

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.09.2020

CORAM :

The Hon'ble Mr.A.P.SAHI, THE CHIEF JUSTICE

AND

The Hon'ble Mr.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.A.No.713 of 2020

M/s.Hotel Saravana Bhavan
Rep. by its Partner, R.Saravanan .. Appellant

-VS-

1.The Presiding Officer,
The Employees' Provident Funds
Appellate Tribunal, Ministry of
Labour, Govt. of India, Lakshmi
Nagar District Centre, 4th Floor,
Lakshmi Nagar, New Delhi 110 092.

2.The Regional Provident Fund Commissioner,
Employees Provident Fund Organization,
Regional Office, 37, Royapettah High Road,
Chennai 600 014.

.. Respondents

Appeal filed under Clause 15 of the Letters Patent against the
order dated 22.11.2019 passed in W.P.No.32637 of 2014 on the file of
this Court.

For Appellant : Mr.C.Manohar Gupta
For Respondents : Mr.T.R.Sundaram
for R-2

JUDGMENT

(Delivered by The Hon'ble Chief Justice)

We have heard Mr.Manohar Gupta, learned counsel for the appellant and Mr.T.R.Sundaram, learned counsel for the second respondent.

2.Learned counsel for the second respondent points out that the appellant had already been granted extension of time for making the pre-deposit as required for the proceeding of the appeal, which is recorded in paragraph 2 of the impugned judgment. He, therefore, submits that there is no cause to file the appeal and the Appellate Authority is yet to decide the matter.

3.We had entertained this appeal in view of the submissions that were raised by Mr.Gupta and that stands recorded in our order dated 28.07.2020, which is extracted hereinunder:-

*"There is a delay of 79 days in presenting of the appeal. Learned counsel for the petitioner / appellant urges that the Writ Petition that gave rise to this appeal was filed against an order of interim stay where the appellate authority had directed the appellant to deposit 40% of the computed amount. The writ petition had been filed praying for further reduction in the sum, but instead the learned Single Judge, bereft of the said issue, proceeded to rely on the Apex Court judgment in the case of **"Regional Provident Fund Commissioner, West Bengal -Vs- Vivekananda Vidyamandir and Others"** reported in **2019 (2) C.T.C. 302**, to hold that in order to calculate the basic wages for the purpose of contribution, inclusion of special allowance was permissible. Learned counsel submits that this was to be argued on merits before the appellate authority and was not even the issue raised for consideration by this Court. Therefore, the very purpose of filing of the appeal has been frustrated on account of the order passed on the merits of the appeal by the learned Single Judge himself.*

2. Learned counsel has invited the attention of this Court to paragraph 14 of the judgment of the Apex Court referred to above, which reads 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. It is submitted on the strength thereof that the aforesaid issue on facts is yet to be contested before the appellate authority and without there being pleadings in this respect, the learned Single Judge could not have proceeded to hold that the judgment

of the Apex Court finally clinches the issue insofar as the appellant is concerned.

4. Let copy of the papers be served on the learned counsel for the Provident Fund Department who had appeared before the learned Single Judge and the matter shall come up after six weeks ie., on 08.09.2020 showing the name of the learned counsel."

4.The learned single Judge, in paragraph 5 of the impugned judgment has made observations on the merits of the matter and it was, therefore, contended by Mr.Gupta on the previous occasion that this will be an impediment as nothing more may survive in the decision of the pending appeal if the said observation of the learned single Judge is sustained.

5.Learned counsel for the second respondent, however, submits that the appeal can be disposed of leaving it to the Appellate Authority to decide the same on its own merits without being influenced by the observations made by the learned single Judge in paragraph 5 of the impugned judgment.

Accordingly, in view of the aforesaid submissions advanced by the learned counsel for the second respondent, we dispose of this appeal with the observation that the Appellate Authority shall dispose of the appeal without being influenced by the observation made in paragraph 5 of the impugned judgment. No costs.

(A.P.S., C.J.) (S.K.R., J.)
08.09.2020

Index : Yes/No

sra

To

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(sra)



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