IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2019

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

W.P.No.8921 of 2012
and
MP.No.1 of 2012

M/s.Absolute Logistics Pvt. Ltd.,
9B/22 Sri Labdhi Colony,
Alwarpet, Chennai - 600 018.
rep by Director ... Petitioner

Vs.

1.The Presiding Officer
Employees Provident Fund Appellate Tribunal
(Ministry of Labour and Employment, Govt of India)
4th Floor, Core 2, SCOPE Minar,
Laxmi Nagar, Delhi 110 092.

2. The Assistant Provident Fund Commissioner (C&R)
Office of the Regional Provident Fund Commissioner
Employees Provident Fund Organization
Regional Office
37 Royapettah High Road
Chennai 600 014. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling records of the 1st respondent in ATA No.234 (13) 2011 and quash the order dated 14.02.2012 confirming the order of the second respondent dated 14.03.2011 in proceedings No.CC1/4/TN/49518/Enf/Regl/10.

For Petitioner : Mr.S.Haroon Al Rashid
for M/s.T.S.Gopalan & Co.

For Respondents : Tribunal (for R1)
Mr.T.R.Sundaram (for R2) .

ORDER

The order passed by the first respondent / Employees Provident Fund Appellate Tribunal in ATA No.234 (13) 2011, confirming the order of the 2nd respondent dated 14.03.2011, is sought to be quashed in the present writ petition.

2. The contention of the writ petitioner is that the Appellate Tribunal considering the legal position as well as the facts and made an observation in appeal was that "the contribution of PF made on basic wages includes all emoluments earned by the employee and allowances like conveyance allowance, attendance incentives, special allowance and meals allowance are integral part of basic wages. The attendance incentive given to only those employees who are perpetual, however, would not form part of basic wages since it is not given to all the employees."

3. The learned counsel for the writ petitioner relying on the said observations of the Appellate Tribunal contended that even as per the judgment of the Hon'ble Supreme Court of India, all allowances should be taken into account along with the basic wages for the purpose of calculating the contributions, if such allowances are paid to all the employees. In other words, all allowances payable to all the employees are to be taken along with the basic wages for the purpose of calculating the contributions to be paid by the employer to the Employees Provident Fund Organization. However, in the present case, the attendance incentive given only to those employees who are punctual is distinct one and unconnected with all other allowances. Drawing an inference, the learned counsel for the petitioners states that even as per the Hon'ble Supreme Court of India, the attendance incentive cannot be taken along with the basic wages for the purpose of calculating the contribution. Thus the Tribunal also contended so. However, the Tribunal disposed of the appeal by stating that the appeal is accordingly dismissed.

4. The learned counsel for the writ petitioner states that instead of dismissal, the Appellate Tribunal ought to have disposed of the matter. The very word used as dismissed while provide a negative impact and the authority would misconstrued the observations made by the Tribunal in respect of payment of attendance incentive and merging the attendance incentive along with the basic wages.

5. In this view of the matter, the Appellate Tribunal order is modified, the appeal is disposed of instead of dismissed. It is made clear that the attendance incentive given to only those employees who are punctual would not form part of basic wages

and in respect of all other allowances, it is to be construed as basic wages, as per the judgment of the Hon'ble Supreme Court of India in the case of Regional Provident Fund Commissioner (II) West Bengal Vs. Vivekananda Vidyamandir and Others, reported in 2019 SCC OnLine SC 291. Thus the basic wages is to be calculated pursuant to the principles settled by the Hon'ble Supreme Court of India, except the allowances which are not paid to all the employees.

6. With these observations, the writ petition stands disposed of. No Costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1.The Presiding Officer
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(Ministry of Labour and Employment, Govt of India)
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Laxmi Nagar, Delhi 110 092.

2. The Assistant Provident Fund Commissioner (C&R)
Office of the Regional Provident Fund Commissioner
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+1cc to M/s.T.S.Gopalan & Co.,, Advocate Sr.99561
+2cc to Mr.T.R.Sundaram, Advocate Sr.99626

W.P.No.8921 of 2012

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srg 21/01/2020