IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 14.12.2022

Coram:

THE HONOURABLE MR. JUSTICE M.S.RAMESH

W.P.No.27021 of 2017
and
W.M.P.Nos.28832 and 28833 of 2017

E-Edit Infotech Private Limited
Rep.by its General Manager (Operations)
Chona Centre, First Floor,
No.45, College Road, Chennai 600 006.
Tamil Nadu. .. Petitioner

/versus/

1.The Presiding Officer,
Central Government Industrial Tribunal cum Labour Court,
(Appellate Authority under Section 7-I of the
Employees Provident Fund and Miscellaneous
Provisions Act, 1952),
1st Floor, 'B'Wing, Shastri Bhavan,
No.26, Haddows Road,
Nungambakkam, Chennai-6.

2.Assistant Provident Fund Commissioner
Employees Provident Fund Organization
No.37, Royapettah High Road,
Chennai 600 014. .. Respondents

W.P.No.27021 of 2017
and
W.M.P.Nos.28832 and 28833 of 2017

Prayer: Writ Petition has been filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, after calling for the concerned records from the 2nd respondent, quash the order of the 2nd respondent dated 30.01.2017/03.03.2017 bearing No.TN/54568/D-17/MAS/PDC/2016 claiming interest and the order of the 2nd respondent dated 30.01.2017/ 03.03.2017 bearing No.TN/54568/D-17/MAS/ PDC/ 2016 imposing the damages.

For Petitioner :Mr.G.Karthikeyan

For Respondents :R1-Court
Mr.V.Sundareswaran for R2

ORDER

In the order impugned, the computation of rejection of the Employees Provident Fund, was done on the basis of wages including the allowances. The challenge to the said order is on the ground that the expression 'basic wages' under Section 2(b)(ii) r/w Section 6 of the Employees Provident Fund Act (in short “the Act”) could include only basic wages with allowances.

2. In the case of ***The Regional Provident Fund Commissioner (II) West Bengal v. Vivekananda Vidyamandir & others*** reported in ***[2019(2) CTC 302]***, it has been held that the expression 'basic wages' under Section 2(b)(ii) r/w Section 6 of the Act, would include allowance also. The relevant portion of the order 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 normal of work prescribed for those workmen during the relevant period. It is therefor 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 claim of the petitioner that the allowance will not form part of the basic wages cannot be sustained, in view of the above decision. Accordingly, this Writ Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

14.12.2022

Index:yes/no
Speaking order/non speaking order
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To
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M.S.RAMESH, J.

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