied] Section 1(3) is subject to Section 16 of the EPF Act. Sub-section (1) of Section 16 enlists those establishments which are excluded from the applicability of the EPF Act. As per clause (b) of sub-section (1), an establishment belonging to or under the control of the Central or State Government, and whose employees are entitled to the benefit of contributory provident fund in accordance with any scheme or rules framed by the Central or State Government governing such benefits, is excluded from the purview of the EPF Act.

Sub-section (1) of Section 16 reads as: Section 16. Act not to apply to certain establishment. (1) This Act shall not apply

(a) to any establishment registered under the Co-operative Societies Act, 1912 (2 of 1912), or under any other law for the time being in force in any State relating to cooperative societies employing less than fifty persons and working without the aid of power; or

(b) to any other establishment belonging to or under the control of the Central Government or a State Government and whose employees are entitled to the benefit of contributory provident fund or old age pension in accordance with any Scheme or rule framed by the Central Government or the State Government governing such benefits; or

(c) To any other establishment set up under any Central, Provincial or State Act and whose employees are entitled to the benefits of contributory provident fund or old age pension in accordance with any scheme or rule framed under that Act governing such benefits; (2) If the Central Government is of opinion that having regard to the financial position of any class of establishment or other circumstances of the case, it is necessary or expedient so to do, it may, by

notification in the Official Gazette, and subject to such conditions, as may be specified in the notification, exempt, whether prospectively or retrospectively, that class of establishments from the operation of this Act for such period as may be specified in the notification. [emphasis supplied] This Court in Regional Provident Fund Commissioner v. Sanatan Dharam Girls Secondary School laid down a twin test for an establishment to seek exemption from the provisions of the EPF Act, 1952. The twin conditions are: 1 (2007) 1 SCC 268 : (2007) 1 SCC (L&S) 167 First, the establishment must be either belonging to or under the control of the Central or the State Government. The phrase belonging to would signify ownership of the Government, whereas the phrase under the control of would imply superintendence, management or authority to direct, restrict or regulate.² Second, the employees of such an establishment should be entitled to the benefit of contributory provident fund or old age pension in accordance with any scheme or rule framed by the Central Government or the State Government governing such benefits.

If both tests are satisfied, an establishment can claim exemption/exclusion under Section 16(1)(b) of the EPF Act.

Applying the first test to the instant case, the Central Government has a 51% ownership in the Appellant Company, while the balance 49% is owned by the ONGC, a Central Government PSU.

As per Section 2(45) of the Companies Act, 2013, a Government Company means any company in which not less than 51 % of the paid up share capital is held by the Central Government. Since 51% of the shares of the 2 Shamrao Vithal Coop. Bank Ltd. v. Kasargode Panduranga Maliya, (1972) 4 SCC 600 Appellant Company are owned by the Central Government, the first test is satisfied as the Appellant Company can be termed as a Government Company under Section 2(45) of the Companies Act, 2013.

With respect to the second test, it is relevant to note that the Company had its own Scheme viz. the Pawan Hans Employees Provident Fund Trust Regulations in force. The Company however restricted the application of the PF Trust Regulations to only the regular employees. The PF Trust Regulations of the Company were not framed by the Central or State Government, nor were they applicable to all the employees of the Company, so as to satisfy the second test. The Regional Provident Fund Commissioner, Bandra issued letter dated 24.05.2017 addressed to the Company wherein it was stated that the benefit of contributory provident fund was not being provided to contractual/casual employees of the Company; and was directed to implement the provisions of the EPF Act. The relevant extract from the letter is set out hereinbelow:

approximately 370-400 employees have been engaged by M/s Pawan Hans Ltd. on contract basis in various cadres. But no social security benefit is being extended to them.

The EPF & MP Act, 1952 under Section 2(f) lays down that any person employed for wages in any kind of work in or in connection with the work of the establishment and includes a worker engaged by or through a contractor. There is no distinction between a person employed on permanent, temporary, contractual or casual basis under Section 2(f) of the EPF & MP Act, 1952.

You are therefore, requested to implement the provisions of the EPF & MP Act, 1952 in respect of all the contractual/causal employees engaged by M/s Pawan Hans Ltd. who are still not getting benefits of PF and Pension. [emphasis supplied] In our view, the Company does not satisfy the second test, since the members of the Respondent Union and other similarly situated contractual workers were not getting the benefits of contributory provident fund under the PF Trust Regulations framed by the Company, or under any Scheme or any rule framed by the Central Government or the State Government. Consequentially, the exemption under Section 16 of EPF Act would not be applicable to the Appellant Company.

In view of the above discussion, we hold that the Company has failed to make out a case of exclusion from the applicability of the provisions of the EPF Act. 6.3 The next issue which arises for consideration is whether the members of the Respondent Trade Union are entitled to the benefit of Provident Fund under the PF Trust Regulations or under the EPF Act.

Clause 1.3 of the Regulations would show that the PF Trust Regulations were made applicable to all employees of the Appellant Company.

Clause 2.5 of the Regulations, defines an employee, to include any employee who is employed for wages/salary in any kind of work, monthly or otherwise, or in connection with the work of the Company, and who gets his wages/salary directly or indirectly from the Company. Clause 2.5 excludes only a person employed by or through a contractor in connection with the work of the Company, and any person employed as an apprentice or trainee.

In the present case, the Respondent Union submitted that even though the appointment letters refer to the employees as contractual employees, they were not engaged through any contractor. They were being paid directly by the Company, which is evidenced from the pay slips issued to them. It was submitted that about 250 contractual employees receive wages directly from the Company, and are eligible to be included under the PF Trust Regulations framed by the Company.

6.4 We find that the members of the Respondent Union have been in continuous employment with the Company for long periods of time. They have been receiving wages/salary directly from the Company without the involvement of any contractor since the date of their engagement. The work being of a perennial and continuous nature, the employment cannot be termed to be contractual in nature.

In our considered view, Clause 2.5 of the PF Trust Regulations would undoubtedly cover all contractual employees who have been engaged by the Company, and draw their wages/salary directly or indirectly from the Company.

6.5 As per Section 2(f) of the EPF Act, the definition of an employee is an inclusive definition, and is widely worded to include any person engaged either directly or indirectly in connection with the work of an establishment, and is paid wages. 3 Sub Regional Provident Fund Office v. Godavari Garments Ltd., (2019) 8 SCC 149 : (2019) 2 SCC (L&S) 483; M/s P.M. Patel & Sons and Ors. v. Union of India and Ors (1986) 1 SCC 32. In view of the above discussion, we find that the members

of the Respondent Union and all other similarly situated contractual employees, are entitled to the benefit of provident fund under the PF Trust Regulations or the EPF Act. Since the PF Trust Regulations are in force and are applicable to all employees of the Company, it would be preferable to direct that the members of the Respondent Union and other similarly situated contractual employees are granted the benefit of provident fund under the PF Trust Regulations so that there is uniformity in the service conditions of all the employees of the Company. 6.6 The question which now arises is the date from which the benefit of provident fund is to be extended to the contractual employees.

This Court vide Order dated 24.10.2019 had passed the following Order:

Provident Fund is normally managed on actuarial basis;

the contributions received from employer and the employee are invested and the income by way of interest forms the substantial fund through which any pay-out is made. For all these years the Fund in question was subsisting on contributions made by the other employees and, if at this stage, the benefit in terms of the judgment of the High Court is extended with retrospective effect, it may create imbalance. Those who had never contributed at any stage would now be members of the fund. The fund never had any advantage of their contributions and yet the fund would be required to bear the burden in case any pay-out is to be made. Even if concerned employees are directed to make good contributions with respect to previous years with equivalent matching contribution from the employer, the fund would still be deprived of the interest income for past several years in respect of such contributions.

In order to have clear perspective in the matter and to see if there could be any solution to the problem as posed above, we call upon the petitioner to depute a person who is well versed in the matter and who has been managing the Provident Fund Scheme of Pawan Hans Limited to have a dialogue with the respondent No.3 before 15.11.2019 (a representative of the respondent(s) is also at liberty to remain present during such discussion) so that a workable solution could then be presented by such person and the representative of respondent No.3 before us on the next occasion.

List the matter on 29.11.2019 at 10.30 a.m. 6.7 The learned ASG submitted that no workable solution could be worked out at the meeting held between the representative of the Appellant Company, Respondent No.3, and the representative of the Respondent Union. The learned ASG however offered that the Appellant Company was willing to extend the benefit under the PF Trust Regulations to the members of the Respondent Union and other similarly situated employees, from the date of the impugned Judgment.

6.8 Respondent No.3 the Regional Provident Fund Commissioner submitted that since the Company had remained out of the purview of the EPF Act, the direction to deposit contribution from the date of eligibility of the contractual employees till the date of remittance was not workable, and could not be sustained.

7 After hearing the parties at length, and in light of the peculiar facts and circumstances of this case, we affirm the Judgment & Order dated 12.09.2018 passed by the Bombay High Court in W.P.No.325/2017 holding that members of the Respondent Union are covered by the EPF Act. However, we modify the direction of the High Court to grant the benefits under the EPF Act, and direct that the members of the Respondent Union and other similarly situated contractual employees be enrolled under the Pawan Hans Employees Provident Fund Trust Regulations so that there is uniformity in the conditions of service of all employees of the Appellant Company.

Furthermore, the direction of the High Court to pay the contribution from the date of their eligibility till the date of remittance is also modified in terms of the directions given in this Judgment.

8 We pass the following directions to effectuate the reliefs granted:

(i) The interests of justice would be best subserved if the benefit of Provident Fund is provided to the members of the Respondent Union, and other similarly situated contractual employees, from January 2017 when the Writ Petition was filed before the High Court.

(ii) Respondent No.3 the Regional Provident Fund Commissioner, Regional Office, Bhavishya Nidhi Bhawan, 341 Bandra (E), Mumbai is directed to determine and compute the amount to be deposited by the Company on the one hand, and the members of the Respondent Union and other similar situated employees on the other hand. The computation would be required to be made for the past period i.e. January 2017 to December 2019;

(iii) The Company shall be liable to pay Simple Interest @ 12% p.a. on the amount payable by it towards contribution of provident fund for the past period, i.e., January 2017 to December 2019, as per Section 7Q of the EPF Act, 1952 ;

(iv) The statement of computation made by Respondent No.3 will be placed before this Court within a period of 12 weeks from the date of this Judgment, and thereafter the matter will be listed for issuance of necessary directions, so that the amount can be remitted from the deposit made before this Court, directly to the PF Trust;

(v) The employees will be obligated to deposit their matching contribution for the past period i.e. January 2017 to December 2019, within a period of 12 weeks along with interest @ 6% p.a., after the contribution of the Company has been remitted to the PF Trust;

(vi) With respect to the period from January 2020 onwards, the Company and the members of the Respondent Union as also other similarly situated employees, will make their respective contributions as per the PF Trust Regulations;

(vii) The benefit shall not be extended to those employees who have superannuated, expired, resigned, or ceased to be in the employment of the Company on the date of this Judgment ;

(viii) We consider it appropriate to award Costs of Rs.5,00,000 (Rupees Five Lacs) to the Respondent□Union towards litigation expenses incurred in the High Court and in this Court.

(ix) After the aforesaid amounts are disbursed, the balance amount lying deposited in this Court shall be refunded to the Appellant□Company.

The present civil appeal along with all pending applications, if any, stand disposed of. Ordered accordingly.

.....J.

(UDAY UMESH LALIT)J.

(INDU MALHOTRA) New Delhi;

January 17, 2020.