IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.11.2019

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.19310 of 2011
and
MP.Nos.1 & 2 of 2011

M/s.Suraj Precision Engineering Works (P) Ltd.,
Unit - I, 26 B/7,
Sidco Industrial Estate,
Ambattur, Chennai - 600 098.
Rep. by its Managing Director,
Sushil Haridoss ..Petitioner

Vs.

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

2. Regional Provident Fund Commissioner,
Sub-Regional Office,
Ambattur, Chennai. ..Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the first respondent in ATA 711 (13)/2010 dated 04.07.2011 and quash the same to the extent of inclusion of special and allowance and attendance allowance as a part of the basic wages and consequently direct the second respondent to compute the Provident Fund contribution without including special allowance and attendance allowance also as part of the basic wages.

For Petitioner : Mr.M.Arvind Subramaniam

For Respondents : Labour Court (for R1)
Mr.J.Sathya Narayana Prasad (for R2)

O R D E R

The order passed by the Appellate Tribunal in ATA 711 (13)/ 2010 dated 04.07.2011 is under challenge in the present writ petition.

2. The issue raised in the present writ petition is that inclusion of the special allowances and other allowances along with the basic wages for the purpose of quantifying the contribution. The Hon'ble Supreme Court in the case of Regional Provident Fund Commissioner (II) West Bengal Vs. Vivekananda Vidyamandir and Others, reported in (2019) SCC Online SC 291, settled the issue regarding the inclusion of Special Allowances and other allowances along with the basic wages, for the purpose of deciding the contributions to be paid to the Provident Fund Organization. The relevant paragraphs are extracted here under:-

> "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.

15. Resultantly, Civil Appeal No. 6221 of 2011 is allowed. Civil Appeal Nos. 3965-66 of 2013, Civil Appeal Nos. 3967-68 of 2013, Civil Appeal Nos. 3969-70 of 2013 and Transfer Case (C) No. 19 of 2019 are dismissed."

3. In view of the judgment of the Hon'ble Supreme Court, the writ petitioner has to place the entire records before the

Competent Authority for adjudication and to conduct an enquiry and therefore, the writ petitioner is at liberty to approach the Competent Authorities and the Authority Competent is also empower to conduct an enquiry in this regard.

4. With these observations, the writ petition stands disposed of. No Costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

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

2. The Regional Provident Fund Commissioner,
Sub-Regional Office,
Ambattur, Chennai.

+1 cc to M/s.M.Aravind Subramaniam,Advocate Sr.No. 98625
+1 cc to M/s.J.Sathya Narayana Prasad,Advocate Sr.No. 98387

AKM/02.01.2020/4P-5C /

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