

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

MONDAY, THE TWENTY THIRD DAY OF SEPTEMBER
TWO THOUSAND AND TWENTY FOUR

PRESENT

**THE HONOURABLE THE CHIEF JUSTICE ALOK ARADHE
AND
THE HONOURABLE SRI JUSTICE J SREENIVAS RAO**

WRIT APPEAL NO: 1160 OF 2023

Writ Appeal under clause 15 of the Letters Patent preferred against the order dated 05/06/2023 in the W.P.No. 23523 of 2011 on the file of the High Court.

Between:

M/s Cherukuri Group, Having its office at 6- 1- 200/9, Plot No. 29,
Vanasthalipuram, Hyderabad - 500 070 Rep. By Mr. Cherukuri Gopinath

...APPELLANT/PETITIONER

AND

1. The Employees Provident Fund Appellant Tribunal, (Ministry of Labour Employment), Govt. Of India, Scope Minar, Core- II, 4th Floor, Laxmi Nagar, New Delhi - 110 092
2. The Asst. Provident Fund Commissioner (ENF), Employees Provident Fund Organisation, Regional Office at 3- 4- 763, Bavishyanidhi Bhavan, Barkatpura, Hyderabad

...RESPONDENTS/RESPONDENTS

IA NO: 1 OF 2023

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay operation of the order dated 05- 06- 2023 in WP NO. 23523 of 2011 and the respondents be directed no further coercive action shall be taken and any other relief which the Hon'ble Court may deems fit and proper in the facts and circumstances of the case, may also kindly be passed in favour of the Petitioner, during pendency of Writ Appeal.

**Counsel for the Appellant :SRI. PILLADA SATYANARAYAN
Counsel for the Respondent No.2: SRI VIJHAY K PUNNA
Counsel for the Respondent No.1: None Appeared**

The Court made the following: JUDGMENT

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**THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE
AND
THE HON'BLE SRI JUSTICE J. SREENIVAS RAO**

WRIT APPEAL No.1160 of 2023

JUDGMENT: (per the Hon'ble the Chief Justice Alok Aradhe)

Mr. Pillada Satyanarayana, learned counsel appears for the appellant.

Mr. Vijhay K Punna, learned Standing Counsel for Employees' Provident Fund Organization appears for respondent No.2.

2. In this intra court appeal, the appellant has assailed the validity of the order dated 05.06.2023 passed by the learned Single Judge, in Writ Petition No.23523 of 2011 by which the orders of the Assistant Provident Fund Commissioner as well as the Employees' Provident Fund Appellate Tribunal had been upheld.

3. Facts giving rise to filing of this Writ Appeal briefly stated are that the appellant runs a group of organizations including Cherukuri Mutually Aided Cooperative Credit Society Limited. The aforesaid establishment is admittedly

covered under the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as 'the 1952 Act'). The said establishment made payment of provident fund contribution of its employees up to 31.05.2005. Subsequently, no remittances were made.

4. Thereupon, an enquiry under Section 7A of the 1952 Act was initiated and summons was served on the appellant. The representative of the appellant appeared before the Assistant Provident Fund Commissioner and contended that the provisions of the 1952 Act are not applicable to the establishment of the appellant as the appellant does not engage their services on regular basis but is hiring the services of the consultants on remunerative basis.

5. The Assistant Provident Fund Commissioner by an order dated 03.07.2007 determined the liability of the appellant under the 1952 Act and held that the appellant is liable to pay a sum of Rs.39,47,618/- towards arrears of provident fund contribution for the period from May, 2005, till March, 2007.

6. The appellant thereupon filed a review petition which was dismissed by an order dated 28.09.2007. The appellant thereupon challenged the said order in a Writ Petition, namely, W.P.No.23043 of 2007 which was disposed of by the learned Single Judge of erstwhile High Court of Andhra Pradesh *vide* order dated 10.12.2007 granting liberty to the appellant to take recourse to the remedy of appeal as provided under Section 7-I of the 1952 Act.

7. The appellant thereupon filed an appeal before the Employees' Provident Fund Appellate Tribunal (hereinafter referred to as 'the Appellate Tribunal'). The Appellate Tribunal by an order dated 12.07.2011 dismissed the aforesaid appeal. The appellant challenged the aforesaid order in a Writ Petition, namely, W.P.No.23523 of 2011 which was dismissed by the learned Single Judge *vide* order dated 05.06.2023. Hence, this Writ Appeal.

8. Learned counsel for the appellant at the outset submitted that the entire amount due under the impugned orders has been paid. However, it is submitted that the learned Single Judge

ought to have appreciated that the consultants appointed by the appellant could not have been treated as employees and therefore, the orders passed by the Assistant Provident Fund Commissioner and the Appellate Tribunal are erroneous.

9. We have considered the submissions made by the learned counsel for the appellant and have perused the record.

10. The Assistant Provident Fund Commissioner has held that the consultant is nothing but an employee appointed on a fixed monthly payment. The Assistant Provident Fund Commissioner has therefore held that the so-called consultants and agents are nothing but the employees of the establishment and are engaged on long term employment and are getting monthly remuneration. It was further held by the Assistant Provident Fund Commissioner that in case of the absence of the consultants from their duties, their remuneration is reduced. The Assistant Provident Fund Commissioner further held that the appellant has deliberately renamed his employees as Consultants and has shown their wages as consultant fee.

Accordingly, it was held that the consultants are employees within the meaning of Section 2(f) of the 1952 Act. The aforesaid finding has been affirmed by the Appellate Tribunal.

11. The aforesaid findings of fact are based on meticulous appreciation of material available on record and by no stretch of imagination can be termed as either perverse or illegal. The aforesaid findings of fact have been upheld by the learned Single Judge. We do not find any ground to differ with the view taken by the learned Single Judge.

12. In the result, the Writ Appeal fails and is hereby dismissed.

Miscellaneous applications, if any pending, shall stand closed. There shall be no order as to costs.

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Sd/-B.SATYAVATHI
DEPUTY REGISTRAR
SECTION OFFICER

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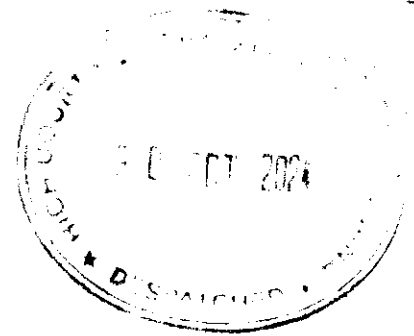
1. One CC to SRI. PILLADA SATYANARAYAN, Advocate [OPUC]
2. One CC to SRI. VIJHAY K PUNNA, Advocate [OPUC]
3. Two CD Copies

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HIGH COURT

DATED: 23/09/2024



JUDGMENT

WA.No.1160 of 2023

DISMISSING THE WRIT APPEAL WITHOUT COSTS

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