IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

47 WRIT PETITION NO.8307 OF 2010

THE REGIONAL P.F. COMMISSIONER NASIK
VERSUS
M/S ORBIT EXPORTS PVT. LTD

Mr.N. K. Chaudhary, Advocate h/f Mr. K. B. Chaudhary, Advocate for the petitioner
Mr. S. R. Patil, Advocate for the respondent No.1
Mr. V. M. Chate, Advocate for the respondent Nos. 1 to 7

CORAM : RAVINDRA V. GHUGE, J.

DATE : 14-03-2022

P. C.

1. By this petition, the petitioner Regional P. F. Commissioner, Nashik seeks to challenge the order dated 15-04-2009 passed by the Employees' Provident Fund Appellate Tribunal vide which the order dated 30-12-2005 passed under Section 7-A of the EPF and MP Act, 1952, was quashed and set aside.

2. I have considered the strenuous submissions of the learned Advocate for the respective sides. I have perused the petition paper book with their assistance. The learned Advocate for the PF authorities relies upon the recent judgment

delivered by the Hon'ble Apex court in *RPF Commissioner (II) West Bengal Vs and Vivekananda Vidyamandir and others alongwith connected cases (2020) 17 SCC 643*. Reliance is also placed upon the judgment of the Hon'ble Apex Court in *TI Cycles of India, Ambattur Vs M. K. Gurumani and others reported in (2001)7 SCC 204*. The learned Advocate for the respondent has relied upon *Bridge and Roofs Company Ltd Vs Union of India and others reported in AIR 1963 SC 1474*.

3. Issue raised is as regards whether the payment made by the employer to the employees for achieving a particular level of production on daily basis as per the terms of the long term settlement signed between the Union and the Management, under Section 2 (p) and 18(1) of the I.D., 1947, would be termed as a part of the basic wages defined under Section 2(b) of the 1952 Act.

4. Ever since the judgment has been delivered by the Hon'ble Apex Court in Bridge and Roofs Company Ltd. (supra), it is common knowledge that the employers have been devising different names for terming the production incentive either viz bonus or

ex-gratia or allowance etc. Barring special allowance/ Dearness allowance, all other allowances including HRA are not included in the definition of basis wages. Since allowances were not to be included in the basic wages, employers started using the word allowance even when the workers were encouraged to produce beyond a particular slab of production, as a part of wage revision. Payment of extra wages for such enhanced production on day to day basis, became an incentive to the workers to produce.

5. In Bridge and Roofs Company Ltd. (supra) it has been held as under:-

> “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". Similarly, commission or any other similar allowance is excluded from the definition of "basic wages" for commission and other allowances are not necessarily to be found in all concerns; nor are they necessarily earned by all employees of the same concern, though where they exist they are earned in accordance with the terms of the contract of employment. It seems therefore that the basis for the exclusion in cl. (ii) of the exceptions in section. 2 (b)

is that all that is not earned in all concerns or by all employees of concern is excluded from basic wages. To this the exclusion of dearness allowance in cl. (ii) is an, exception. But that exception has been corrected by including dearness allowance in section. 6 for the purpose of contribution. Dearness allowance which is an exception in, the definition of "basic wages", is included for the purpose of contribution by section. 6 and the real exceptions therefore in cl. (ii) are the other exceptions beside dearness allowance, which has been included through section. 6."

6. It is, therefore, well settled that if all the workers are indulging in production beyond particular levels/ slabs and if wage rise was interlinked with such different levels of productivity, the workers would earn wages in each shift, every day and in every month. Such wages are paid to them in the pay cycle which could be weekly or bi-monthly or even monthly.

7. I am not required to go into the entire submissions putforth by the learned Advocate for the respective sides for the sole reason that the PF Appellant Tribunal, by the impugned order, has set

aside the conclusions drawn by the PF authorities under Section 7-A, by delivering a cryptic order. The judgment delivered in TI cycles (supra) is referred to for concluding that incentive wages paid in respect of extra work done are to be excluded from the definition of basic wages. The law laid down in Bridge and Roofs Company Ltd. (supra) was lost sight of. Without going into the details of the matter which was normally expected to be done by the tribunal, if it has upset the finding on facts under Section 7 enquiry, much is wanting to be said about the quality of the impugned order. When a finding under Section 7-A is to be upset, what is expected is that the tribunal should deal with all the grounds raised by the parties, should refer to the material available and should follow the law that is applicable to such cases.

8. Clause 14 (A and B) of the settlement between the Management and the Union dated 27-06-2002, clearly indicates that the additional Production allowance is to be paid to every permanent worker in every month beginning from 01-06-2002. Certain slabs of production were also mentioned and the workers were expected to produce

more so as to achieve higher productivity every day in each shift. None of these factors were considered by the appellate tribunal while delivering the impugned judgment.

9. The learned Advocate for the Management submits that though the Corporate office and the company is alive, the establishment at the Additional MIDC Jalgaon has been closed down. Nevertheless, it is a matter of recovery of dues, if the Management is held to be liable.

10. In view of the above, this petition is partly allowed. The impugned order dated 15-04-2009 is quashed and set aside and appeal ATA No.316 (9) of 2006 is remitted to the office of the present appellant Tribunal which is CGIT at Nagpur with following directions:-

a] CGIT would issue notice to the litigating parties herein.

b] The Management Company is at liberty to produce the entire record for inspection of the appellant Forum.

c] It is expected that the learned CGIT would consider the record, pleadings of the parties as well as the settlement and the law cited and deliver a reasoned order preferably within a period of four months from the date of appearance of the parties.

d] Consequent to the above, the order dated 28-05-2010 issued by the appellant tribunal directing the PF authorities to refund the money, also stands quashed and set aside.

[RAVINDRA V. GHUGE, J.]

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