IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 12.11.2019
CORAM
THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM
W.P.No.15131 of 2011
MP.Nos.1 & 2of 2011

DTDC Courier and Cargo Ltd,
Valluvar Kottam Road, Chennai - 600 0034.
Rep. by its Administrative Officer,
Shri.S.Ravikumar. ..Petitioner

Vs.

1.The Regional Provident Fund Commissioner,
EPFO, Ministry of Labour and Employment,
Govt. of India, Regional Office,
37, Royapettah High Road,
Chennai - 600 011.

2.Assistant Provident Fund Commissioner,
EPFO, Ministry of Labour and Employment,
Govt. of India, Regional Office,
37, Royapettah High Road,
Chennai - 600 011.

3.Enforcement Officer,
EPFO, Ministry of Labour and Employment,
Govt. of India, Regional Office,
37, Royapettah High Road,
Chennai - 600 011. ..Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the 2nd and 3rd respondents to forbear from continuing with the proceedings in No.CHN/TN/31651 dated 21.03.2011 in so far as it relates to the determination of the petitioner liability to pay contributions towards Provident Fund in respect of special allowance paid to the employees for the period after Februaruy 2010, till the disposal of WP.No.6586 of 2011 pending on the file of this Court.

For Petitioner : M/s.Chitra Narayan

For Respondents : Mr.V.Sundareswaran

O R D E R

In respect of special allowance paid by the management, the issue was raised whether such special allowances are to be included along with the basic wages for the purpose of calculating the contributions to be paid under Employee's Provident Fund and Miscellaneous Provisions Act, 1952. The Hon'ble Supreme Court of India decided the issue in the case of Regional Provident Fund Commissioner (II) West Bengal Vs. Vivekananda Vidyamandir and Others, reported in 2019 SCC Online SC 291, stating that the special allowances also form part and parcel of basic wages and to be taken in to account for the purpose of calculating the contributions. The relevant paragraphs 12, 13 and 14 of the judgment are extracted 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 v. 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 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 v. 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 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."

2. In view of the judgment of the Apex Court of India, the claim of the writ petitioner cannot be considered and they are liable to pay the contributions by including the special allowances along with the basic wages.

3. Accordingly, the writ petition is devoid of merits and stands dismissed. No Costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

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+1cc to Mr.Vinod Kumar, Advocate sr.93983

W.P.No.15131 of 2011

nr 13/12/2019