IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 18.03.2019
CORAM
THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR
W.P.No.30859 of 2014
&
M.P.No.1 of 2014

M/s. Ponds Exports Limited,
Poonthurai Village,
Vanur Taluk,
Villupuram District.
Rep. by its Business Manager. ... Petitioner

vs.

1.The Regional Provident Fund Commissioner
Employees Provident Fund Organisation,
Sub Regional Office,
P.B.No.588, Sree Complex,
"D" Block, No.18, Madurai Road,
Trichy - 620 008.

2.The Enforcement Officer,
Employees Provident Fund Organisation,
Cuddalore I Division,
ARA Complex,
No.22, Nathaji Road,
Manjakuppam,
Cuddalore 607 001. ... Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorari to call for the records connected with impugned order ref no:Enf.C1/TN/TR/76106/SRO-TRY/2014 dated 31st October 2014 passed by the 1st respondent under Section 7A of the EPF Act.

For Petitioner : Mr.B.Balavijayan

For Respondents : Ms.V.J.Latha

O R D E R

The petitioner has challenged the impugned proceedings in ref no:Enf.C1/TN/TR/76106/SRO-TRY/2014 dated 31st October 2014 passed by the 1st respondent under Section 7A of the EPF Act.

2. According to the learned counsel appearing for the petitioner, the Department preferred an appeal in Civil Appeal No.6221 of 2013 etc., [The Regional Provident Fund Commissioner (II), West Bengal and Ors. vs. Vivekananda Vidyamandir and Ors.] before the Hon'ble Supreme Court and the same was allowed, by Judgment dated 28.02.2019 and the relevant portion is extracted

hereunder:

" 11. In Manipal Academy of Higher Education vs. Provident Fund Commissioner, MANU/SC/1186/2008 : (2008) 5 SCC 428, relying upon Bridge Roof's case it was observed:

"10. The basic principles as laid down in Bridge Roof's case (supra) on a combined reading of Sections 2(b) and 6 are as follows:

(a) Where the wage is universally, necessarily and ordinarily paid to all across the board such emoluments are basic wages.

(b) Where the payment is available to be specially paid to those who avail of the opportunity is not basic wages. By way of example it was held that overtime allowance, though it is generally in force in all concerns is not earned by all employees of a concern. It is also earned in accordance with the terms of the contract of employment but because it may not be earned by all employees of a concern, it is excluded from basic wages.

(c) Conversely, any payment by way of a special incentive or work is not basic wages."

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, MANU/SC/0007/2014 : (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 vs. The Regional Provident Fund Commissioner, Punjab, Haryana, Himachal Pradesh and Union Territory, Chandigarh, MANU/SC/0673/1998 : (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.
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> 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. The learned counsel for the petitioner also submitted the facts of the present case is also covered by the Judgment of the aforesaid case. Therefore, this writ petition may be disposed with liberty to the petitioner seek his remedy before the authority for further action.

4. In view of the above, this writ petition is dismissed with the liberty to the petitioner to seek for any other remedy before the appropriate authority, if any, permissible under law. No costs. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1.The Regional Provident Fund Commissioner
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P.B.No.588, Sree Complex,
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2.The Enforcement Officer,
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ARA Complex,
No.22, Nathaji Road,
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Cuddalore 607 001.

+1cc to Mr.B.Balavijayan, Advocate sr.no.25521
+1cc to M/s.V.J.Latha, Advocate sr.25539

W.P.No.30859 of 2014

nrl(co)
nr 08/05/2019