IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13446 of 2010

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The Assistant Provident Fund Commissioner, Employees Provident Fund Organization Regional Office, Bhavisyanidhi Bhawan, R-Block, Road No.6, P.S.Sachiwalaya , Distt-Patna .... Petitioner

Versus

M/S Hotel Lalita, Through Its Proprietor East Boring Canal Road, Patna .... Respondent

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Appearance :

For the Petitioner : Mr. Jai Prakash, Advocate

For the Respondent : None

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

ORAL ORDER

11 12-01-2015 The Assistant Provident Fund Commissioner, Employees Provident Fund Organization, Regional office, Patna, has challenged the order dated 16.4.2009, passed by the Presiding officer, Employees Provident Fund Appellate Tribunal, New Delhi (herein after referred to as 'the Tribunal') in ATA No.373(3)/2004, setting aside its order dated 9.2.2004, passed under Section 7A of the Employees Provident Fund & Miscellaneous provisions Act, 1952 (herein after referred to as 'the Act'), has been allowed.

The sole respondent/establishment is a residential hotel covered under the Act. It was proceeded in an enquiry under section 7A of the Act. The Assistant Provident Fund Commissioner, Employees Provident Fund Organization, Regional office, Patna (petitioner) participated in the proceeding and furnished the records of salary, wages, cash book, ledgers for the notice period of April, 2003 to September, 2003. In course of enquiry, the petitioner found that there is an expense under the heading ‘staff food’ in the ledgers as well as in the trial balance, and no provident fund dues were paid with respect to the allowance under the said heading. The Department/petitioner in view of explanation 1 to section 6 included the allowance/food expense for calculating provident fund liability and directed the respondent to pay of a sum of Rs.27,830/- accordingly with consequential actions under section 7Q and 7(C) of the Act.

Being aggrieved the respondent preferred appeal before the employees Provident Fund Appeal Tribunal, New Delhi bearing Appellate Tribunal Appeal (ATA) No. 373(3) of 2004. The Appellate court noticed that the only issue involved in the appeal is whether the expenses shown against the head ‘staff food’ is liable to be included for calculation of provident fund dues. After hearing the parties, and relying upon a decision in case of Tata Power Company Limited and others versus Regional Provident Fund Commissioner, Maharashtra and Goa and others, 2008-III- LLJ-992, the Appellate tribunal observed that the term ‘cash value’ of any concession allowed to an employee means such value of component by which the price of item is reduced. The proposition would necessarily postulate the provision of the supply of food grain and without such supply, it would not be possible to calculate the value of any food concession allowed to an employee. The Appellate Tribunal observed that as there was no supply of any food by the establishment, no provident fund liability can be saddled in relation to the expense under the heading ‘staff food’. The Appellate tribunal as such allowed the appeal and quashed the order of the department. Being aggrieved, the Assistant Provident Fund Commissioner has preferred this writ petition.

According to the writ petitioner, the Dearness allowance in view of explanation 1 to Section 6 of the Act would include also cash value of any food concession allowed to the employee and as such the department was right in calculating the food expenses incurred under the heading ‘staff head’ towards the provident fund liability and the Appellate Tribunal erred in taking a contrary view.

No one has appeared for the respondent.

I have heard learned counsel for the petitioner and perused the materials on record as well as the relevant provisions of laws.

Section 6 of the Act states that the provident fund dues would be calculated both on wages as well as dearness allowance. As per explanation 1 to section 6 of the Act inserted in 1960, for the purpose of contribution of the provident fund, the dearness allowance shall be deemed to include also the cash value of any food concession allowed to the employee. Explanation 1 to section 6 is quoted herein below:-

> *"(Explanation 1). For the purposes of this section, dearness allowance shall be deemed to include also the cash value of any food concession allowed to the employee*."

It would appear from the bare reading of provision that cash value of any concession provided to an employee would be also computed for the purpose of calculating provident fund liabilities. For instance, if an establishment provides food coupon valuing Rs. 50/- for Rs.10/-, then in such circumstances, cash value of concession comes to Rs.40/-. As per explanation 1 to section 6 of the Act, Rs. 40/- would be taken into account under the head 'dearness allowance' for the purpose of levying provident fund. Take for instance another example. If the food is offered free of cost, then the cash value of food concession is 100% and the full value of the food will be taken into account for computing provident fund liabilities.

But if the establishment charges the full value for the food supply, there is obviously no concession, as such no amount would be charged under this head for levying provident fund. There is no material on the record to establish as to what was the cash value of concession provided to the employees under the head ‘food expenses’. As such the Appellate tribunal rightly quashed the order of the department adding expenses under the heading “staff food” for computing provident fund liability.

In the result, there is no merit in this writ petition. It is dismissed as such.

(Samarendra Pratap Singh, J)

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