IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 11.04.2019
CORAM
THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR
WP.No.28913 of 2014
and
MP.No.1 of 2014

M/s. Lumesse India Pvt. Ltd.,
Kakani Towers,
34, Khader Nawaz Khan Road,
Nungambakkam,
Chennai - 600 006,
Rep. by its Managing Director A.Sudhakar ... Petitioner

Vs.

The Regional Provident Fund
Commissioner (C&R),
Employees Provident Fund Organisation,
37, Royapettah High Road,
Chennai - 600 014. ... Respondent

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue WRIT OF MANDAMUS, forbearing the respondent initiating any recovery proceedings pursuant to the order dated 24.10.2014 in proceedings No.CCI/CHN/TN/49300(D/17)/Enf/Regl/ 2014 till the disposal of the Special Leave (C) Nos.8781 to 8782/2012.

For Petitioner : Mr.Haroon AL Rasheed
for T.S.Gopalan & Co.,

For Respondent : Mr.T.R.Sundaram

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O R D E R

The petitioner has filed the Writ Petition praying to issue a WRIT OF MANDAMUS, forbearing the respondent initiating any recovery proceedings pursuant to the order dated 24.10.2014 in proceedings No.CCI/CHN/TN/49300 (D/17)/Enf/Regl/ 2014 till the disposal of the Special Leave (C) Nos.8781 to 8782/2012.

2.The learned counsel for the petitioner fairly submits that the Hon'ble Supreme Court of India passed a Judgment in C.A.No.6221 of 2011 dated 28.02.2019, wherein the Hon'ble Supreme Court of India has held as follows:

> “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.”

3.The learned counsel appearing for the respondent submitted that in the light of the above said Judgment dated 28.02.2019 passed in C.A.No.6221 of 2011, this Writ Petition may be dismissed.

4.The learned counsel for the petitioner seeks liberty to work out the petitioner's remedy before the Appellate Authority.

5.In view of the above submissions of both the parties and in view of the above said Judgment dated 28.02.2019 passed by the Hon'ble Supreme Court of India in C.A.No.6221 of 2011, this Writ Petition stands dismissed and this Court grants liberty to the petitioner to work out his remedy before the Appellate Authority. However there shall be no order as to costs. Consequently, the connected Miscellaneous Petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

The Regional Provident Fund
Commissioner (C&R),
Employees Provident Fund Organisation,
37, Royapettah High Road,
Chennai - 600 014.

+1 CC to Mr.T.R.Sundaram Advocate Sr.No.35932
+1 CC to Mr.T.S.GOPALAN & CO, Advocate Sr.No.36119

+1 CC to Mr.T.R.Sundaram Advocate Sr.No.35932[02/07/2019]

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SSI(CO)
KP(31/05/2019)