



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 31.10.2017

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE P.D.AUDIKESSAVALU

W.P(MD)No.6771 of 2011
and M.P.(MD) No.1 of 2011

Regional Provident Fund Commissioner,
Sub-Regional Office,
10-A/3, St. Thomas Road,
High Grounds, Tirunelveli - 627 011.

... Petitioner

vs.

1. The Employee's Provident Funds
Appellate Tribunal,
New Delhi.

2.The General Manager,
M/s. Faywalk Fashions,
1/266, Ellanaickanpatti,
Keela Vallanadu P.O. 628 851,
Thoothukudi District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records of the impugned order passed by the 1st respondent in review dated 15.03.2011 in ATA No.466 (13) 2006 and order dated 20.10.2010 in ATA No.466(13)2006 and quash the same.

For Petitioner : Mr.K.Muralishankar

1st Respondent : Tribunal

For 2nd Respondent : Mr.P.Chandra Bose

ORDER

Heard Mr.K.Muralishankar, learned counsel appearing for the petitioner and Mr.P.Chandrabose, learned counsel appearing for the 2nd respondent.

2.The petitioner has preferred this Writ Petition on the ground that the appeal lies against the order passed by the first respondent, rejecting an application for review, as referred to



under sub-section 5 of Section 7-B of the Employee's Provident Funds and Miscellaneous Provisions Act, 1952, where as *locus-standi* of the petitioner to file such writ petition itself is questioned by the second respondent by relying on the judgment of the Andhra Pradesh High Court in **Assistant Provident Fund Commissioner, Visakhapatnam v. Employees Provident Fund Appellate Tribunal and another** reported in **2013-II-LLJ-82 (AP)**.

2. Be that as it may, having regard to the fact that there is no infirmity in the factual finding of the first respondent/Appellate Tribunal that House Rent Allowance and Medical Allowance cannot form part of basic wages as defined in 2 (b) (ii) of the Employee's Provident Funds and Miscellaneous Provisions Act, 1952, substantive justice demands that no views need to be expressed on the correctness or otherwise on the aforesaid rival contentions raised by the petitioner and the second respondent and the said questions of law are left open for decision in appropriate cases later. Hence, the Writ Petition is disposed of with the aforesaid observations. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

To

The Employee's Provident Funds
Appellate Tribunal,
New Delhi.

+ 1 cc TO Mr.P.Chandra Bose , Advocate in SR No. 84622
+ 1 cc TO Mr.K.Muralishankar , Advocate in SR No. 84428

sj
AE/KKR/SAR2/15.11.2017/2P/4C

order in
W.P(MD)No.6771 of 2011
and M.P.(MD) No.1 of 2011
31.10.2017