



W.P.(MD)No.10829 of 2012

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.11.2022

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.10829 of 2012

and

M.P.(MD)No.1 of 2012

Regional Provident Fund Commissioner,
Employee's Provident Fund Organisation,
Sub Regional Office,
Bhavishya Nidhi Bhavan,
NGO 'B' Colony,
Tirunelveli-627 007.

... Petitioner

vs.

1.Employees' Provident Fund
Appellate Tribunal,
New Delhi.

2.Tamil Nadu Jai Bharat Mills Limited,
Malyankullam Village,
Chidambaram Post,
Sankarankovil Taluk-627 754,
Tirunelveli – 627 007.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records of the



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impugned order passed by the 1st respondent, dated 17.02.2012, in ATA No. 462(13)2011 and to quash the same and to direct the 2nd respondent to pay the sum of Rs.56,48,795/- as per the order no. TN/MDU/TNY/33099/CD-1/Circle-11/2010, dated 19.04.2011.

For Petitioner : Mr.K.Murali Sankar
For R1 : Tribunal
For R2 : Mr.S.Renganathan

ORDER

This writ petition is filed for issuance of writ of Certiorarified Mandamus, to call for the records of the impugned order passed by the 1st respondent, dated 17.02.2012, in ATA No.462(13)2011 and to quash the same and to direct the 2nd respondent to pay the sum of Rs.56,48,795/- as per the order, dated 19.04.2011.

2. The 2nd respondent is an establishment covered under the Provident Fund Act. The issue in this case is whether over time stipend paid to the employees will come under the purview of basic wages. The act has defined basic wages under Section 2 (ii) as under:

“(b) “basic wages” means all emoluments which are earned by an employee while on duty or 3 [on leave or on holidays with wages in



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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 presents made by the employer;”

The Act has specifically excluded the over time allowances paid to the employees.

3.The counter filed by the EPF organization before the Tribunal as under:

“Further the records pertaining to statement of overtime stipend paid on day basis was also verified by the Enforcement Officer. Since the document shows overtime allowance paid on every day basis, the veracity of the nomenclature used was examined. The term 'overtime denote any thing which is carried out beyond the normal time limits. 'stipend' is a fixed periodical payment of any kind (eg) pay. pension or allowance. This term finds its mention only under Apprentices Act 1961 Section 13 (1) & (2). On analysis, it is found that the so called overtime stipend has been paid to the employees engaged in the various categories as found in



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document for the work actually done by them on their respective weekly holidays. For eg.. employee bearing token No. 8002 K. Mariappan is allotted with weekly holiday on every Monday as per exhibit AS. For the period from 1.11.09 to 15.11.09, it is noticed that the said employee has been marked attendance for 13 days. On 2.11.09 and 9.11.09, the attendance has been marked as paid holidays and whereas in the overtime stipend, it is noticed that he has been paid with overtime stipend on every Mondays with number of hours of overtime being 8 hours. It is also noticed from the corresponding wages register of the said employee for the month of 11/09, that he has been paid for only 13 days marked as attendance and there is no wages paid for the weekly off mentioned as PH ie, Paid Holidays.

As per the provisions of Factory Act, every employee has to be provided with compulsory weekly off with wages for every 48 hours of work. For any work done over and above 48 hours, he has to be compensated with compensatory holidays as per section 53 of the Act. However, in the present case, it is noticed that no such weekly off with wages seems to have been provided. Instead, the employees have to actually work. Only for those who attend work are paid with wages under the head 'overtime stipend' i.e., for the statutory weekly off days entitled to them. Therefore, it is evident that there is no element of overtime involved in it and all the payments made under the head "overtime stipend are nothing but the wages for the statutorily entitled paid holiday and the amount paid fall



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under the term basic wages defined under section 2(b) of the E.P.F. and M.P Act 1952 and will attract contributions payable under section 6 of the Act.”

4.On perusal of this counter, the EPF organization has taken over time stipend, since the particular employee was granted holiday on every Monday. The particular employee has opted to work on weekly holiday also. After working on the weekly holiday, the said person was paid over time stipend. The contention of the EPF organization is that the Factories Act has granted compulsory weekly holiday for every employee. If the person is working in holiday also then it should be considered as basic wages. This contention cannot be entertained at all. The employees' union as well as the establishment has entered into 18(1) settlement and based on this settlement, over time stipend is paid.

5.In such circumstances, the petitioner organization cannot question the 18(1) settlement and also cannot invoke the Factories Act and render a finding, as if there is violation of Factories Act. The authorities under the Factories Act will



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take appropriate action. The petitioner organization cannot act like an authority under Factories Act. It is a prerogative right of the employees' union and the employer to enter into 18(1) settlement. If the employer is paying over time stipend for working on weekly holiday, based on the settlement, the petitioner cannot question the settlement. Moreover, the over time stipend cannot be included in basic wages, since it will never come under the basic wages as stated in the definition. Therefore, the EPF organization is under a wrong presumption and wrong interpretation of the section and is claiming to add it to the basic wages. The Tribunal has come to the correct conclusion. Hence, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No
Internet : Yes

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