IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.02.2018

CORAM:

THE HONOURABLE MR. JUSTICE SATRUGHANA PUJAHARI

W.P.No.27214 of 2012

A.Thangavelu .. Petitioner

Vs

1.The EPF Appellate Tribunal,
rep. by its Registrar,
Ministry of Labour & Employment,
Scope Minar Core-2, Fourth Floor,
Laxmi Nagar District Canter,
Delhi-110 092.

2.The Regional Provident Fund Commissioner,
Employees Provident Fund Organisation,
No.3, Rajaji Salai,
Tambaram,
Chennai-45.

3.Binny Engineering Works Limited,
rep. by its General Manager,
Station Road, Meenambakkam,
Chennai-600 061. .. Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records relating to the order dated 23.02.2012 passed by the first respondent Appellate Tribunal, in ATA No.605(13) 2011, allowing the appeal filed by the third respondent and quash the same as being illegal, arbitrary and unconstitutional and consequently issue a direction to the third respondent to settle the provident fund benefits due to the petitioner as directed by the second respondent with all attendant benefits together with the accrued interest.

For Petitioner : Mr.C.K.Chandrasekkar
For R3 : M/s.Devi Rudra for
M/s.T.S.Gopalan & Co

ORDER

This writ petition has been filed by the petitioner under Article 226 of the Constitution of India with a prayer to issue a writ of certiorarified mandamus by quashing order dated 23.02.2012 passed by the first respondent Appellate Tribunal, in ATA No.605(13) 2011, as the same is illegal, arbitrary and contrary to law and restore the order of the Provident Fund Commissioner directing the respondent no.2, to deposit the provident fund amount due to the petitioner by the third respondent, and with a further direction to release all the attendant benefits together with accrued interest.

2. As it appears, that the petitioner was working under the third respondent, since 1970. However, in the year 1986, the lock out having been announced. On 17.02.1988, the lock out was lifted, but the petitioner was not taken back to service till 22.02.1991. Thereafter, the petitioner was in ex-parte domestic enquiry dismissed from service on 16.04.1992, which was refused to be approved by the Industrial Tribunal in A.No.42 of 1992, and the respondent no.3, therein was directed to pay the back wages to the petitioner. The said order of the Industrial Tribunal was challenged in WP.No.17353 of 1995, which was dismissed on 27.06.2003. A Writ Appeal against the same was filed in W.A.No.754 of 2004, having also been dismissed by the Division Bench of this Court on 05.07.2007. Thereafter, Special Leave Petition was filed against the same, before the Apex Court vide SLP(C) No.20789 of 2007, which was disposed of, in terms of the compromise meted out of the Court wherein, it was specifically stated that the entitlement of back-wages, the payment of compensation paid to the petitioner of Rs.2,62,000/- be treated as back-wages. Accordingly, the aforesaid compensation having been paid which was in the nature of back-wages, the petitioner approached respondent no.2/Regional Provident Fund Commissioner, to direct the management to pay the provident fund contribution from 16.09.1992 to 06.07.2007, so as to pay the pension to the petitioner on the basis of his entire service. Such amount of Provident Fund contribution quantify to Rs.1,35,596.70/- and accordingly, a direction was given to the respondent no.3, to deposit the same. However, the respondent no.3, without complying with the aforesaid order preferred an appeal before the Provident Fund Appellate Tribunal vide appeal No.ATA 605 (13)/2011, in which, the petitioner was not made as a party and as such, without giving any notice to the petitioner, the first respondent/Appellate Tribunal dispose of the same, setting aside the order of the Provident Fund Commissioner indicating therein that since the aforesaid amount was not paid as wages for the duties performed but the compensation awarded under Court settlement, the same does not constitute basic wages and as such employer is not liable to

pay the Provident Fund Contribution. Reliance in this regard was placed in the case of Swastik Textile Engineers Pvt Ltd., Vs. Virjibhai Mavjibjhai Rathod and another(in SLP.No.4336 of 1999) 2007 SCC OnLine Guj 313.

3. The learned counsel appearing for the petitioner, however submits that the aforesaid amount being paid as back wages. Such order of the Appellate Tribunal therefore, is contrary to law that too when the aforesaid order has been passed without giving any opportunity to the petitioner, hence, the same is unsustainable. But, placing reliance on the decision of Gujarat High Court, the learned counsel for the respondents submits that since the aforesaid is not the basic wages as defined under Provident Fund Act but the compensation paid under Provident Fund no liability is attracted to the petitioner.

4. As it appears in the case of Swastik Textile Engineers Pvt Ltd., Vs.Virjibhai Mavjibjhai Rathod and another(in SLP.No.4336 of 1999) 2007 SCC OnLine Guj 313, when the workmen was reinstated in service and so paid backwages, the management having not deducted the amount of provident fund from the said amount of the back-wages and also given its statutory contribution to the provident fund taking note of Section 7- A of the Employee Provident Fund and Miscellaneous Provisions Act, 1952(herein after referred to as ''the act''), held that the management is liable to pay the statutory contribution under the Provident Fund Act. However, the back- wages for that period was granted. Against the same, a representation having been made before the Employees Provident Fund Appellate Tribunal. The Appellate Tribunal remanded the matter to the Commissioner to reconsider and decide the matter afresh. Pursuant to which, an enquiry under Section 7 -A of the Act was initiated and in the meanwhile, a fresh case under Paragraph 26 (B) of Provident Fund Scheme having been initiated, the Commissioner was of the opinion that the back-wages awarded by the Labour Court was the wages, when the workmen was out of service, therefore, the same constitute basic wage as defined under the Act. Hence, the management is liable to pay the contribution of provident fund. The aforesaid order was challenged before the Gujarat High Court. The Gujarat High Court, vide the decision cited supra, in paragraph no.10, held as follows:

> ''In my view, when the Court awards back-wages for the period the employee was kept away from duty, what the Court does is to award damages assessed in terms of whole or part of the wages the workman would have earned had he been continued in service without interruption. It is not the same as payment of wages for the duties performed or for the period deemed to have been spent on duty. The amount of

damages or the compensation awarded by a Court would not constitute the 'basic wages' as envisaged by the Act''.

5. In the case of Shree Changdeo Sugar Mills Vs. Union of India dated 09.01.2000, the Apex Court have held that the payment of Provident Fund liability arose only on basic wages. But for the basic wages, it is not at all necessary that the workmen must actually be on duty or that the workmen, who actually had worked in order to attract the provisions of the Employees Provident Fund Act. In the present case, admittedly, the service of the petitioner, who was terminated held to be illegal and he was directed reinstatement with back-wages. Therefore, the aforesaid back-wages is required to be counted towards basic wage inasmuch as the same was given to the petitioner for his duty as his termination was held to be illegal. No doubt, the reinstatement was not granted and the said order was challenged. But, in the Supreme Court, the Company having agreed to settle the matter to pay the wages though a deductible amount on agreement, the matter was disposed of. The same was not towards any compensation but reduce a wage to which the petitioner agreed. Hence, the said in the opinion of this Court constitute the payment towards wage. Therefore, the impugned order, placing reliance in the case of Swastik Textile Engineers Pvt Ltd., cited supra appears to be unsustainable. Accordingly, the same stands set aside. So far as the other contentions that has been raised since the employees contribution was not deducted, the employer has no liability, the same has also been already well settled in the case of Shree Changdeo Sugar Mills Vs. Union of India cited supra, that the aforesaid does not exonerate the employer for payment of his part of contribution in any manner. I would therefore, allow this writ petition and consequently, set aside the order of the first respondent and restore the order of the second respondent.

6. With the aforesaid direction, the writ petition stands disposed of. No costs.

Sd/-
Deputy Registrar

//True Copy//
Sub Assistant Registrardn

To
1.The EPF Appellate Tribunal,
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2.The Regional Provident Fund Commissioner,
Employees Provident Fund Organisation,
No.3, Rajaji Salai,
Tambaram,
Chennai-45.

3.Binny Engineering Works Limited,
rep. by its General Manager,
Station Road, Meenambakkam,
Chennai-61.

+1cc to Mr.T.S.Gopalan & Co, Advocate, S.R.No.12853
+1cc to Mr.J.Sathya Narayana Prasad, Advocate, S.R.No.12711

W.P.No.27214 of 2012

GSP(17/07/2018)