

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.04.2019

CORAM

THE HON'BLE MR. JUSTICE D. KRISHNAKUMAR

W.P. No.28969 of 2014

and

M.P.No.1 of 2014

M/s.MATRIMONY.Com Pvt. Ltd.,
Represents by its Manager - Legal - Bijin Das,
TVH Beliciaa Towers, Tower-II, 10th Floor,
94, MRC Nagar,
Mandaveli,
Chennai - 600 028. Petitioner

Vs.

The Regional Provident Fund
Commissioner-I,
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 to make demand on contribution on various allowances in terms of its notice No.CHN/TN/50353/CC-3/26/Enf/Reg1/2014 dated 08.10.2014 till the disposal of SLP No.8781-8782/2012 pending before the Supreme Court of India.

For Petitioner : Mr.S.Ravindran

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 to make demand on contribution on various allowances in terms of its notice No.CHN/TN/50353/CC-3/26/Enf/Reg1/2014 dated 08.10.2014 till the disposal of SLP No.8781-8782/2012 pending before the Supreme Court of India.

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.

Sd/-

Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

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To

The Regional Provident Fund
Commissioner-I,
Employees Provident Fund Organisation,
37, Royapettah High Road, Chennai - 600 014.

+1 cc to Mr.S.Bazeer Ahmed, Advocate Sr.No.35711

+2 cc to Mr.T.R.Sundaram, Advocate Sr.No.35931

W.P. No.28969 of 2014

MP(CO)
CSL/07.06.2019

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