IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.11.2019

CORAM

THE HONOURABLE MR.JUSTICE S.M. SUBRAMANIAM

W.P.No.13375 of 2011
and
M.P.No.1 of 2011

M/s.Accel Transmatic Limited,
Accel House,
75, Nelson Manickam Road,
Aminjikarai, Chennai-600 029,
Rep., by its Company Secretary,
Mr.S.T.Prabhu. .. Petitioner

-vs-

1.The Presiding Officer,
Employees' Provident Fund Appellate Tribunal,
New Delhi.

2.The Employees' Provident Fund Organisation,
No.37, Royapettah High Road,
Chennai-600 014, Rep., by its
Assistant Provident Fund Commissioner. .. Respondents

Prayer: Writ Petition under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the records connected with the Order dated 13.04.2011 in Appeal No. ATA No.340 (13) 2009 made by the 1st respondent, the Presiding Officer, Employees' Provident Fund Appellate Tribunal, New Delhi thereby confirming the Order dated 21.05.2009 made by the 2nd respondent, the Assistant Provident Fund Commissioner, Chennai, and to quash the same.

For Petitioner : Mr.Sanjay Mohan
For M/s.Ramasubramaniam & Associates

For Respondents: R1 - Tribunal

: R2 - T.R.Sundaram

ORDER

The order dated 13.04.2011 passed by the 1st respondent in

ATA No.340 (13) 2009 confirming the order of the 2nd respondent dated 21.05.2009 is under challenge in the present writ petition.

2.In respect of including special allowances along with basic wages for the purpose of calculating the contributions under the Employees' Provident Fund and Miscellaneous Provisions Act, 1952, the Hon'ble Supreme Court of India decided the issue by holding that such special allowances are to be included along with the basic wages for the purpose of assessing the contribution. The said order was passed by the Hon'ble Supreme Court in the case of Regional Provident Fund Commissioner (II), West Bengal and Others vs. Vivekananda Vidyamandir and Others reported in 2019 SCC OnLine SC 291 and the relevant paragraphs are extracted as hereunder:-

> "12. The term basic wage has not been defined under the Act. Adverting to the dictionary meaning of the same in Kichha Sugar Company Limited through General Manager vs. Tarai Chini Mill Majdoor Union, Uttarakhand, (2014) 4 SCC 37, it was observed as follows:
>
> > "9. According to http://www.merriam webster.com (Merriam Webster Dictionary) the word 'basic wage' means as follows:
> >
> > 1. A wage or salary based on the cost of living and used as a standard for calculating rates of pay
> >
> > 2. A rate of pay for a standard work period exclusive of such additional payments as bonuses and overtime.
> >
> > 10. When an expression is not defined, one can take into account the definition given to such expression in a statute as also the dictionary meaning. In our opinion, those wages which are universally, necessarily and ordinarily paid to all the employees across the board are basic wage. Where the payment is available to those who avail the opportunity more than others, the amount paid for that cannot be included in the basic wage. As for example, the overtime allowance, though it is generally enforced across the board but not earned by all employees equally. Overtime wages or for that matter, leave encashment may be available to each workman but it may vary from one workman to other. The extra bonus depends upon the extra hour of work done by the workman whereas leave encashment shall depend upon the number of days of leave available to workman. Both are variable. In view of what we have

observed above, we are of the opinion that the amount received as leave 18 encashment and overtime wages is not fit to be included for calculating 15% of the Hill Development Allowance."

13. That the Act was a piece of beneficial social welfare legislation and must be interpreted as such was considered in The Daily Partap vs. The Regional Provident Fund Commissioner, Punjab, Haryana, Himachal Pradesh and Union Territory, Chandigarh, (1998) 8 SCC 90.

14. Applying the aforesaid tests to the facts of the present appeals, no material has been placed by the establishments to demonstrate that the allowances in question being paid to its employees were either variable or were linked to any incentive for production resulting in greater output by an employee and that the allowances in question were not paid across the board to all employees in a particular category or were being paid especially to those who avail the opportunity. In order that the amount goes beyond the basic wages, it has to be shown that the workman concerned had become eligible to get this extra amount beyond the normal work which he was otherwise required to put in. There is no data available on record to show 19 what were the norms of work prescribed for those workmen during the relevant period. It is therefore not possible to ascertain whether extra amounts paid to the workmen were in fact paid for the extra work which had exceeded the normal output prescribed for the workmen. The wage structure and the components of salary have been examined on facts, both by the authority and the appellate authority under the Act, who have arrived at a factual conclusion that the allowances in question were essentially a part of the basic wage camouflaged as part of an allowance so as to avoid deduction and contribution accordingly to the provident fund account of the employees. There is no occasion for us to interfere with the concurrent conclusions of facts. The appeals by the establishments therefore merit no interference. Conversely, for the same reason the appeal preferred by the Regional Provident Fund Commissioner deserves to be allowed."

3.Thus, the principles laid down by the Apex Court in Regional Provident Fund Commissioner (supra) would squarely apply to the present case and accordingly, the writ petition is liable to be rejected. If at all any other grievances exist, it is left open to the writ petitioner to approach the competent authority by following the procedures contemplated under the law.

4.Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

abr

To

1.The Presiding Officer,
Employees' Provident Fund Appellate Tribunal,
New Delhi.

2.The Assistant Provident Fund Commissioner,
The Employees' Provident Fund Organisation,
No.37, Royapettah High Road,
Chennai-600 014.

+1cc to Mr.TR.Sundaram, Advocate, S.R.No. 93506
+1cc to Mr.S.Ramasubramanian & Associates,Advocate, S.R.No.93544

W.P.No.13375 of 2011

MR(CO)
GN(12/02/2020)