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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 07.04.2022

Pronounced on : 11.05.2022

Coram

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.18104 of 2012

The Regional Provident Fund Commissioner
Employees Provident Fund Organisation
Sub Regional Office,
Ambattur,
R-40, A-1, TNHB Shopping cum Office Complex,
Mugappair Road, Mugappair East,
Chennai-600 037.

...Petitioner

Vs.

1. M/s.Colorplus Fashions Ltd
C-10, Industrial Estate,
Ambattur, Chennai-600 058.
2. Employees Provident Fund Appellate Tribunal,
Scope Minar, Core-II, 4th Floor,
Laxmi Nagar District Centre,
Laxmi Nagar,
New Delhi-110092.

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of certiorarified Mandamus calling for the records relating to the Proceedings of the 2nd Respondent dated 16.09.2011 in Ref.No.ATA No.131(13)2011 and quash the order passed therein and consequently direct the 1st respondent to pay the dues as assessed by the petitioner by the order dated 10.12.2010 in Ref. No.TN/SRO/Amb/31645/CC/A-1/2010.

For Petitioner : Mr.M.S.Viswanathan

For R1 : Mr.Anand Gopalan
for M/s.T.S.Gopalan and Co

For R2 : Tribunal



O R D E R

The short question that may arise for consideration in this writ petition is as to whether "attendance bonus" would fall within the scope of "basic wages" as defined in terms of section 2(b)(ii) of the Employees Provident Funds and Miscellaneous Provisions Act, 1952.

2. To examine the above question, it may be necessary to refer to the definition of "basic wages" as defined under Section 2(b)(ii) of the Employees Provident Funds and Miscellaneous Provisions Act, 1952, which reads as under:

2(b). "basic wages" means all emoluments which are earned by an employee while on duty or [on leave or on holidays with wages in either case] in accordance with the terms of the contract of employment and which are paid or payable in cash to him, but does not include--

(i) the cash value of any food concession;

(ii) any dearness allowance (that is to say, all cash payments by whatever name called paid to an employee on account of a rise in the cost of living), house-rent allowance, overtime allowance, bonus, commission or any other similar allowance payable to the employee in respect of his employment or of work done in such employment;

(iii) any present made by the employer;

A reading of the above definition would show that it provides for certain exclusions which inter alia includes overtime allowances, bonus, commission or any other similar allowances. The question is whether "attendance bonus" would fall within the exclusions carved out, in the said definition.

3. To answer the above question it may be necessary to examine as to whether the "attendance bonus" which has been extended/paid by the respondent company would constitute "bonus" or "any other similar allowances" for the purpose of Section 2(b)(ii) of the Act. If the answer to the above question is in the affirmative then the payments by way of "attendance bonus" would fall within the exception/exclusion and thus may not attract section 6 of the said Act, which provides for contribution to be made by the employer to the provident fund. A reading of the definition clause of the Act would show that the expression "bonus" is not defined under the Act nor does it come



with any limitation while being employed in Section 2(b)(ii) of the Act. Thus bonus of any kind would be covered within the expression "Bonus" employed in Section 2(b)(ii) of the said Act.

4. It may be relevant rather necessary to understand the nature of the "attendance bonus" in the instant case. Attendance bonus was paid every month to employees who reported for work on all 6 days in a week. In other words, if an employee failed to turn up for the required number of days, the attendance bonus was paid only on prorata basis. It is more of an inducement amount paid to the employees who reported to the work regularly without absenting themselves and without availing any leave, and observing full working hours without any permission to leave establishment before normal working hours. The bonus normally paid was to the extent of 20% of the earned basic wages. In the event of an employee availing one day leave in a week of the month, he will be losing 5% of the attendance bonus. If he avails 2 days leave on successive weeks, he will be losing 10% of the assured attendance bonus. For such of those employees who availed leave beyond 3 days, no attendance bonus was paid and similarly if leave was availed for more than 3 consecutive days as well, the employees will have to forego the attendance bonus. It was also made clear that the bonus was not statutory bonus as per the Payment of Bonus Act, 1965. In fact, the 1st respondent made it clear before the 2nd respondent that attendance bonus was not static in nature and more in the form of the contingent payment subject to satisfaction of certain conditions. Therefore, the said payment would fall outside the scope of basic wage.

5. The scope of the expression "bonus" employed under Section 2(b)(ii) of the said Act is no longer res integra and has been decided by the Supreme Court as early as 1963 in the case of Bridge and Roofs Company Limited v. Union of India and others reported in (1963) 3 SCR 978 : AIR 1963 SC 1474 : (1962) 2 LLJ 490 where in it was held as under:

"The Act is an All-India Act applicable to all industries mentioned in Sch. I and to all concerns engaged in those industries; and the intention behind the exclusion seems to be to make the incidence of provident fund the same in all industrial concerns, which are covered by the Act so that it was necessary to exclude from the wide definition of ,basic wages" given in the opening part, all such payments which would not be common to all industries or to all employees in the same concern. We are therefore of opinion that there is no reason why when the, word "bonus" is used in el. (ii) without any qualifying word, it should not be interpreted to include all kinds



of bonus which were known to industrial adjudication before 1952 and which must therefore be deemed to be within the knowledge of the legislature."

6. It may also be relevant to refer to the decision in *Titaghur Paper Mills Co Ltd. v. Workmen*; wherein while dealing with the "production bonus" it was held that payment of production bonus depends upon production and in the nature of incentive wage and would fall within the scope of the expression "bonus" employed in Section 2(b)(ii) of the Act.

"The scheme in force in the Company is a typical scheme of production bonus of this kind with a base or standard upto which basic wages as time wages are paid and thereafter extra payments are made for superior performance. This extra payment may be called incentive wage and is also called production bonus. In all such cases however the workers are not bound to produce anything beyond the base or standard that is set out. The performance may even fall below the base or standard but the minimum basic wages will have to be paid whether the base or standard is reached or not. When however the workers produce beyond the base or standard what they earn is not basic wages but production bonus or incentive wage. it is this production bonus which is outside the definition of "basic wages" ins. 2(b), for reasons which we have already given above. The production bonus in the present case is a typical production bonus scheme of this kind and whatever therefore is earned as production bonus is payable beyond a a base or standard and it cannot form part of the definition of "basic wages" ins. 2(b) because of the exception of all kinds of bonus from that definition. We are therefore of opinion that production bonus of this type is excluded from the definition of "basic wages" ...

7. The above test was applied recently by the Supreme Court in the decision reported in 2019 SCC Online SC 291 wherein it was held as under:

"14. Applying the aforesaid tests to the facts to 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



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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."

A reading of the above judgments would suggest that wherever the benefit extended to an employee irrespective of the nomenclature but had all or any of these features, the same was held to fall within the meaning of "bonus" for the purpose of Section 2(b) (ii) of the Act viz.,

- a. It is found to be variable (or)
- b. It is not common (or)
- c. It is not granted by all industrial concerns (or)
- d. It is not made to all employees within an industrial concern.

8. In the present case it appears that from the features of "attendance bonus" as stated supra that it would qualify as "bonus" for the purpose of exclusion from Section 2(b) (ii) of the Act, inasmuch as it is not extended by all the industrial concerns in that particular trade nor paid uniformly to all the employees of the respondent corporation, it is also a variable as would be evident from the fact that the quantum of bonus would vary depending upon the regularity of the attendance of the employee. In other words attendance bonus paid by the respondent company is not static in nature but contingent. In view of the same, applying the above test laid down by the Hon'ble Supreme Court to "attendance bonus", this court is of the view that "attendance bonus" would fall within the expression "bonus" employed in Section 2(b) (ii) of the said Act and falls within exceptions carved out from "basic wages" as defined under Section 2(b) (ii) of the Act.

9. For the above reasons, the writ petition is dismissed. No costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

Psa
To :

1. The M/s.Colorplus Fashions Ltd
C-10, Industrial Estate,



Ambattur, Chennai-600 058.

2. The Employees Provident Fund Appellate Tribunal,
Scope Minar, Core-II, 4th Floor,
Laxmi Nagar District Centre,
Laxmi Nagar, New Delhi-110092.

+1cc to M/s.T.S.Gopalan and Co , Advocate, S.R.No.31382

W.P. No.18104 of 2012

CA[co]
NSK/24/05/2022