Before M. R. Agnihotri, J.

STATE OF PUNJAB,—*Petitioner.*

versus

REGIONAL PROVIDENT FUND COMMISSIONER PUNJAB, HIMACHAL PRADESH AND U.T. CHANDIGARH AND OTHERS,— *Respondents.*

Civil Writ Petition No. 4441 *of* 1987.

Constitution of India 1950—*Article* 226—*Employees Provident Funds Miscellaneous Provisions Act,* 1952 (*Act No.* 19 *of* 1952 *as amended upto Act* 33 *of* 1988)—*Section* 7 *A—Petitioner employer engaged in building and construction activity of Hydel Channel employing* 200 *workmen—At first decided to make deductions from wages by way of contribution to Provident Fund—Thereafter reversed decision to deduct wages as contribution towards Provident Fund without affording opportunity—Decision of respondents holding petitioner to be industry and liable to continue making contribution challenged—Such decision of the respondents upheld.*

Held, that by virtue of this notification, the petitioner-employer stands included within the definition of "industry" for the purposes of 'the Act' with effect from March, and it was on that basis, the petitioner-employer had started making deductions. The impugned decision of discontinuing the deductions taken thereafter was not only arbitrary and *ex parte* but was wholly without jurisdiction. This has resulted in a considerable financial loss to the poor workmen who have been dragged to litigation unnecessarily, especially when the fight between the employee and the employer is most unequal, as the employee cannot match the resources of the State.

(Para 4)

Civil Writ Petition under Articles 226/227 *of the Constitution of India praying that this Hon'ble Court may be pleased to issue* :—

(*a*) *a Writ of Certiorari quashing the order* 'P-1';

(*b*) *any other order, Writ or direction deems fit in the circumstances of the case;*

It is further prayed that :—

(*i*) *filing of certified copies of the orders* 'P-1', *may be dispensed with.*

(ii) *issuance of advance notice to the respondent may be dispensed with;*

(iii) *implementation/compliance of the order 'P-1' may stayed during the pendency of the present writ petition.*

S. K. Bhatia, D.A.G. (Punjab), *for the Petitioner.*

S. D. Sharma, Advocate with Diwahar Pathak, C. L. Chaudhary, and G. S. Chadha, Advocates for Respondents No. 2 to 118, *for the Respondents.*

JUDGMENT

M. R. Agnihotri, J.

(1) The State of Punjab through the Executive Engineer, Mukerian Hydel Civil Construction Division No. 1 (I.P.P. Division), Talwara Township, has invoked the writ jurisdiction of this Court for the quashing of the order dated 6th May, 1987, of the Regional Provident Fund Commissioner, Punjab, Himachal Pradesh and Union Territory of Chandigarh, under section 7-A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (Act No. 19 of 1952) as amended upto Act 33 of 1 hereinafter referred to as "the Act', by which it has been held that the provisions of 'the Act' were applicable to the employees of Mukerian Hydel Civil Construction Division No. 1, Talwara Township, and the employer establishment was duty bound in law to deposit its contribution regularly towards the provident fund of its employees-respondents Nos. 2 to 118. The principal ground of attack of the petitioner against the impugned order of the Regional Provident Fund Commissioner is that the petitioner establishment was not covered in the definition of the word "industry" under section 2(i) of 'the Act', as the same was different from the definition of "industry" as envisaged under section 2(j) of the Industrial Disputes Act, 1947.

(2) Elaborating the plea made by the petitioner, it has been contended that Irrigation Department of the State Government may be covered within the definition of "industry" for the purposes of the Industrial Disputes Act, but the same is not covered for the purposes of 'the Act' as it is not a factory. It was on that basis that due to inadvertence, the petitioner-employer started making deductions from the wages of its employees, that is, respondents Nos. 2 to 118, on account of the employees' provident fund contribution with effect from March, 1983. and contained to do so upto June, 1984. Thereafter, when the petitioner-employer realised that it was not governed by the Provisions of 'the Act', it discontinued making any deductions.

(3) In the written statement filed by the Regional Provident Fund Commissioner, it has been disclosed in an elaborate and detailed version that the Mukerian Hydel Civil Construction Division of the petitioner-employer is engaged in building and construction activity in connection with the Hydel Channel by employing about 200 workmen, all of whom are not on work-charged basis, Moreover, the work-charged employees were covered within the definition of "employ under section 2(f) of 'the Act', as they were employed in connection with the work of the establishment, that building and construction of the Hydel Channel and its up-keep and maintenance, etc.

(4) After hearing the learned counsel for the parties and having gone through the records, I am of considered view that the petitioner employer, that is Mukherian Hydel Civil Construction Division is square covered within the definition of "industry" for the purposes of 'the Act' and it has rightly taken a decision earlier, to make deductions from the wages of the workmen by way of their contribution towards the Provident Fund. Firstly, once a decision had been taken to the benefit of the employees, the same could not be reversed without affording an opportunity of hearing to them. This having not been done, it was not permissible in law to the petitioner-employer to reverse its earlier decision and stop the aforesaid deductions, as it was a change in the conditions of service of the employees which was adverse and deterimental to their interest. Further, according to Section 1(3)(b) of 'the Act', any establishment employing more than twenty workmen was specifically including for the purposes of 'the Act', by the following notification issued on 23rd September, 1980 :—

MINISTRY OF LABOUR,
New Delhi, the 23rd September, 1980.

G.S.R. 1069.—In exercise of the powers conferred by clause (b) of sub-section (3) of Section 1 of the Employees' Provident Funds and Miscellaneous Provisions Act, (19 of 1952) the Central Government hereby specifies every establishment engaged in Building and Construction Industry and in each of which twenty or more persons are employed, as a class of establishments to which the provisions of the said Act shall apply with effect from the 31st October,

By virtue of this notification, the petitioner-employer stands included within the definition of "industry" for the purposes of 'the Act'

with effect from March, and it was on that basis, the petitioner-employer had started making deductions. The impugned decision of discontinuing the deductions taken thereafter was not only arbitrary and *ex parte* but was wholly without jurisdiction. This has resulted in a considerable financial loss to the poor workman who have been dragged to litigation unnecessarily, especially when the fight between the employee and the employer is most unequal, as the employee cannot match the resources of the State.

(5) Keeping these considerations in view and in order to suitably compensate the workmen, I upheld the order of the Regional Provident Fund Commissioner, Respondent No. 1, dated 6th May, 1987, and dismiss the writ petition with costs, which are quantified at Rs. 1,000 in the case of each respondent-workman. The petitioner-employer is further directed to deposit the Provident Fund contribution of each of the respondent-workman from July, 1984, to date, forthwith, and while doing so, adjust the amount of costs awarded in favour of the workman.

J.S.T.

Before A. L. Bahri., V. K. Bali., JJ.

LACHI RAM,—*Petitioner.*

versus

THE STATE OF HARYANA ETC.,—*Respondents.*

Civil Writ Petition 9863 *of* 1991.

17th January, 1992.

Constitution of India, 1950—*Art.* 226—*Domicile certificate—Petitioner appeared in Final B.Ed. examination—Result cancelled on the ground that domicile certificate not genuine—Petitioner not afforded any opportunity to defend himself—Delay on part of University in raising objection of fake certificate not justified.*

(Para 4)

Held, that after the petitioner was allowed to take the examination, it was too late for the University to cancel his result. However, we find that the petitioner who had completed one year of academic education career should not suffer when he had finally appeared in the examination. We accordingly direct the University to declare the result of the petitioner forthwith. It may further be stated that the petitioner was not afforded any opportunity in the enquiry, if any or thereafter regarding the genuineness of the certificate produced by him.