



W.P.(MD).Nos.3952 to 3954 of 2012

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.10.2022

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).Nos.3952 to 3954 of 2012

and

M.P.(MD).Nos.1, 1,2, 1 and 2 of 2012

and

W.M.P.(MD).Nos.8883, 8999, 9094, 9117 and 9401 of 2022

W.P.(MD).No.3952 of 2012:

A.P.R.Agencies,
Interlining Manufacturing Facility,
386/2 & 387-B,
1B Mela Ambasamudram,
Tamil Nadu – 627 401,
Represented by its Partner

... Petitioner

Vs.

1.The Presiding Officer,
Employees Provident Fund Appellate Tribunal
(Ministry of Labour and Employment,
Government of India),
4th Floor, Core 2, SCOPE Minar,
Laxmi Nagar,
Delhi – 110 092.

2.The Assistant Provident Fund Commissioner,
Employee's Provident Fund Organization,



W.P.(MD).Nos.3952 to 3954 of 2012

Sub Regional Office,
NGO 'B' Colony,
Perumalpuram,
Tirunelveli – 627 007.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records of the first respondent in ATA No.459(13) 2011 and quash its common order dated 14.02.2012 confirming the order of the second respondent dated 25.04.2011 in proceedings file No.TN/TNY/55180/Enf.I/CIRCLE-13/2011.

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W.P.(MD).Nos.3952 to 3954 of 2012

Sub Regional Office,
NGO 'B' Colony,
Perumalpuram,
Tirunelveli – 627 007.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records of the first respondent in ATA No.658(13) 2010 and quash its common order dated 14.02.2012 confirming the order of the second respondent dated 25.04.2011 in proceedings file No.TN/TNY/55180/Enf.I/CIRCLE-13/2011.

W.P.(MD).No.3954 of 2012:

A.P.R.Agencies,
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386/2 & 387-B,
1B Mela Ambasamudram,
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Represented by its Partner

... Petitioner

Vs.

1.The Presiding Officer,
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2.The Assistant Provident Fund Commissioner,



W.P.(MD).Nos.3952 to 3954 of 2012

Employee's Provident Fund Organization,
Sub Regional Office,
NGO 'B' Colony,
Perumalpuram,
Tirunelveli – 627 007.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records of the first respondent in ATA No.800(13) 2011 and quash its common order dated 14.02.2012 confirming the order of the second respondent dated 02.09.2011 in proceedings file No.TN/TNY/55180/Enf.I/CIRCLE-13/13046/2011.

(In all Writ Petitions)

For Petitioner : Mr.Anand Gopalan,
For M/s.T.S.Gopalan and CO.
For R-1 : Tribunal
For R-2 : Mr.K.Murali Sankar

COMMON ORDER

These Writ Petitions have been filed to quash the common order dated 14.02.2012 confirming the order of the second respondent.

2. The brief facts as stated in the affidavit are that the petitioners are engaged in the manufacture of shirting collar cotton materials and employed about 115 employees. All eligible employees are covered under the provisions of



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the EPF Act and the petitioner has been regularly paying contribution on basic wages under Section 2(b) read with Section 6 and para 29 of the EPF scheme. The contention of the petitioner is that the basic wages to the employees consisting of components viz., basic, House Rent Allowance, Conveyance Allowance and Washing Allowance. Normally, the basic wages constitute about 51% of gross wages and various other allowances constitutes balance 49% of the wages. In terms of the provisions of the EPF Act, the petitioner is liable to pay contribution only on basic wages and not on any other allowances. However, the contention of the respondents is that all other allowances including the other allowances also should be treated as basic allowances. Pending this Writ Petition, the issue was considered by Hon'ble Supreme Court in the case of ***The Regional Provident Fund Commissioner (II) West Bengal Vs Vivekananda Vidyamandir and Others reported in 2019 SSC 1 Online SC 291***. The Hon'ble Supreme Court has clarified how to treat all other allowances and has held that the crucial test is one of the “universality”. The employer if he is paying to all the employees then the same ought to be included in basic wages not otherwise. However, this issue was not considered as per the judgment of the Hon'ble Supreme Court.



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3. Therefore, the matter ought to be remitted back to the authorities for reconsideration. Hence, this Court is remitting back the case to the second respondent and the respondents are directed to apply the test of universality as held by the Hon'ble Supreme Court in the case of Vivekananda Vidyamandir and thereafter determine the liability of the petitioner's establishment. The respondents shall pass orders afresh within a period of eight (8) weeks from the date of receipt of a copy of this order.

4. With the above direction, these Writ Petitions are disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

19.10.2022

Index : Yes / No
Internet : Yes

Nsr



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S.SRIMATHY, J

Nsr

Order made in
W.P.(MD).Nos.3952 to 3954 of 2012

19.10.2022