NEUTRAL CITATION NO. 2025:MPHC-JBP:66985

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE DEEPAK KHOT

ON THE 9th OF DECEMBER, 2025

WRIT PETITION No. 14855 of 2022

MADHYA PRADESH HOUSING AND INFRASTRUCTURE DEVELOPMENT BOARD ESTABLISHED UNDER THE M.P. GRIHA NIRMAN

Versus

REGIONAL PROVIDENT FUND COMMISSIONER II JABALPUR AND OTHERS

Appearance:

Shri Kapil Duggal - Advocate for the petitioner.
Shri Rahul Diwakar – Advocate for the respondent no.1.
Shri Hare Krishana Upadhyay - Advocate for the respondent no.6 & 17.

O R D E R

The present petition under Article 226 of the Constitution of India has been filed by the petitioner seeking the following reliefs :-

> *"(i) Call for the records pertaining to the case.*
> *(ii) Set aside the impugned order dated 15.06.2022 passed by the learned Central Government Industrial Tribunal Cum Labour Court/EPF Appellate Tribunal, Jabalpur in Case No.CGIT/LC/EPFA-59-2019;*
> *(iii) Hold that the EPF Act is not applicable to the petitioner;*
> *(iv) Any other appropriate writ/order/direction, which this Hon'ble Court may deem fir and proper also kindly be issued in the interest of justice."*

2. Short facts giving rise to the present petition are that one complaint has been filed to the Regional Provident Fund Commissioner, Jabalpur (for brevity, the 'RPFC') on 15.09.2006 (Annexure-A/2). On the said complaint, notices have been issued on 24.04.2007. The petitioner had submitted objection in response to the notice on 25.06.2007. The RPFC passed an order holding that the EPF is applicable vide order dated 21.07.2010. Again objections were submitted vide objection dated 17.08.2010 in regard to the applicability of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (for brevity hereinafter referred to as the 'EPF Act'). Simultaneously, a review petition was filed by the petitioner for reviewing the order dated 21.07.2010 passed by the RPFC. The said review petition was dismissed vide order dated 10.09.2010. Again, second review application was filed against the order dated 21.07.2010 which also came to be dismissed vide order dated 07.10.2010. Thereafter, appeal has been filed against the order passed in the review on 07.10.2010. The Appellate Tribunal has allowed the appeal and remanded the matter back to the RPFC with a direction to decide the second review application on its own merits. Same was decided vide order dated 03.10.2016. Thereafter, on 24.04.2019, the RPFC has passed the final order assessing the dues of 107 employees of the petitioner's establishment to be paid by the petitioner. When such amount has not been deposited with the respondent no.1, the accounts of the petitioner's establishment were freezed vide order dated 13.06.2019. Being aggrieved by the action of the authority of freezing the accounts, the petitioner had preferred a writ petition being W.P. No.16572/2019. This Court, vide order dated 19.08.2019, quashed the order dated 13.06.2019 of

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freezing of the accounts of the petitioner and gave liberty to the petitioner to assail the original order of the respondent no.1 whereby, the order under Section 7-A of the EPF Act has been passed. Thereafter, the appeal was preferred under section 7(I) of the Act of 1952 before the CGIT. The CGIT, vide order dated 15.06.2022, has dismissed the appeal holding that the original order dated 30.09.2016/03.10.2016 by which the authority has made the EPF Act applicable upon the petitioner has not been challenged within the period of limitation and it has attained finality between the parties and thus, for question in regard to the applicability, it has been held that in absence of challenge of original order which attained finality, it is applicable and accordingly, dismissed the appeal.

3. It has been contented by learned counsel for the petitioner that the CGIT has wrongly held that the order dated 30.09.2016/03.10.2016 has not been challenged and has attained finality because such order got merged with the final order passed by the authority assessing the amount of payment under the EPF Act. It is submitted that the said order of initiation of proceedings against the EPF Act under Section 7-A was passed vide order dated 21.07.2010 (Annexure-P/1). Thereafter, several reviews have been filed and on rejection of the review applications, the appeal was preferred before the EPF Appellate Tribunal. The Appellate Tribunal, vide order dated 10.06.2014, remanded back the matter to the RPFC to decide the review on its own merits. The same was decided vide order dated 03.10.2016 (Annexure P-5)/(Annexure A-9 to the appeal). The said order was passed in the review filed by the petitioner by Appellate Authority vide order dated 10.06.2014 by remanding the matter. Thereafter, the authority has passed the final order dated 24.04.2019 (Annexure-

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P/6). The said order was again challenged before the CGIT in an appeal and the said appeal was dismissed by impugned order dated 15.06.2022. It is the case of the petitioner that the order passed on 03.10.2016 got merged in the order dated 24.04.2019 and therefore, when the appeal has been filed against the order dated 24.04.2019, the Appellate Authority ought to have seen the applicability of the Act on merits but as the CGIT held that once the order dated 03.10.2016 has attained finality and no challenge was made against the said order, the applicability of the Act has been upheld as passed by the authority vide order dated 03.10.2016. It is submitted that CGIT has committed error of law in holding that both the orders are independent to each other and once the earlier order has attained finality, the question of applicability cannot be raised against the final order.

4. It is further submitted that on merits the EPF Act is not applicable on the employees of the establishment as per Section 16(c) of the Act which provides that if any establishment is set up under the State Act and whose employees are entitled for any benefits of the contributory provident fund or old age pension in accordance with law, the EPF Act would not be applicable. It is submitted that the petitioner's establishment has been set up under the Madhya Pradesh Griha Nirman Evam Adhosanrachana Vikas Mandal AdiniyaAdhinayam, 1972 and the daily wagers are not covered within the definition of the employees and therefore, as per section 16(c) of the Act, the EPF Act is not applicable.

5. It is further submitted that the Hon'ble Apex Court, in the case of ***Sunita Burman vs. Madhya Pradesh Housing and Infrastructure Development Board***

(2023) 1 SCC 570, has held that as the Work Charged & Contingency Paid Employees Recruitment and Service Rules, 1977 were never adopted by the petitioner's establishment, the Pension Rules for Work Charged & Contingency Paid Employees of the petitioner's establishment is not made applicable and the petitioner therein was not found to be entitled for payment of family pension. It is submitted that the Board, vide order dated 18.02.2015, has enforced the applicability of the National Pension Scheme, 2005 (for brevity, 'NPS, 2005') for the employees of the Board w.e.f. February, 2015. Thereafter, the daily wagers of the establishment have also been benefited by the scheme of Viniyamitikaran, 2016 and accordingly, prayed that as the NPS, 2005 has been made applicable to the petitioner's establishment, the applicability of the Act of 1952 has lost his force. Thus, on the basis of aforesaid submissions prayed for quashment of the order dated 15.06.2022 passed by the CGIT and the direction by this Court that EPF Act is not applicable in the present establishment.

6. *Per contra*, learned counsel for the respondents vehemently submitted that the proceedings have been initiated in the year 2006 and vide order dated 21.07.2010, for the very first time, the RPFC has held that the EPF Act is applicable in the petitioner's establishment. However, the petitioner's establishment continued to prolong the process of assessment by filing one after another review application which came to be dismissed. However, on appeal been filed, the matter was remanded back to the authority to decide the second review application submitted by the petitioner's establishment and finally vide order dated 03.10.2016, the authority again has passed the order holding that the EPF Act is applicable to the petitioner's establishment. It is submitted that the

order dated 03.10.2016 was never challenged by the petitioner's establishment and thereafter, the order was passed by RPFC assessing the liability of the petitioner's establishment under the EPF Act by order dated 24.04.2019 (Annexure-P/6). The said order was challenged before the CGIT and the CGIT, holding that as the order dated 03.10.2016 has attained finality in absence of any challenge within limitation, the question of deciding the applicability does not hold the force and accordingly, dismissed the appeal. It is submitted that the petitioner has wrongly construed that the order dated 30.09.2016/03.10.2016 has been merged with the order dated 24.04.2019. The CGIT has rightly held that once the applicability of Section 7-A(1)(a) of the EPF Act has been decided vide order dated 03.10.2016/30.10.2016 which remained unchallenged, it has attained finality. As the authorities have passed separate orders on the question of applicability of the EPF Act and the assessment, the petitioner has tried to take benefit of it stating that the earlier order was merged with the order dated 24.04.2019, though connected. It is further submitted that the objections raised by the petitioner in respect of the applicability of the Act has already been decided by the detailed order of the authorities in 2010 and then after remand in the year 2016. It is submitted that as contended by petitioner that as per section 16(c), the EPF Act is not applicable but in response it is submitted that under the definition clause, the definition of employees covers the daily wagers also.

To bolster his submission, learned counsel for the respondent has placed reliance on the judgment of the Hon'ble Apex Court in the case of ***Officer-in-Charge, Sub-Regional Provident Fund Office and Another vs. Godavari Garments Limited*** **(2019) 8 SCC 149** and prayed for dismissal of the petition.

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7. Heard the learned counsel for the parties and produced the record.

8. It is not in dispute that the petitioner's establishment has marked his presence before the Authority to submit their objection in regard to the applicability of the Act at the first instance when the notices were issued by the Authority. The said objection culminated in the order dated 21.07.2010 whereby, the authority examining the provisions of section 16(1)(b) and 16(1)(c) has found that the EPF Act is applicable to the petitioner's establishment. Thereafter, various review applications have been filed. However, it came to be dismissed. On appeal been filed against the order of review, the matter was remanded back to the RPFC to decide the review application on its own merits. Thus, the authority was required to consider the review application submitted by the petitioner and not the original order on its own merits. However, from a bare perusal of the order dated 30.09.2016/03.10.2016, it reveals that the authority, on the basis of the earlier order, has again examined the matter and found that the EPF Act is applicable to the petitioner's establishment. Against the said order, no appeal was filed and the applicability of the Act attained finality. The authority, vide order dated 24.04.2019 (Annexure-P/6), has made the assessment of the liabilities and dues of the petitioner's establishment towards the Employees Provident Fund and directed the petitioner's establishment to remit the dues within 15 days of the receipt of the order. The petitioner had challenged the said order in the appeal before the CGIT which again came to be dismissed vide order dated 15.06.2022. The CGIT, holding that though, both the orders dated 30.09.2016/03.10.2016 as well as 24.04.2019 are connected but independent to each other as the authority has passed independent orders on the

applicability of the Act which was never challenged within time. Therefore, holding that as the order dated 30.09.2016/03.10.2016 has attained finality, no order can be passed on the applicability of the Act upon the petitioner's establishment.

9. It is pertinent to note here that the proceedings were initiated on a complaint made on 15.09.2006 in which the order dated 21.07.2010 has been passed considering Section 16(1)(a) and (b) of the Act and accordingly, found that the EPF Act is applicable upon the petitioner's establishment. In fact, the said order was made to challenge under review which came to be dismissed and on an appeal been filed, the Appellate Authority directed to decide the review application on its own merits and not on the merits of the case which has already been decided. But the authorities has decided the applicability of the Act again vide order dated 30.09.2016/03.10.2016. The same was not challenged and thus, the findings arrived at by the CGIT that the order remain unchallenged has attained finality and does not call for any interference as both the orders have been passed by the authorities independently and cannot be said that the earlier order dated 30.09.2016/03.10.2016 has merged in the order dated 24.04.2019. The petitioner's establishment has kept blissful silence for almost three years after passing of the order dated 30.09.2016/03.10.2016 as the time period to challenge that order has passed. When the authority has passed the order on 24.04.2019 assessing the dues and liabilities under the EPF Act, the petitioner awoke from deep slumber and filed an appeal before the CGIT. Thus, the order dated 30.09.2016/03.10.2016, in the considered opinion of this Court has attained finality.

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10. As the petitioner has also challenged the applicability of the Act before this Court when the question has been tested on the basis of the provisions of law, it is found that as per Section 16(1)(c), the Act has not been made applicable to the establishment setup under the State Act and whose employees are entitled to benefits of contributory fund and old age pension in accordance with the Rules. For ready reference, Section 16(1)(c) of the EPF Act reads as under :-

> *"**16. Act not to apply to certain establishments.-**[(1) This Act shall not apply –*
>
> *(a)… … …*
>
> *(b)… … …*
>
> *(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;*

Section 16(1)(c) of the EPF Act has two limbs - one is establishment which is constituted under the State Act and second is when the employees of the establishment are not covered under the contributory fund or old age pension as per the available rules. Admittedly, the private respondents are not covered either in the EPF or Old Age Pension Scheme or Rules of the establishment as submitted by the counsel for the petitioner. However, it is submitted the daily wagers are not covered under the employees and therefore, as per Section 16(1)(c), the Act is not applicable.

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11. The term 'employee' is defined under Section 2(f) of the Act of 1952, which reads as under :-

> *"**2. Definitions.**- In this Act, unless the context otherwise requires,-*
>
> *(f) "employee" means any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the workof [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 the 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;]"*

From a bare perusal of the Rule 2(f) of the Act, it is clear that any person who is receiving wages against any kind of work manual or otherwise of an establishment and gets the wages directly or indirectly from the employees is covered under the .

12. The Hon'ble Apex Court in the case of ***Officer-in-Charge, Sub-Regional Provident Fund Office and Another vs. Godavari Garments Limited*** **(2019) 8 SCC 149** has held in paragraph – 9 as under :-

> *"**9.1.** The definition of "employee" under Section 2(f) of the EPF Act 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.*

***9.2**. In the present case, the women workers employed by the respondent Company were provided all the raw materials, such as the fabric, thread, buttons, etc. from the respondent employer. With this material, the women workers were required to stitch the garments as per the specifications given by the respondent Company. The women workers could stitch the garments at their homes, and provide them to the respondent Company. The respondent Company had the absolute right to reject the finished product i.e. the garments, in case of any defects.*

***9.3.** The mere fact that the women workers stitched the garments at home, would make no difference. It is the admitted position that the women workers were paid wages directly by the respondent Company on a per-piece basis for every garment stitched.*

***9.4.** The issue in the present case is squarely covered by the decision of this Court in Silver Jubilee Tailoring House v. Chief Inspector of Shops & Establishments[3]. The appellants therein were engaged in the business of producing garments. They employed workers who were provided with the cloth, and were instructed by the appellants how to stitch it. The workers were paid on piece-rate basis. If a worker failed to stitch a garment as per the instructions, the appellants rejected the work, and asked the worker to re-stitch the garment. This Court held that such workers fell within the definition of "person employed" under Section 2(14) of the Andhra Pradesh (Telangana Area) Shops and Establishments Act, 1956. It was held that: (Silver Jubilee Tailoring House case[3], SCC p. 509, para 34)*

> *"34. Quite apart from all these circumstances, as the employer has the right to reject the end product if it does not conform to the instruction of the employer*

and direct the worker to restitch it, the element of control and supervision as formulated in the decisions of this Court is also present."

9.5. *On the issue where payment is made by piece-rate to the workers, would they be covered by the definition of "employee", this Court in Shining Tailors v. Industrial Tribunal, held that: (SCC pp. 465-66, para 5)*

"5. We have gone through the record and especially the evidence recorded by the Tribunal. The Tribunal has committed a glaring error apparent on record that whenever payment is made by piece-rate, there is no relationship of master and the servant and that such relationship can only be as between principal and principal and therefore, the respondents were independent contractors. Frankly, we must say that the Tribunal has not clearly grasped the meaning of what is the piece-rate. If every piece-rated workman is an independent contractor, lakhs and lakhs of workmen in various industries where payment is correlated to production would be carved out of the expression "workman" as defined in the Industrial Disputes Act. In the past the test to determine the relationship of employer and the workman was the test of control and not the method of payment. Piece-rate payment meaning thereby payment correlated to production is a well-recognised mode of payment to industrial workmen. In fact, wherever possible that method of payment has to be encouraged so that there is utmost sincerity, efficiency and single-minded devotion to

increase production which would be beneficial both to the employer, the workmen and the nation at large. But the test employed in the past was one of determining the degree of control that the employer wielded over the workmen. However, in the identical situation in Silver Jubilee Tailoring House v. Chief Inspector of Shops & Establishments³ Mathew, J. speaking for the Court observed that the control idea was more suited to the agricultural society prior to Industrial Revolution and during the last two decades the emphasis in the field is shifted from and no longer rests exclusively or strongly upon the question of control. It was further observed that a search for a formula in the nature of a single test will not serve the useful purpose, and all factors that have been referred to in the cases on topics, should be considered to tell a contract of service. Approaching the matter from this angle, the Court observed that the employer's right to reject the end product if it does not conform to the instructions of the employer speaks for the element of control and supervision. So also the right of removal of the workman or not to give the work has the element of control and supervision. If these aspects are considered decisive, they are amply satisfied in the facts of this case. The Tribunal ignored the well-laid test in law and completely misdirected itself by showing that piece-rate itself indicates a relationship of independent contractor and error apparent on the record disclosing a total lack of knowledge of the method of payment in various occupations in

> *different industries. The right of rejection coupled with the right to refuse work would certainly establish master-servant relationship and both these tests are amply satisfied in the facts of this case. Viewed from this angle, the respondents were the workmen of the employer and the preliminary objection therefore, raised on behalf of the appellant employer was untenable and ought to have been overruled and we hereby overrule it."*

9.6. *In P.M. Patel & Sons v. Union of India, the appellants therein were engaged in the manufacture and sale of bidis. The appellants engaged contractors, and the contractors engaged workers who rolled the bidis at their own homes after obtaining the raw materials either directly from the appellants, or through the contractors. The appellants contended that those workers were not covered by the definition of "employee" under Section 2(f) of the EPF Act. This Court rejected the contentions raised by the appellants therein, and held that: (SCC pp. 37-38 & 40-41, paras 8 & 10)*

> *"8. Clause (f) of Section 2 of that Act defines an "employee" to mean '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 employed by or through a contractor in or in connection with the work of the establishment.' It will be noticed that the terms of the definition are wide. They include not only persons employed directly by the employer but also persons employed through a contractor. Moreover, they include not only persons employed in the factory but also*

persons employed in connection with the work of the factory. It seems to us that a home worker, by virtue of the fact that he rolls beedis, is involved in an activity connected with the work of the factory. We are unable to accept the narrow construction sought by the petitioners that the words "in connection with" in the definition of "employee" must be confined to work performed in the factory itself as a part of the total process of the manufacture.

10. In the context of the conditions and the circumstances set out earlier in which the home workers of a single manufacturer go about their work, including the receiving of raw material, rolling the beedis at home and delivering them to the manufacturer subject to the right of rejection there is sufficient evidence of the requisite degree of control and supervision for establishing the relationship of master and servant between the manufacturer and the home worker. It must be remembered that the work of rolling beedis is not of a sophisticated nature, requiring control and supervision at the time when the work is done. It is a simple operation which, as practice has shown, has been performed satisfactorily by thousands of illiterate workers. It is a task which can be performed by young and old, men and women, with equal facility and it does not require a high order of skill. In the circumstances, the right of rejection can constitute in itself an effective degree of supervision and control. We may point out that there is evidence to show that the rejection takes place in the presence of the home worker. That factor, however, plays a merely supportive role in petitioners point out that

> *there is no element of personal service in beedi rolling and that it is open to a home worker to get the work done by one or the other member of his family at home. The element of personal service, it seems to us, is of little significance when the test of control and supervision lies in the right of rejection."*

9.7. *The aforesaid judgments make it abundantly clear that the women workers employed by the respondent Company are covered by the definition of "employee" under Section 2(f) of the EPF Act.*

9.8. *The EPF Act is a beneficial social welfare legislation which was enacted by the legislature for the benefit of the workmen. This Court in Daily Partap v. Regl. Provident Fund Commr.6, held that: (SCC p. 98, para 9)*

> *"9. It has to be kept in view that the Act in question is a beneficial social welfare legislation meant for the protection of weaker sections of society, namely, workmen who had to eke out their livelihood from the meagre wages they received after toiling hard for the same."*

Hence, the provisions under the EPF Act have to be interpreted in a manner which is beneficial to the workmen.

9.9. *In the present case, the women workers were certainly employed for wages in connection with the work of the respondent Company. The definition of "employee" under Section 2(f) is an inclusive definition, and includes workers who are engaged either directly or indirectly in connection with the work of the establishment, and are paid wages."*

On the basis of the aforesaid, it is clear that the private respondents fall within the definition of employees. Thus, Section 16(1)(c) is not applicable in the present case in hand.

13. The third question which has been raised by the learned counsel for the petitioner is that whether in the petitioner's establishment the NPS Scheme has been made applicable w.e.f. February, 2015 vide order dated 18.05.2015 brought on record by way of rejoinder. It is submitted that as the petitioner has been benefited by the Scheme of 2016 which has been made applicable in the petitioner's establishment vide order dated 08.11.2016, the petitioner is entitled for NPS. It is submitted that once the services of the petitioner are taken into consideration and made member of the scheme by the executive orders, then both the provisions i.e., the provision of EPF and the Scheme of 2005 cannot exist together. Either the respondents/employees would be entitled for the benefits of EPF or the Scheme of 2005. In response, the learned counsel for the respondents has submitted that the authority has adjudicated the claims of the respondents for the period which commenced from 1982 till 2015 in several matters. Thus, the applicability of this scheme which has been made applicable in the petitioner's establishment w.e.f. February, 2015 has got no effect to the orders already passed by the Authority. It is submitted that the benefit of the scheme would be extended w.e.f. 2005 and the period for which the respondents have served the petitioner's establishment, the benefit of EPF Act deserves to be granted.

14. Considering this anomaly, this Court is of the considered opinion that the respondents would be entitled for the benefits of EPF Act from the period of their engagement in the petitioner's establishment till the enforcement of the 2005 Scheme in the petitioner's establishment. Thus, the authority is directed to assess the liabilities/dues payable to the respondents by the petitioners from their date of engagement till the enforcement of 2005 Scheme. The petitioner is directed to make all the contribution of 2005 Pension Scheme from the date of its enforcement till date and in future or date of retirement of the respondents/employees.

15. The other aspect in regard to the applicability of the EPF Act on the ground that the Hon'ble Apex Court in the case of ***Sunita Burman (supra)*** has held that once the petitioner's Board has not adopted the Rules of 1977 in their establishment, the employees or the dependent of the employees are not entitled for the family pension and on the basis once the petitioner has not adopted the applicability of the Act, it is not applicable in the present case in hand. The arguments raised by the counsel for the petitioner seems to be misconceived as in that case, the Hon'ble Apex Court, while dealing with the applicability of the Rules for the employees of the Work Charged Contingency establishment of the petitioner's Board, has found that once it is not adopted by the petitioner's Board then such benefit under the said Rules cannot be extended. From a bare perusal of the definition 2(f) and the provisions of Section 16(1)(c), it is clear that the respondents falls within the definition of employees and covered under the EPF Act. Thus, the principle laid down by the Hon'ble Apex Court is of no help to the petitioner in the present case in hand.

16. In view of the aforesaid discussion of the factual matrix and law referred to by the learned counsel for the parties, this Court is of the considered opinion that the petition of the petitioner is devoid of merits and is hereby **dismissed**, however, with a modification in the relief that the respondents would be entitled for the benefits of EPF Act from the date of their engagement till applicability of the Pension Scheme of 2005 with the condition that the petitioner shall also contribute according to the scheme of 2005 from the applicability of the scheme in the petitioner's establishment till the retirement of the respondents. The respondent no.1 is directed to assess the liabilities/ dues payable to the respondents/employees by the petitioner's establishment.

No order as to cost(s).

(DEEPAK KHOT)
JUDGE

Priya.P.