BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.10.2022

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.9881 of 2012
and
M.P.(MD).No.1 of 2012

The Regional Provident Fund Commissioner,
Employees Provident Fund Organisation,
Sub-Regional Office, Bhavishyanidi Bhavan,
NGO 'B' Colony,
Tirunelveli-627 007. ... Petitioner

Vs.

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

2.The Sibaflor Natural Decorations Private Limited,
2/101-2/108, Ettayapuram Road,
Melamaruthur, Kurukuchalai,
Tuticorin-628 722,
Represented by its Director. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records of the impugned order passed by the first respondent, dated 07.02.2012, in ATA No.330 (13) 2010 and quash the same and direct the second respondent to pay the sum of Rs.11,08,894/- as per the order No.TN/TNY/41151/CD-II/T-21/Circle 21/397/2010, dated 31.05.2010.

For Petitioner	:	Mr.K.Muralisankar
For R-1	:	Tribunal
For R-2	:	Mr.K.Hema Karthikeyan

ORDER

The present Writ Petition has been filed challenging the order passed by the first respondent, dated 07.02.2012, in ATA No.330(13)/2010 and direct the second respondent to pay a sum of Rs.11,08,894/- as per the order of the petitioner, dated 31.05.2010.

2. The facts as stated in the affidavit are that the second respondent establishment is covered under the Employees Provident Funds Act under the code number TN/41151. The squad of enforcement officer while inspecting the establishment has found out that the wages paid to the employees were artificially break up into basic pay and allowances. The employee is not paying the contribution of provident fund for the said allowances.

3. The EPF authorities calculated the actual contribution payable in respect of the employees and issued the same along with the part II inspection report, dated 13.10.2009, then directed the establishment to remit a sum of Rs. 11,08,894/- for the period from 3/2007 to 10/2008. The establishment had failed to remit an enquiry under Section 7A of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 was initiated vide summons, dated 21.10.2009, to determine the dues payable by affording opportunity to the employer to represent their case.

4. The establishment submitted explanation on 05.01.2010 and has stated that they were paying uniform allowances, washing allowance, production bonus paid in the name of special allowance-I. Then reimbursement of expenses for purchasing eatables, medicines to those who are working in dyeing, painting, maintenance, mixing and bouquet cutting sections of the unit as special allowance II. Then conveyance allowances are paid. For the above allowances the establishment were not liable to pay contribution on the said amount.

5. The Enforcement Officer had submitted his explanation that the Government of Tamil Nadu and Government of India have declared that where no minimum wages were fixed for any industry, the lowest minimum wages declared to that type of industry has to be paid to the employees of other industry, which are not notified under the Minimum Wages Act. Accordingly, the floor level wages for the relevant period is Rs.66/- per day up to 31.08.2007 and Rs.80/- from 01.09.2007. Though the employer has paid the above said wages to their employee but had bifurcated the floor level wages of Rs.66/- as Rs.50/- (Basic + DA) and Rs.16/- (Other allowances), which was paid in order to avoid liability. Therefore, under Section 7A of the Act, after considering all the averments, the second respondent establishment was directed to pay the said amount vide, dated 31.05.2010.

6. Aggrieved over the said order, the second respondent challenged before the Employees' Provident Funds Appellate Tribunal, New Delhi. The Tribunal vide interim order directed to pay 40% of the assessed amount and the establishment has remitted a sum of RS.4,43,558/-. Thereafter, the Tribunal vide order, dated 07.02.2012, allowed the appeal, filed by the establishment. Aggrieved over the same, the present writ petition is filed.

7. Heard Mr.K.Muralisankar, learned Counsel appearing for the petitioner and Mr.K.Hema Karthikeyan for the 2nd respondent and perused the records.

8. The contention of the EPF is that the second respondent establishment has artificially split up the basic minimum wages and has not remitted the contribution for the allowances. The contention of the respondent establishment is that the special allowances paid only to the certain employees alone and not to all employees. They are paying the special allowances for purchasing eatables, medicines for those who are working in dyeing, painting, maintenance, mixing and bouquet cutting sections. The Tribunal has accepted the contention of the second respondent, has held that the special allowances are paid by the management to its workers at own will and pleasure and not under any contract of employment, settlement or award does not form part of basic wages as defined under section 2(b) of the Act. The said issue was considered by the Hon'ble High Court of Madras in the case of ***R.Ramanathan Chettair Jewellers, Madurai Vs. Regional Commissioner, reported in 1998 (4) LLN 783***. Keeping in view of the said judgment, the Tribunal has come to

the aforesaid conclusion and has allowed the appeal.

9. The contention that was raised by the EPF is that the special allowances were carved out from the basic minimum wages that is payable to the employees. The second respondent is paying Rs.50/- as the minimum wages and the balance of Rs.16/- is being paid as a special allowance. The establishment is not paying any provident fund for these special allowances, which is forming part of the minimum wages. But the tribunal has considered the said issue by taking the judgment rendered in ***Assistant Provident Fund Commissioner Vs. G4S Security Services (India) Limited and another reported in 2011 (3) LLN page 775 (Punjab and Haryana)***. In the said judgment, it has been held that the provident fund contributions are not necessarily be paid based on the wages, which is fixed under the Minimum Wages Act. The basic wages as defined under the Provident Fund Act and wages defined in Minimum Wages Act are different. Hence, the provident fund liability is to be fixed on the actual wages paid to the workers. Therefore, this Court is of the considered opinion that the definition prescribed under the Minimum Wages Act cannot be taken for fixing the wages under EPF Act. The EPF Act has defined the wages after taking all ingredients that is covered under

the EPF Act. Therefore, the Tribunal is absolutely right in following the judgment rendered in Punjab and Haryana High Court. Therefore, the plea raised by the EPF Organisation cannot be sustained.

10. The writ petition stands dismissed, confirming the order passed by the Tribunal. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

11.10.2022

Index : Yes / No
Internet : Yes/ No
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To

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S.SRIMATHY, J.

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