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on this ground, because the proper service on the Railway Administration alone is sufficient compliance with the provisions of section 77 of the Indian Railways Act and section 80 of the Code of Civil Procedure. The suit can now proceed on merits.

In view of what I have said above, this appeal is accepted, the judgment and decree of the trial Court are set aside and the case is remanded to the trial Court for decision on merits. Costs will abide the event.

Since the suit was dismissed on a preliminary objection and that decision is being reversed the court-fee on appeal will be refunded to the appellant.

Parties have been directed to appear before the trial Court on 26th February, 1962.

Mahajan, J.

D. K. MAHAJAN, J.—I agree.

R.S.

LETTERS PATENT APPEAL

Before S. S. Dulat and Inder Dev Dua, JJ.

THE REGIONAL PROVIDENT FUND COMMISSIONER, PUNJAB, AND ANOTHER,—*Appellants.*

versus

LAKSHMI RATTEN ENGINEERING WORKS LTD.,—*Respondent.*

Letters Patent Appeal No. 392 of 1958

1962

Feb., 2nd

Employees' Provident Funds Act (XIX of 1952)—Section 5—Whether ultra vires *Articles 14 and 19, Constitution of India—Section 2(f)—"Employee"—meaning of—Whether excludes persons receiving emoluments exceeding Rs. 200 per month—Employees' Provident Funds Scheme 1952—Para 2(f)—Whether contravenes the provisions of the Act—Interpretation of Statutes—Interpretation of terms used in one statute by reference to those terms in another statute—Whether permissible.*

Held, that section 5 of the Employees' Provident Funds Act cannot be said to be unconstitutional as offending Articles 14 and 19 of the Constitution of India. It does

not give unrestricted and unguided discretion to the Central Government to frame a Scheme. On the other hand the Act is full of carefully laid down principles to guide the Government. This Act has been enacted by Parliament in the public interest and the restriction so-called is in no manner unreasonable, for all it demands is that a certain contribution, the maximum limit of which is contained in the Act, should be made by employers for the benefit of the employees. The legislation is essentially calculated to harmonise the relations between the employer and the employee in certain industries, and in the modern context this can in no sense be called unreasonable.

Held, that the Employees' Provident Funds Act defines "basic wages" as all emoluments earned by an employee, and an 'employee' as a person working for wages in any kind of work, manual or otherwise, and in neither definition is there any hint that emoluments more than Rs. 200 per month are outside the definitions. In the Act there is nothing to exclude from the category of employees any person who may be in receipt of remuneration exceeding Rs. 200 per month. It follows that para 2(f) of the Employees' Funds Scheme exempting only those employees who receive more than Rs. 500 per month, does not contravene the provisions of the Act and cannot be called illegal.

Held, that it is somewhat dangerous to approach a particular statute and try to understand its meaning with any preconceived notion as to the meaning of certain expressions used in another statute. The two statutes may differ entirely in their purpose and context as statutes almost invariably do. The meanings of the terms used in a statute must be gathered from that very Act

Letters Patent Appeal under Clause X of the Letters Patent against the order of Hon'ble Mr. Justice A. N. Grover in C.W. No. 1067(a) of 1957 decided on 5th September, 1958.

C. D DEWAN, DEPUTY ADVOCATE-GENERAL, for the Appellant.

S. K. KAPUR, ADVOCATE, AND N. N. GOSWAMY, ADVOCATES, for the Respondents.

JUDGMENT

Dulat, J. DULAT, J.—In March,1952, Parliament enacted the Employees' Provident Funds Act (19 of 1952) in order to, as the preamble says, 'provide for the institution of provident funds for employees in factories and other establishments'. The Act was made applicable to every factory engaged in any industry specified in Schedule I in which 50 or more persons were employed. A "factory" was defined in the Act as "any premises including the precincts thereof, in any part of which a manufacturing process is being carried on or is ordinarily so carried on, whether with the aid of power or without the aid of power", and an "employee" was defined as "any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of a factory". Certain exceptions were, however, provided for in the Act, and for that the Central Government was given power to exempt certain factories in certain circumstances. At the same time, power was given to the Central Government to add to the industries mentioned in Schedule I. Section 5 of the Act empowered the Central Government to 'frame a scheme for the establishment of provident funds under the Act for employees or any class of employees and to specify the factories to which the scheme should apply'. In exercise of this particular power given under section 5 of the Act, the Central Government on the 2nd September, 1952, framed a comprehensive scheme called the Employees' Provident Funds Scheme, 1952. Under that Scheme certain employees were excluded, and one of those exceptions applied to an employee whose pay at the time exceeded Rs. 500 per month. Under the same Scheme the Central Government apopinted a Provident Fund Commissioner and certain Regional Commissioners. After the Scheme had come into force, the Regional Provident Fund Commissioner required the owners of the factories covered by the Scheme to make appropriate contributions to the Fund set up under the Scheme. Three companies, owning three factories which those companies had acquired by purchase from Government, objected to being forced to contribute to the Provident Fund,

and, as their objections were not accepted, each of them filed a writ petition under Article 226 of the Constitution in this Court challenging the act of the Regional Provident Fund Commissioner and the Central Provident Fund Commissioner, impleading at the same time the Union of India as a party. One of these writ petitions (Civil Writ 1067 of 1957) was filed on behalf of the Lakshmi Rattan Engineering Works Limited. It was said in that petition that the petitioner-Company had purchased the factory in question only in May, 1955. The second petition (Civil Writ No. 1068 of 1957) was by the Hindustan Electric Company, Limited who claimed to have purchased their factory in February, 1956, and the third petition (Civil Writ No. 1069 of 1957) was by the East India Cotton Manufacturing Company, Private, Limited, and they claimed to have purchased the factory in January, 1955. Most of the grounds taken in support of these three writ petitions were common and Grover, J., before whom petitions came up for hearing, therefore, dealt with them together.

The main contention raised on behalf of the petitioners before Grover, J., was that section 5 of the Employees' Provident Funds Act gave arbitrary and uncontrolled power to the Central Government to frame any kind of scheme, and that Parliament had provided no guide for the purpose, and this provision in the Act was, therefore, unconstitutional in view of Article 14 of the Constitution. Further, it was contended that the Act by making certain contribution by certain employers compulsory placed an unreasonable restriction on the business of the factory owners and thus offended Article 19 of the Constitution. Neither contention found favour with the learned Single Judge, and he held that there were in the Act enough guides to indicate the policy of the Act, and the power of the Central Government under section 5 of the Act was to be exercised within those limits. He held, therefore, that Article 14 of the Constitution had not been offended. Nor did he agree that any unreasonable restriction not in the public interest had been placed by the Act on any business.

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The next contention was that under section 16 of the Act infant industries, which had not been in existence for three years or more, were kept outside the mischief of the Act, and that in the present cases this period of three years should be counted from the date, in each case, when the present owners of the factories purchased it from Government, the argument being that during the time Government ran these factories they were exempted from the operation of the Act because of section 16, clause (a), and should, therefore, be deemed to have been established for the purposes of the Act only when they ceased to be owned by Government. This contention again was not accepted by Grover, J., who held that the change of ownership made no difference and the factories in question having been established for more than three years, they were covered by the Act and the period of three years had to be counted from their original establishment and not when the present owners purchased them. The learned Judge in this connection relied on a previous decision of this Court by Bishan Narain, J., in *Robindra Textile Mills* v. *Secretary, Ministry of Labour, Government of India, New Delhi, and another* (1).

It was then contended that one of the factories owned by the Hindustan Electric Company, when owned by Government, was used only for the manufacturing of ordinary stoves for domestic use which was not a scheduled industry, and the present factory used for the manufacture of motor parts came into being only after the purchase from Government, and on this ground, too, the factory had not, within the meaning of section 16 of the Act, been in existence for more than three years. This argument, too, found no favour with Grover, J., and he held that even when owned by Government the business of manufacturing stoves was a scheduled industry and was covered by the expression "electrical, mechanical or general engineering" mentioned in Schedule I of the Act. The learned Judge, therefore, repelled the contention, and he relied again on another decision by

(1) A.I.R. 1958 Punj. 55.

Falshaw, J., in this Court, *Nadir Ali Khan* v. *Union of India* (2).

Finally, it was contended that a part of the Scheme framed by the Central Government has contravened the provisions of the Act. It was pointed out that, according to the definition of an "excluded employee" contained in the Scheme, only an employee whose pay exceeded Rs. 500 per month was exempted, while, according to the Act, an "employee" was defined as a person employed for wages, and the argument was that "wages" in this context meant small emoluments not exceeding a hundred rupees per month or a little more, for any emoluments in excess of such amount would be properly called salary and not wages. Grover, J., was persuaded that this contention was sound and, in view of a decision of the Madras High Court, *In re K. V. V. Sarma, Manager, Gemini Studios, Madras* (3), interpreting the expression "wages" in the Factories Act he held that only emoluments not exceeding Rs. 200 per month could be properly called wages, and a person drawing emoluments in excess of Rs. 200 per month should be properly described as receiving a salary and not wages, and he, therefore, concluded that the Central Government was not competent to provide in the Scheme that an "excluded employee" was only such a person whose pay exceeded Rs. 500 per month. In the result, the learned Single Judge, while repelling the other contention of the petitioners, found that the definition of the word "employee" in the Scheme must be restricted to such employees who were paid wages and did not receive remuneration or monthly salary in excess of Rs. 200 per month, and to that extent the learned Judge struck down part 2(f) of the Scheme as contrary to the Act. To this extent alone the petitions were allowed and the parties left to bear their own costs. Against that decision the Regional Provident Fund Commissioner has filed three appeals in the three cases (Letters Patent Appeals Nos. 392, 393 and 394 of 1958), while two cross-appeals have been

(2) A.I.R. 1958 Punj. 177.
(3) A.I.R. 1953 Mad. 269.

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filed—one by the Lakshmi Rattan Engineering Works Limited (Letters Patent Appeal No. 413 of 1958) and the other by the East India Cotton Manufacturing Company, Private Limited (Letters Patent Appeal No. 414 of 1958).

It is convenient to deal with the contentions raised on behalf of the Companies first. Mr. Kapur submits that section 5 of the Employees' Provident Funds Act, when considered in the light of other provisions of the Act, seems to hand over to the Central Government vast and unrestricted power without any clear guidance in that connection by Parliament and that discrimination offensive to Article 14 of the Constitution is thus inherent in it. Section 5 of the Act says this—

> "The Central Government may, by notification in the Official Gazette, frame a Scheme to be called the Employees' Provident Fund Scheme for the establishment of provident funds under this Act for employees or for any class of employees and specify the factories or class of factories to which the said Scheme shall apply."

Mr. Kapur's argument largely ignores the emphasis which this provision lays on the fact that the Scheme to be framed by the Central Government must be under the Act and, of course, in the light of the various provisions of the Act, and it seems to suggest as if because of section 5 the Central Government has been authorised to frame any kind of scheme for setting up a provident fund. That is clearly not so and reading the other provisions of the Act it is quite clear that the general principles to be followed have been clearly indicated by Parliament. The establishment of provident funds is, of course, the rule, but the Act itself creates various exceptions and exemptions, and the Scheme naturally has to be framed by the Central Government within those exceptions. Thus certain factories are straight off exempted, and so are certain employees, and so are certain industries. Small factories are taken out of the mischief of the Act

except in certain circumstances, and so are infant industries. It is true, as Mr. Kapur points out, that certain power has been given to the Central Government to add to the Schedule, but there again the power has to be exercised in the light of the guiding principles mentioned in the Act, namely, the size of the factory and the time during which the factory has had opportunity to firmly establish itself. It is, in the circumstances, an idle contention to my mind that section 5 of the Act gives wholly unrestricted and unguided discretion to the Central Government to frame a Scheme, and it appears on the other hand that the Employees' Provident Funds Act is full of carefully laid down principles to guide the Central Government, and, in agreement with Grover, J., I find it impossible to say that section 5 of the Act in any manner offends Article 14 of the Constitution.

On the basis of Article 19 of the Constitution, the submission has even less force. It is perfectly clear that what Parliament has done, by enacting the Employees' Provident Funds Act, has been done in the public interest, and the restriction so called is in no manner unreasonable, for all it demands is that a certain contribution, the maximum limit of which is contained in the Act, should be made by the employers for the benefit of the employees. The legislation is essentially calculated to harmonise the relations between the employer and the employee in certain industries, and in the modern context this can in no sense be called unreasonable. On this point too, therefore, I find myself in complete agreement with the view expressed by Grover, J., that section 5 of the Employees' Provident Funds Act cannot be called unconstitutional.

Mr. Kapur then says that the factories in the present cases are infant within the meaning of section 16 of the Act and should, therefore, be exempted, the argument again being that the date, when the present owners purchased these factories, should be taken as the date of their establishment. Section 16 of the Act is in these words—

> "16. This Act shall not apply to—
>
> (a) any factory belonging to the Government or a local authority, and

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(b) any other factory, established whether before or after the commencement of this Act unless three years have elapsed from its establishment."

What is exempted by section 16, therefore, is only a factory which has not been established for more than three years, and, since it is clear that in the present cases the premises were certainly being used for manufacturing purposes long before the present Companies purchased them, it is impossible to say that the factories had not been established for more than three years. The change of ownership cannot make any difference. As I have already mentioned, this was the view expressed by Bishan Narain, J., in *Robindra Textile Mills* v. *Secretary, Ministry of Labour, Government of India, New Delhi, and another* (1), and a similar view, appears to have been expressed by the Calcutta High Court in *Messrs Bharat Board Mills* v. *The Regional Provident Fund Commissioner and others* (4). Mr. Kapur's contention, therefore, is without force.

Regarding the third contention, which was raised before Grover, J., concerning the Hindustan Electric Company Limited that while the factory was owned by Government only stoves for domestic use were being manufactured and no scheduled industry was being carried on, there is now no serious dispute, that Company not having appealed. There is, in any case, no force in the contention, as the protection mentioned in section 16 of the Act covers only those factories since the establishment of which three years have not elapsed. In the present cases, the factories were established long ago, although by Government, and at the time the Regional Provident Fund Commissioner made his demand, the factories were admittedly engaged in scheduled industries, so that no protection could be accorded to them under section 16. This is apart from the consideration that even the manufacture of domestic stoves seems to be covered by the expression "electrical, mechanical or general engineering" which does occur in the first Schedule to the Act. In another case, to which I have already referred, *Nadir Ali Khan* v. *Union of India* (2),

(4) A.I.R. 1957 Cal. 702.

Falshaw, J., had occasion to consider this question in connection with a factory engaged in the manufacture of musical instruments, and Falshaw, J., held that the heading in the first Schedule, namely. "mechanical products" is "intended to cover all manufactured objects which are put to some use as opposed to articles of food and drink which are intended for consumption", and that musical instruments were covered by the expression "electrical, mechanical or general engineering products" which was wide and general in its scope. No reason has been shown why a contrary view should be taken in the present cases.

I now come to the final question on which the three appeals by the Regional Provident Fund Commissioner turn. Section 5 of the Act, as I have already mentioned, authorises the Central Government to frame a scheme for employees or any class of employees. An "employee" is defined in the Act thus in section 2, clause (f)—

> "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 a factory, and who gets his wages directly or indirectly from the employer, and includes any person employed by or through a contractor in or in connection with the work of the factory."

"Basic wages", according to section 2(b), mean "all emoluments which are earned by an employee while on duty or on leave with wages in accordance with the terms of the contract of employment and which are paid or payable in cash to him". The argument, which found favour with Grover, J., was that an employee is only a person who is employed for 'wages' as distinguished from a person employed for 'salary', and that 'wages' ordinarily mean small remuneration usually paid not per day. Reliance for this argument was placed on a decision of the Madras High Court, *In re K. V. V. Sarma, Manager, Gemini Studios, Madras* (3). That case arose out of the conviction of the manager of a film studio under the Factories Act for failure to

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exhibit at the entrance of the studio the working hours of certain workers and for failure to enter the particulars of all the workers engaged in a department of the studio. The main question argued, therefore, was whether the film studio was a "factory" within the meaning of the Factories Act, and whether certain persons employed there were "workers". A "worker" is defined in the Factories Act as "a person employed directly or through any agency, whether for wages or not, in any manufacturing process * * *". It was urged in that case that a "worker" was only a person who received wages and "wages" meant small emoluments. The learned Judges, deciding that case, considered in that connection the provisions of the Payment of Wages Act and the Workmen's Compensation Act, and they finally concluded that the term 'wages' "is not intended to apply to persons who receive a fairly good sum of money as monthly salary", and that it "should be understood as compensation paid for work done for a period less than a month", and they further expressed the opinion that a person who received emoluments exceeding Rs. 200 per month or more could not be called a wage-earner but must be taken as receiving a salary. It would thus appear that the question before the Madras High Court was not the same as before us, for here we are concerned not with the interpretation of the Factories Act, as the Madras High Court was, nor with the meaning of a "worker" within the terms of that Act, nor with the meaning of "wages" as occurring in the Payment of Wages Act or the Workmen's Compensation Act. What we are concerned with is the interpretation of the term "employee" as used in the Employees' Provident Funds Act, and, if I may say so with great respect, it is somewhat dangerous to approach a particular statute and try to understand its meaning with any pre-conceived notion as to the meaning of certain expressions used in another statute. I say this because the two statutes may differ entirely in their purpose and context as statutes almost invariably do. The question before us is whether the expression "employee", as used in the Employees' Provident Funds Act, was intended to exclude such persons who may be in

receipt of emoluments exceeding Rs. 200 per month, as the learned Single Judge has held. There is, I confess, not the slightest inkling of this in any part of the Act, and I have little doubt that if Parliament had meant to exclude persons receiving more than Rs. 200 per month from the benefit of the Employees' Provident Funds Act, it would certainly have given a clear indication of its purpose in the Act itself. Nor does it stand to reason, in the light of the main purpose of the Act, that Parliament could ever have intended that such persons should not get the benefit of a provident fund. The Act defines "basic wages" as all emoluments earned by an employee, and an "employee" is then defined as a person working for wages in any kind of work, manual or otherwise, and in neither definition is there any hint that emoluments more than Rs. 200 per month are outside the definitions. It is true that the definition of an "employee" refers to a person who is employed for wages, but that only means that he must be in receipt of some remuneration, not being merely an apprentice without remuneration. The expression has otherwise no significance, and it is in my opinion somewhat arbitrary to say that an "employee" only means a person whose emoluments do not exceed Rs. 200 per month or for that matter any other particular sum of money, and there is in the Act no justification for such a view. The real meaning of the terms "employee" and "wages" used in the Employees' Provident Funds Act must, in my opinion, be gathered from this very Act in the light of its provisions, and it is not, I think, legitimate to import into it the provisions of another Act meant for a wholly different purpose. As I read the Act, there is nothing to exclude from the category of employees any person who may be in receipt of remuneration exceeding Rs. 200 per month. It follows that the provision in the Scheme framed under the Act exempting only those employees who receive more than Rs. 500 per month, does not contravene the provisions of the Act and cannot be called illegal.

For these reasons, I would dismiss the two appeals by the Lakshimi Ratten Engineering Work

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Limited (Letters Patent Appeal No. 413 of 1958) and the East India Cotton Manufacturing Company, Private Limited (Letters Patent Appeal No. 414 of 1958) with costs, and allow the three appeals by the Regional Provident Fund Commissioner (Letters Patent Appeals Nos. 392, 393 and 394 of 1958) also with costs and set aside the order made by Grover, J., in these three cases and discharge the rule in each case.

Dua, J.

INDER DEV DUA, J.—I agree.

K.S.K.

APPELLATE CIVIL

Before Daya Krishan Mahajan, J.

SHORI LAL,—*Appellant.*

versus

SARDARI LAL AND ANOTHER,—*Respondents.*

First Appeal from Order No. 85 of 1961

1962

Feb., 16th

Arbitration Act (X of 1940)—Section 5—Whether applies to reference only or to arbitration agreement as well—Contract Act (IX of 1872)—Section 62—Parties to an arbitration agreement—Whether can substitute one agreement by another.

Held, that an arbitration agreement is distinct from a reference, and the words of section 5 of the Arbitration Act, 1940, particularly the words "authority of an appointed arbitrator" indicate that the provisions of section 5, merely apply to a reference and not to an arbitration agreement.

Held, that there is no prohibition in the Arbitration Act, for the substitution of one arbitration agreement by another and under section 62 of the Indian Contract Act, it is always open to the parties to a contract to substitute that contract by another, unless the substituted contract is either illegal or void.

First appeal from order of Shri Adish Kumar Jain, Sub-Judge, Ist Class, Amritsar, dated 17th February, 1961, referring the matter to the arbitrator.