

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.02.2020

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.Nos.16769 & 26348 of 2015

and

M.P.Nos. 1 & 1 of 2015

Central Board of Trustees

Employees' Provident Fund Organization

Through the Regional Provident Fund Commissioner

Employees Provident Fund Organisation

Regional Office,

No.37, Royapettah High Road,

Chennai-600 014.

... Petitioner in both W.P.s

vs.

1.M/s.AVON SOLUTIONS & LOGISTICS PVT. LTD.,

Rep. by its Managing Director

13, Habibullah Road,

T.Nagar, Chennai - 600 017.

2.The Presiding Officer

Employees' Provident Funds Appellate Tribunal

4th Floor, Core 2, Scope Minar

Laxmi Nagar, New Delhi - 110 092.... Respondents in both W.P.s

Writ Petition No.16769 of 2015 filed under Article 226 of the Constitution of India praying to issue Writ of Certiorari, to call for the records of the 2nd respondent relating to the order passed in ATA No.391(13)2012 dated 23.09.2014 and quash the same.

Writ Petition No.26348 of 2015 filed under Article 226 of the Constitution of India praying to issue Writ of Certiorari, to call for the records pertaining to order dated 28.07.2015 passed by the second respondent in ATA No.393(13)2012 on the file of the 2nd respondent and quash the same.

For Petitioner in both W.P.s : Mr.T.R.Sundaram

For Respondents in both W.P.s : Mrs.D.Veda, for R1

C O M M O N O R D E R

W.P.No.16769 of 2015 is filed against the order of the second respondent-Appellate Tribunal dated 23.09.2014. The Regional Provident Fund Commissioner passed an order dated 04.04.2012 against the first respondent herein determining the provident fund dues in respect of HRA, Conveyance allowance, Skeleton, Special Incentive, Performance Incentive, Incentive, Staff welfare, washing allowance and early morning allowance paid to the employees of the first respondent. The first respondent challenged the said order by filing an appeal before the second respondent by contending that they are not liable to pay EPF contribution on the allowances for the disputed period. The second respondent-Tribunal allowed the appeal and passed the present impugned order by holding that the first respondent herein is not liable to pay EPF dues as claimed by the Regional Provident Fund Commissioner, Chennai. Hence, the present writ petition is filed by the Employees Provident Fund Organization.

2. W.P.No.26348 of 2015 is filed by the very same Employees Provident Fund Organization challenging the order dated 28.07.2015 of the second respondent-Appellate Tribunal, directing the petitioner to refund the amount recovered from the first respondent in view of the order already passed on 23.09.2014, which is the subject matter of challenge in W.P.No.16769 of 2015.

3. Heard the learned counsel for the petitioner and the learned counsel for the first respondent.

4. It is submitted by the learned counsels appearing on either side that the issue involved in this case is no more res integra, in view of the recent decision of the Apex Court reported in 2019 SCC Online SC 291, Regional Provident Fund Commissioner (II), West Bengal, Vs. Vivekananda Vidyamandir, holding that the special allowances are essentially part of the basic wage.

5. The learned counsel for the petitioner thus, submitted that the order passed by the second respondent-Tribunal cannot be sustained, except in respect of HRA.

6. The learned counsel for the first respondent is not disputing the said fact. She further submitted that since Section 2(b)(ii) of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952, specifically excludes HRA from the definition of basic wage, the petitioner is not entitled to demand contribution towards HRA. Therefore, she submitted that the petitioner is bound to refund the amount of contribution recovered in relation to HRA.

7. The learned counsel for the petitioner fairly submitted that the petitioner cannot demand and retain the contribution in respect of HRA.

8. In view of the above decision made by the Apex Court, statutory position of Section 2(b)(ii) of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952, and the submissions made by the learned counsels appearing on either side, this Court is of the view that the petitioner is entitled to succeed in these writ petitions except in respect of payment made by the first respondent towards HRA.

9. Accordingly, W.P.No.16769 of 2015 is allowed in part and the order of the second respondent-Tribunal dated 23.09.2014 is set aside except in respect of payment made by the first respondent towards HRA. Consequently, W.P.No.26348 of 2015 is also allowed in part and the petitioner is directed to refund only the amount recovered under the head "HRA" from the first respondent within a period of four weeks, if any amount is collected under the said head. No costs. Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

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To

The Presiding Officer
Employees' Provident Funds Appellate Tribunal
4th Floor, Core 2, Scope Minar
Laxmi Nagar, New Delhi - 110 092.

+2 Ccs to Mr. Meenakshi Sundaram, Advocate sr 9193, 9194.
+2 Ccs to Mr.T.R.Sundaram, Advocate sr 9756 & 9755.

W.P.Nos.16769 & 26348 of 2015

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SP(04/03/2020)