



2024:KER:21995

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE AMIT RAWAL

&

THE HONOURABLE MRS. JUSTICE C.S. SUDHA

THURSDAY, THE 8TH DAY OF FEBRUARY 2024 / 19TH MAGHA, 1945

WA NO. 1708 OF 2019

AGAINST THE JUDGMENT DATED 07/06/2018 IN WP(C)NO.

13827/2016 OF HIGH COURT OF KERALA

APPELLANT/1ST RESPONDENT:

EMPLOYEES' PROVIDENT FUND ORGANIZATION,
REPRESENTED BY ASSISTANT PROVIDENT FUND
COMMISSIONER (COMPLIANCE DIVISION),
BHAVISHYANIDHI, P.B.NO.1806, ERANHIPALAM P.O.,
KOZHIKODE - 673 006

BY ADV ABRAHAM P.MEACHINKARA

RESPONDENTS/PETITIONER/RESPONDENTS:

- 1 MOULANA HOSPITAL,
P.B.NO.31, OOTTY ROAD, PERINTHALMANNA,
MALAPPURAM DISTRICT -679 322, REPRESENTED BY
MANAGING PARTNER N.ABDUL RASHEED.
- 2 UNION OF INDIA,
REPRESENTED BY ITS SECRETARY, MINISTRY OF LABOUR
AND EMPLOYMENT, SASTHRI BHAVAN,
NEW DELHI -110 001.

BY ADVS.
K.ANAND
HUSSAIN KOYA VALIYAVEEDAKATH

THIS WRIT APPEAL HAVING COME UP FOR FINAL HEARING ON
08.02.2024, ALONG WITH WA.469/2023, 1633/2019 AND
CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE AMIT RAWAL

&

THE HONOURABLE MRS. JUSTICE C.S. SUDHA

THURSDAY, THE 8TH DAY OF FEBRUARY 2024 / 19TH MAGHA, 1945

WA NO. 469 OF 2023

AGAINST THE JUDGMENT DATED 11/10/2022 IN WP(C)NO.14016/2010

OF HIGH COURT OF KERALA

APPELLANTS/RESPONDENTS 1 TO 3:

- 1 EMPLOYEES PROVIDENT FUND ORGANIZATION,
SUB REGIONAL OFFICE, BAVISHYA NIDI BHAVAN,
KALOOR, COCHIN, PIN - 682 017.
- 2 REGIONAL PROVIDENT FUND COMMISSIONER,
ERNAKULAM, PIN - 682 017.
- 3 ASSISTANT PROVIDENT FUND COMMISSIONER,
KOCHI, PIN - 682 017.

BY ADV SAJEEV KUMAR K.GOPAL

RESPONDENTS/PETITIONER/4TH RESPONDENT:

- 1 LISIE HOSPITAL,
ERNAKULAM, REPRESENTED BY ITS DIRECTOR,
FR.MATHEW MUTTAMTHOTTY, PIN - 682 017.
- 2 REGISTRAR, KERALA NURSES' AND MIDWIVES' COUNCIL,
RED CROSS ROAD, THIRUVANANTHAPUAM, PIN - 695 037.

BY ADV N. RAGHURAJ

THIS WRIT APPEAL HAVING COME UP FOR FINAL HEARING ON
08.02.2024, ALONG WITH WA.1708/2019 AND CONNECTED CASES,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE AMIT RAWAL

&

THE HONOURABLE MRS. JUSTICE C.S. SUDHA

THURSDAY, THE 8TH DAY OF FEBRUARY 2024 / 19TH MAGHA, 1945

WA NO. 1633 OF 2019

AGAINST THE JUDGMENT DATED 07/06/2018 IN WP(C)NO.15477/2014

OF HIGH COURT OF KERALA

APPELLANT/2ND RESPONDENT:

EMPLOYEES' PROVIDENT FUND ORGANIZATION,
REPRESENTED BY ASSISTANT PROVIDENT FUND
COMMISSIONER (COMPLIANCE DIVISION),
BHAVISHYANIDHI, P.B NO.1806, ERANHIPALAM P.O.,
KOZHIKODE - 673 006.

BY ADV DR.ABRAHAM P.MEACHINKARA, SC, EPF ORG.

RESPONDENTS/PETITIONER/1ST RESPONDENT:

- 1 M/S.MALABAR HOSPITALS (P) LTD.,
RAJIV GANDHI BYPASS ROAD, KARUVAMNARAM, MANJERI,
MALAPPURAM DISTRICT - 676 121, REPRESENTED BY
MANAGING PARTNER DR. A. MOIDEENKUTTY.
- 2 UNION OF INDIA REPRESENTED BY ITS SECRETARY,
MINISTRY OF LABOUR AND EMPLOYMENT, SASTHRI
BHAVAN, NEW DELHI - 110 001.

BY ADVS.SRI.K.ANAND
CENTRAL GOVERNMENT COUNSEL(B/O)
SHRI.RAJESH O.N.
SRI.HUSSAIN KOYA VALIYAVEEDAKATH

THIS WRIT APPEAL HAVING COME UP FOR FINAL HEARING ON
08.02.2024, ALONG WITH WA.1708/2019 AND CONNECTED CASES,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE AMIT RAWAL

&

THE HONOURABLE MRS. JUSTICE C.S. SUDHA

THURSDAY, THE 8TH DAY OF FEBRUARY 2024 / 19TH MAGHA, 1945

WA NO. 1778 OF 2019

AGAINST THE JUDGMENT DATED 07/06/2018 IN WP(C)NO.34620/2016

OF HIGH COURT OF KERALA

APPELLANT/1ST RESPONDENT:

EMPLOYEES' PROVIDENT FUND ORGANIZATION,
REPRESENTED BY ASSISTANT PROVIDENT FUND
COMMISSIONER (COMPLIANCE DIVISION),
BHAVISHYANIDHI, P.B. NO.1806, ERANHIPALAM P.O.,
KOZHIKODE - 673 006.

BY ADV DR.ABRAHAM P.MEACHINKARA, SC, EPF ORG.

RESPONDENTS/PETITIONER/RESPONDENTS:

- 1 M/S. MALABAR HOSPITALS (P) LTD.,
RAJIV GANDHI BYPASS ROAD, KARUVAMNARAM, MANJERI,
MALAPPURAM DISTRICT-676 121, REPRESENTED BY
MANAGER PARTNER DR. A.MOIDEENKUTTY.
- 2 UNION OF INDIA,
REPRESENTED BY ITS SECRETARY, MINISTRY OF LABOUR
AND EMPLOYMENT, SASTHRI BHAVAN, NEW DELHI-110 001.

BY ADVS.
SRI.K.ANAND
HUSSAIN KOYA VALIYAVEEDAKATH
SHRI.RAJESH O.N.

THIS WRIT APPEAL HAVING COME UP FOR FINAL HEARING ON
08.02.2024, ALONG WITH WA.1708/2019 AND CONNECTED CASES,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE AMIT RAWAL

&

THE HONOURABLE MRS. JUSTICE C.S. SUDHA

THURSDAY, THE 8TH DAY OF FEBRUARY 2024 / 19TH MAGHA, 1945

WA NO. 2390 OF 2017

AGAINST THE JUDGMENT DATED 13/07/2017 IN WP(C)NO.16329/2012
OF HIGH COURT OF KERALA

APPELLANT/PETITIONER:

M/S INDO AMERICAN HOSPITAL,
BRAIN& SPINE CENTRE, CHEMANAKIRI NEAR VAIKOM,
KOTTAYAM, PIN - 686 143, REPRESENTED BY ITS
MANAGING DIRECTOR COL.RAJIV MANALI.

BY ADVS.SRI.T.A.SHAJI (SR.)
SRI.ATHUL SHAJI
KUM.NAIR ANUJA GOPALAN
SRI.JOLLY JOHN

RESPONDENTS/RESPONDENTS IN THE W.P. (C) :

- 1 ASSISTANT PROVIDENT FUND COMMISSIONER,
EMPLOYEES' PROVIDENT FUNDS ORGANIZATION,
SUB REGIONAL OFFICE, CHALAKKUZHY BUILDINGS,
C.M.S COLLEGE ROAD, KOTTAYAM - 686 001.
- 2 UNION OF INDIA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
MINISTRY OF LABOUR, GOVT. OF INDIA,
NEW DELHI - 110 001.
- 3 THE BRANCH MANAGER,
STATE BANK OF TRAVANCORE, KULASEKHARAMANGALAM
BRANCH, VAIKOM, KOTTAYAM, PIN-686 608.



BY ADVS.
SRI.JOY THATTIL ITOOP, SC, EPF ORGANISA
SRI.K.SHRI HARI RAO, CGC
SRI.PUSHPARAJAN KODOTH
SRI.K.S.DILEEP (B/O)
ADV.T.SETHUMADHAVAN (SR.)
ADV.K.JAYESH MOHANKUMAR

THIS WRIT APPEAL HAVING COME UP FOR FINAL HEARING ON
08.02.2024, ALONG WITH WA.1708/2019 AND CONNECTED CASES,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE AMIT RAWAL

&

THE HONOURABLE MRS. JUSTICE C.S. SUDHA

THURSDAY, THE 8TH DAY OF FEBRUARY 2024 / 19TH MAGHA, 1945

WA NO. 2505 OF 2018

AGAINST THE JUDGMENT DATED 07/06/2018 IN WP(C) NO.1852/2011

OF HIGH COURT OF KERALA

APPELLANT/2ND RESPONDENT:

THE REGIONAL PROVIDENT FUND COMMISSIONER II,
EMPLOYEES PROVIDENT FUND ORGANISATION,
SUB REGIONAL OFFICE, OLD MUNICIPAL OFFICE
BUILDING, KOLLAM-691 001.

BY ADV PIRAPPANCODE V.S.SUDHIR

RESPONDENTS/PETITIONER & 1ST RESPONDENT:

- 1 HOLY CROSS HOSPITAL,
KOTTIYAM-691 571, KOLLAM DISTRICT,
REPRESENTED BY THE ADMINISTRATOR,
SR.FIDES THOTTAN.
- 2 EMPLOYEES PROVIDENT FUND APPELLATE TRIBUNAL,
CORE-2,4TH FLOOR, SCOPE MINAR, LAXMI NAGAR,
DIST.CENTRE, DELHI-110 092.

THIS WRIT APPEAL HAVING COME UP FOR FINAL HEARING ON
08.02.2024, ALONG WITH WA.1708/2019 AND CONNECTED CASES,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE AMIT RAWAL

&

THE HONOURABLE MRS. JUSTICE C.S. SUDHA

THURSDAY, THE 8TH DAY OF FEBRUARY 2024 / 19TH MAGHA, 1945

WA NO. 2464 OF 2018

AGAINST THE JUDGMENT DATED 07/06/2018 IN WP(C)NO.14751/2017

OF HIGH COURT OF KERALA

APPELLANT/RESPONDENTS :

- 1 THE REGIONAL PROVIDENT FUND COMMISSIONER,
EMPLOYEES PROVIDENT FUND ORGANISATION,
BHAVISHYANIDHI BHAVAN, PATTOM,
THIRUVANANTHAPURAM - 695 004.
- 2 THE ASSISTANT PROVIDENT FUND COMMISSIONER,
EMPLOYEES PROVIDENT FUND ORGANISATION,
REGIONAL OFFICE, THIRUVANANTHAPURAM.

BY ADV PIRAPPANCODE V.S.SUDHIR

RESPONDENT/PETITIONER:

SIVAGIRI SREE NARAYANA MEDICAL MISSION HOSPITAL,
VARKALA, THIRUVANANTHAPURAM DISTRICT,
REPRESENTED BY THE SECRETARY - 695 012.

BY ADVS.
V. JAYAPRADEEP
LILIN LAL(K/114/2021)
SAJEENA ABDU T.K.(K/476/2022)

THIS WRIT APPEAL HAVING COME UP FOR FINAL HEARING ON
08.02.2024, ALONG WITH WA.1708/2019 AND CONNECTED CASES,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



AMIT RAWAL & C.S.SUDHA, JJ.

**Writ Appeal Nos. 2390/2017, 2464/2018, 2505/2018,
1633/2019, 1708/2019, 1778/2019 & 469/2023**

Dated this the 08th day of February, 2024

J U D G M E N T

Amit Rawal, J.

Six hospitals, namely, M/s.Indo American Hospital, Holy Cross Hospital, Sivagiri Sree Narayana Medical Mission Hospital, M/s.Malabar Hospitals (P) Ltd., Moulana Hospital and Lisie Hospital, except two, that is Holy Cross Hospital and Sivagiri Sree Narayana Medical Mission Hospital, who are indulging into education were confronted with proceedings under the Employees Provident Funds and Miscellaneous Provisions, 1952 (hereinafter called, the 1952 Act) on the allegation that, on the basis of the report of the inspection conducted by the Enforcement Officer, the contribution of the entire number of staff working in the hospital was not being paid, except a few and therefore exigible to the provisions of the 1952 Act and consequential proceedings. The Enforcement Officer as required under the Act is competent to inspect the record by visiting the premises of the establishments to ascertain whether the staff is permanent or a trainee,



contractual or bonded etc. for, as per the definition of Section 2(f) 'employee' means an employee employed directly or indirectly in any establishment including the apprentice but not apprentice appointed under the Apprentice Act, 1961 or model Standing Orders.

2. Management of the hospitals purported to have supplied materials and made available the entire documents to the Enforcement Officer by justifying the cause of not submitting the contribution of few members of the staff, who, according to them, were either training staff, bonded worker, contractual or trainees.

3. The Enforcement Officer dissatisfied with the reply submitted a report, resulted into proceedings under Section 7A of the Act. The Assessing Officer conducted a detailed hearing and provided an opportunity of hearing as per the provisions of sub-section (2) of Section 7A of the Act. The representatives of the Hospitals raised multi-fold grounds for non applicability of the provisions of the 1952 Act, which are summarised hereunder :

1) Few of the hospitals are also imparting the education and the students who have passed the final year examinations are mandatorily required to undergo one year training and would not be falling in the



definition of permanent employee.

2) The terms and conditions of the appointment letters also reveal that they were paid stipend which is not equivalent to the wages given to the other regular set of employees and appointment is confined to three months; on satisfaction of the work, they would be confirmed and absorbed in the establishment. It is only for those set of employees, the employer would be obliged to make the contribution under the provisions of the 1952 Act.

4. The Assessing Officer after having accepted the request for re-inspection of certain establishments, came to the finding that the workers working under the establishment were infact regular ones and not temporary apprentices appointed under the standing orders, raised the demand.

5. The aforementioned orders were impugned before the Commissioner but of no avail. The matter was taken to this Court under Article 226 of the Constitution of India.

6. Learned Single Judge on analysis of the rival contentions and the case law on record, particularly the judgment of the Supreme Court in **Regional Provident Fund Commissioner, Mangalore v. Central Arecanut & Coca Marketing and Processing Coop. Ltd., Mangalore** reported in **(2006)2 SCC 381** allowed the writ petition. It is in that



background the Employees' Provident Fund Organization is before us in this *intra* court appeals.

7. Respective counsels representing the EPF in different matters have in unison raised the following submissions :

i) The entire gamut and genesis of the judgment of the learned Single Bench is based on a premise that all the hospitals are indulging into education and therefore the final year students who are mandatorily required to give undertaking, would not fall within the definition of Section 2(ii)(f) of the Payment of Wages Act ; whereas each and every case was required to be dissected separately for, the Assessing Officer passed the order not collectively but independently.

ii) There has been a practice among the hospitals to avoid the payment of the contribution towards the Provident Fund even if they are covered under the other provisions of the Act like the Payment of Wages Act and Kerala Shops and Commercial Establishments Act, 1960. The demand had been raised after analysis of the documents provided by the establishments. Writ court could not have exercised the power of judicial review by treating the writ as an appeal for, the order of judicial review which is required to be sparing one except when there are certain



irregularities without order or action is without jurisdiction, without compliance of principle of natural justice or against Statutes. None of the ingredients were in existence for interference. The report of the Enforcement Officer in all the proceedings remained unchallenged.

8. On the contrary, the learned counsel representing different hospitals/establishments supported the findings rendered by the learned Single Bench by relying upon the following case laws :

(1) **Kerala Private Hospital Association v. State of Kerala, 2019(2) KLT 330** wherein by relying upon the provisions of the Nurses and Midwives' Act, 1953, it was held that the Kerala Nurses and Midwives Council was empowered to regulate the activities of the private hospital if there is an interference in any of the provisions of the 1953 Act.

(2) **Lourdes hospital (M/s.) v. Dr.Araham Mathew, 2019(1) KHC 250** where the hospital had challenged the adumbration under the provisions of the Kerala Shops and Commercial Establishments Act, 1960 extending the charitable establishment, when found to be not performing charitability but frequent continuous business, was rejected.

(3) Our attention was drawn to Section 12A of the Industrial Employment (Standing Orders) Act, 1946 to contend that the provisions of



the Act would be applicable notwithstanding anything contained in Sections 3 to 12 for a period commencing from the date on which the Act became applicable to an industrial establishment. In other words it was contended that even in the absence of any specific standing order *qua* particular establishment, the model standing orders in respect of industrial establishment not being an establishment in coal-mines as defined under Schedule I of the Industrial Employment (Standing Orders) Act, 1946 would not cloathe them a liability for payment of contribution in respect of an apprentice who is a learner and paid allowance during the period of training. The Assessing Officer did not supply the copy of the report of the Enforcement Officer for arriving at a just and fair conclusion with regard to the set of employees falling under the definition of Section 2(f) or otherwise.

9. *Per contra* the learned counsel appearing on behalf of the appellants in rebuttal raised the following submissions :

With regard to the hospitals which are commercial establishments, standing orders would not be applicable because a hospital is not an industry as the standing orders are applicable only to industries. The Nurse Trainees and Contract Staff or the apprentices would not be workmen as



defined under Schedule I of the Industrial Employment (Standing Orders) Act, 1946. The hospitals would be covered under Section 1(3)(b) and not under Section 1(3)(a), as the industrial standing orders would be applicable to the establishment falling under Section 1(3)(a).

10. We have heard the learned counsel for the parties and appraised the paper books.

11. Before advertng to the arguments of the learned counsel, we would like to put a caveat that the department, a chronic litigant, as in the past, the proceedings initiated under the Employees' Provident Funds and Miscellaneous Funds Act, 1952 are either been challenged by the establishment and in case of order passed in favour of the establishment, assailed by the Organization. But in every pleadings we have come across the core document, that is the report of the Enforcement Officer, which is neither attached nor produced but in the counter affidavit is relied upon. In other words, the courts are prevented from noticing the contents to arrive at a clear and just conclusion as to whether the proceedings were clear, impartial or otherwise.

12. Section 2(f) of the 1952 Act reads as under :

“(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 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.”

13. Category of employees who would be covered under the provisions of the Act is clear from the aforementioned provisions. Many establishments for the purpose of the applicability of the Act, would not pay contribution of all the employees working under them, by giving different tinge and colour/nomenclature to the status of the employees, like trainees, apprentices, contractual workers, employees who are covered under the bond etc. When such misuses are apprehended by the institution established for the welfare of the workers/employees, such stands are being taken. On an analysis of the documents, the Enforcement Officer who is empowered to inspect the establishment, shall forward his report to the Assessing Officer either pointing out violations or otherwise. The question with regard to the applicability of the Act on the employees who are trainees or not apprentices being not appointed under the Apprentices Act, 1961 or standing orders of the establishment, has been put



to rest by the Supreme Court in **Central Arecanut** (*Supra*) wherein in paragraphs 9 to 16 it has been held as under -

“9. 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 establishment concerned. 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 2 thereof classified workmen as follows:

- “2. (a)(1) permanent,*
- (2) probationers,*
- (3) badlis,*
- (4) temporary,*
- (5) casual,*
- (6) apprentices.”*

10. “Apprentice” is defined in clause (g) of Standing Order 2 as follows:

“2. (g) an ‘apprentice’ is a learner who is paid an allowance during the period of his training.”

11. The Apprentices Act defines an “apprentice” as follows:

“2. (aa) ‘apprentice’ means a person who is undergoing apprenticeship training in pursuance of a contract of apprenticeship;”

12. In the present case, admittedly the Standing Orders were not at the relevant point of time certified. Therefore, in terms of



Section 12-A of the Standing Orders Act, the model standing orders are deemed to be applicable. Section 2(f) of the Act defines an employee to include an apprentice, but at the same time makes an exclusion in the case of an apprentice engaged under the Apprentices Act or under the Standing Orders. Under the model standing orders an apprentice is described as a learner who is paid allowance during the period of training.

13. 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.

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

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

16. The appeal fails and is dismissed. No costs.”

14. It is clear that where the establishment employ trainees and pay stipend during their period of training, the Act not apply. The provisions of Section 12A of the standing order was also taken into fore on the premise that the standing orders were not, at the relevant time, certified, therefore it



was clarified by the provisions of Section 12A that the model standing orders are deemed to be applicable and appeal of the EPF was rejected.

15. Each and every case has to be examined on the touchstone of the evidence and material on record. Though the orders of the Assessing Authority are very detailed and explanatory, but on perusal we find that there has not been any discussion of documents in support of the stand taken by the establishments. Instead, contentions of both the sides have been addressed by arriving at a particular point that too, based upon the definition of trainees, apprenticees etc. Such type of exercise cannot go unnoticed from the scrutiny of judicial review while exercising the power of Article 226 or in an *intra* court appeal.

16. No doubt learned Single Judge while examining the case law on the point treadbare and in extenso, set aside the orders of the Assessing Officer, but the whole focus was on the premise that all the hospitals/establishments other than dispensing medical facilities, were entitled to impart education. We have been apprised that only two establishments, namely, Holy Cross Hospital and Sivagiri Sree Narayana Medical Mission Hospital, are imparting education and though the appointment letters of students have been noticed in the order, it is not



discerned as to whether the persons who have been paid the stipend and appointed for a period of three months or have either continued or confirmed. No doubt the students who have passed out in the final examination are required to undergo a training and are being paid stipend, they would not be branded and termed as an 'employee' as per the strict provisions of Section 2(f) and the question the employer would not be liable to make contributions, have not been appreciated in this context. Certain establishments were not under the coverage of the Payment of Wages Act as well as Kerala Shops and Commercial Establishments Act. For the purpose of carrying out the inspection or non compliance of the provisions, notification dated 17/04/2013 came to be passed covering such establishments under the industrial standing orders and provisions of the 1946 Act and Rules. The contention that the apprentice defined under the industrial rules in view of the notification would not be covered under the definition of Section 2(f) and therefore they were justified in not making the contribution, in our considered view, does not merit acceptance for, the said notification is only for the purpose of violation or compliance of the provisions of the Payments of the Wages Act or Industrial Establishment Act, but not with regard to 1952 Act and had it been so, the notification



would have added the applicability of 1952 Act.

17. While examining the orders of the Assessing Officer it has surfaced that few of the demands are for a different period in respect of the number of employees, but again it is based upon the report of the Enforcement Officer which has not seen in the light or been supplied to the establishments. Thus it remain a mystery much less the courts are also left in lurch and it remains an intriguing question as to whether the employees have been brought under the umbrella of 1952 Act or were of permanent character or trainees in strict sense much less apprentices.

18. We thus are of the opinion that since the establishments are covered under the provisions of the Act, the only point to be pondered by the authority at this point of time is whether, hospitals which are imparting education over and above medical facilities, would be covered in a different set of establishment for, the trainees who have to undergo training for a period of one year are to be paid stipend and therefore would not be termed to be employee as defined under Section 2(f). That being the position, the department is required to undertake an exercise again to the limited extent of justifying the quantification of the demand.

19. *Vis-a-vis* the other establishments, the question would also arise



as to whether the workers who are working are strictly appointed as apprentice under the 1961 Act or the standing orders and if not, despite discharging duties, the apprentice would definitely fall under the provisions of Section 2(f) and for that, the establishment is required to pay the contribution.

20. As regards the trainees who are permitted to continue for a number of years, as per the above finding, would be also covered under the provisions of Section 2(f) and cannot be said to be trainees for a limited purpose and not exigible to the provisions of 1952 Act. This direction would also apply to the workers who have been working for a limited period under the bond. We cannot lose sight of the fact that establishments have already paid the contribution towards the ESI of all the employees including the ones do not deem to be employee for the purpose of coverage under the 1952 Act.

21. Thus we set aside the judgment of the single Bench by upholding the orders of the authorities established under the Act with a caveat that before justifying the quantification of the demand, they will service a notice on all the establishments along with copy of the inspection reports and give a reasonable time for the purpose of payment of the amount due by



marshalling out the number of employees who have fallen within the definition of Section 2(f) or not, subject to the report. Let this exercise be undertaken within a period of four(4) months from the date of receipt of a certified copy of this judgment. Appeals are allowed.

We deem it appropriate to issue a general direction to all the litigants/establishments and to the Registry of this Court that whenever against the orders of the appellate authority or assessing authority established under the 1952 Act, a challenge arises, the report of the Enforcement Officer would also be enclosed as an exhibit.

**SD/-
AMIT RAWAL
JUDGE**

**SD/-
C.S.SUDHA
JUDGE**

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