BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.11.2022

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.10384 of 2012
and
M.P.(MD).No.1 of 2012

The Regional Provident Fund Commissioner,
Employees' Provident Fund Organization,
Sub-Regional Office, NGO 'B' Colony,
Tirunelveli – 627 007. ... Petitioner

Vs.

1.The Employees' Provident Funds,
Appellate Tribunal,
New Delhi.

2.The Manager,
M/s.Seyad Shariat Finance Limited,
54-B, Kanagathara Building,
S.N.High Road,
Tirunelveli – 01. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records of the impugned order passed by the first respondent dated 07.12.2009 in ATA No.406 (13) 2004 and quash the same and direct the second respondent to pay the sum of Rs.5,04,247/- as per the order No.TN/TI/29133/Enf III (12) 2003 dated 29.04.2004.

For Petitioner	:	Mr.K.Murali Sankar
For R-1	:	Tribunal.
For R-2	:	Mr.C.Karthikeyan

ORDER

This Writ Petition has been filed by Employees Provident Fund Organization by way of Writ of Certiorarified Mandamus to quash the order passed by the first respondent dated 07.12.2009 in ATA No.406 (13) 2004 and and direct the second respondent to pay the sum of Rs.5,04,247/- as per the order dated 29.04.2004.

2. The second respondent establishment is a finance limited company covered under the Employees' Provident Fund and Miscellaneous Provisions Act 1952 voluntary under Section 1(4) of the Act with effect from 01.06.1993. During 2003, it was brought to the notice of the petitioner's organization that the establishment had not enrolled some of the employees. Accordingly, the notice dated 03.12.2003 was issued for an inquiry under paragraph 26-B of Employees Provident Fund Scheme 1952. Subsequently, it was decided to conduct an inquiry under Section 7A of the Act in order to enroll the left out employees and determine the dues payable by the second respondent establishment. In partial modification of the earlier notice, another notice dated

10.12.2003 was issued. The inquiry was subsequently adjourned. Further, the Enforcement Officer who inspected the second respondent establishment has verified the documents and filed a report. During the inquiry, the second respondent establishment has furnished a statement showing month wise details of the salary paid with breakup particulars of basic wages, overtime allowances etc., for the period 1999-2000 to 2003-2004 (up to December 2003). The authority found that seven employees were not enrolled to Employees Provident Fund and also a huge sum which was more or less equal to basic wages had been shown as incentive every month. The second respondent establishment with ill motive in order to avoid liability had shown the amount as incentive. Accordingly, the said amount was not included along with the basic wages and dearness allowances for the purpose of remitting to the Provident Fund contribution. Accordingly, the dues payable by the second respondent for the period from April 1999 to December 2003 amounting to Rs. 5,04,247/- was determined vide order dated 29.04.2004 by taking into account the amount shown by the second respondent as incentive, which actually constituted wages paid to the employees. Against the said order, the second respondent establishment has preferred an appeal and the appeal was allowed vide order dated 07.12.2009. Aggrieved over the same, the present Writ Petition is filed.

3. The contention of the second respondent establishment is that the second respondent is a financial institution. They are paying incentive to the staff for canvassing deposits, collection of dues etc., The incentive is in the nature of commission and the system of payment of incentive is in voyage since 1994 and the incentive varies from employees to employees and also from year to year depending upon the performance of the individual. The Tribunal has considered the rival claims and has come to the conclusion that any payment that is specifically paid to those who availed opportunity is not basic wages. Based on this, the Tribunal has allowed the appeal filed by the second respondent. Hence, the second respondent establishment prayed to dismiss this Writ Petition.

4. Heard Mr.K.Murali Sankar, learned counsel for the petitioner and Mr.C.Karthikeyan, learned counsel for the second respondent and perused the records.

5. It is seen from the affidavit and records submitted before this Court that the second respondent establishment is a finance company which is collecting deposits and lending money and thereafter collecting dues. The

second respondent establishment is paying incentive for this work. Even according to the EPF organization, some 5 employees have already left and the following table would be evident hereunder:

SI.No	Name	Date of Joining	Date of Leaving	Salary per month (in Rupees)
1.	Sherifa Begum	20.11.1999	30.05.2000	1000/-
2.	Sheik Alaudeen	01.02.2000	06.03.2000	500/-
3.	Syed Ibrahim	21.07.1999	28.11.1999	1425/-
4.	Abdul Khader	28.04.2001	30.06.2003	800/-
5.	Shahul Hameed	01.06.2001	30.09.2003	1500/-
6.	Sheik Rahman	01.07.2002	---	1750/-
7.	Charless	01.10.2003	---	1750/-

On perusing this tabulation, it is seen that the salary itself varies for all the persons especially for the serial no.1 to 5 which indicates that the salary is not common. If it is so, then it indicates the amount is incentive and that incentive is paid for the performance of the individuals.

6. Therefore, this Court is of the considered opinion that the Tribunal is right in coming to the conclusion that any payment which is paid to those persons who availed the opportunity cannot be considered as basic wages. It is an admitted fact that for the basic wages, the second respondent establishment

is paying Provident Fund. It is only for the incentive that is paid to the employees was not included. The EPF Organization has come to the conclusion that since the incentive is paid as recurring payment every month along with the wages, the same cannot be considered as incentive payment to the individuals.

7. This Court is of the considered opinion that the incentive or commission paid for securing deposits and for collecting arrears can be recurring and the reasoning of the EPF organization is erroneous. Hence the Writ Petition is devoid of merits.

8. At this juncture, the EPF organization submitted that the second respondent has not enrolled some of the employees under the scheme. As far as this alone is concerned, the case is remitted back to the EPF authorities to scrutinize how many persons are working in the institutions and whether everyone is included in the Employees Provident Fund Scheme. To this extent alone, the case is remitted back. It is made clear that the respondents cannot scrutinize as far as the incentives are concerned and the respondents cannot reopen this portion of the order, because this Court has held that the same cannot be included in the basic wages.

9. With the above direction, this Writ Petition is disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petition stands closed.

07.11.2022

Index : Yes / No
Internet : Yes/ No
Nsr

To

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S.SRIMATHY, J.

Nsr

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