



W.P.(MD)Nos.15022 & 15023 of 2017

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.11.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)Nos.15022 & 15023 of 2017

and

W.M.P.(MD)Nos.11857 to 11859 of 2017

W.P.(MD)No.15022 of 2017

The Regional Provident Fund Commissioner,
Employees' Provident Fund Organization,
No.1, Lady Doak College Road,
Chockkikulam, Madurai-2

... Petitioner

vs.

1. The Presiding Officer,
Employee's Provident Fund Appellate Tribunal,
Scope Minor, Core II, 4th Floor,
Lakshmi Nagar District Centre,
Lakshmi Nagar, New Delhi.

2.M/s.Vadamalayan Hospital,
through its Partner.

... 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 relating to the order passed by the 1st respondent in A.T.A.No.622(13)2012 dated 16.09.2013 and quash the same as illegal and consequently direct the 2nd respondent to pay



W.P.(MD)Nos.15022 & 15023 of 2017

WEB COPY

the contribution of Rs.20,88,675/- as proceedings No.TN/MD/4342B/Enf-C/Mdu/RO/2012 dated 20.07.2012, within a time frame as fixed by this Honble Court.

For Petitioner : M/s.K. Murali Shankar
For R-2 : Mr.M.Elanchezhian

W.P.(MD)No.15023 of 2017

The Assistant Provident Fund Commissioner,
Employees' Provident Fund Organization,
Regional Office, Lady Doak College Road,
Chockkikulam, Madurai.

... Petitioner

vs.

1. The Presiding Officer,
Employee's Provident Fund Appellate Tribunal,
Scope Minor, Core II, 4th Floor,
Lakshmi Nagar District Centre,
Lakshmi Nagar, New Delhi.

2.M/s.Prasanna Spinning Mills,
through its General Manager.

... 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 relating to the order passed by the 1st respondent in A.T.A.No.638(13)2013 dated 18.02.2014 and quash the same as illegal and consequently direct the 2nd respondent to pay the contribution of Rs.9,88,522/-vide file No.TN/42762/MDU/Enf-



W.P.(MD)Nos.15022 & 15023 of 2017

WEB COPY

B/Circle31/31045/2013 dated 08.08.2013, within a time frame as fixed by this Hon'ble Court.

In both Writ Petitions:

For Petitioner : M/s.A.John Xavier
K.Saburkhan

For R-2 : Mr.M.Elanchezhian

COMMON ORDER

W.P.(MD)No. 15022 of 2017 is filed against M/s.Vadamalayan Hospital to quash the order passed by the 1st respondent in A.T.A.No.622(13) 2012, dated 16.09.2013 and also sought for a consequential direction to the 2nd respondent to pay the contribution of Rs.20,88,675/- as proceedings No.TN/MD/4342B/Enf-C/Mdu/RO/2012, dated 20.07.2012, within a time frame as fixed by this Court.

W.P.(MD)No.15023 of 2017 is filed against M/s.Prasanna Spinning Mills to quash the order passed by the 1st respondent in A.T.A.No.638(13)2013, dated 18.02.2014 and also sought for a consequential direction to the 2nd



W.P.(MD)Nos.15022 & 15023 of 2017

WEB COPY

respondent to pay the contribution of Rs.9,88,522/-vide file No.TN/42762/MDU/Enf-B/Circle31/31045/2013, dated 08.08.2013, within a time frame as fixed by this Court.

2. The issues involved in the writ petitions filed in ***W.P.(MD) Nos.15022 & 15023 of 2017*** are one and the same and hence both the Writ Petitions are taken up and this common order is passed.

3. The brief facts as stated in the ***W.P.(MD)No.15022 of 2017*** is that the 2nd respondent Hospital comes under the Employees' Provident Fund Act. The petitioner organization inspected the 2nd respondent establishment and submitted a report, dated 05.12.2011, alleging that the 2nd respondent has failed to enroll 106 eligible employees as members. Based on which, 7(A) Authority has issued summon for determining the dues, for the period from 04/2009 to 10/2011. In order to conduct enquiry, a summon, dated 13.01.2012 was issued for production of related documents and books of accounts etc. The 2nd respondent has appeared and after 11 adjournments, the 2nd respondent has filed a letter, dated 12.04.2012, stating that the employees are not covered under the EPF scheme and



W.P.(MD)Nos.15022 & 15023 of 2017

WEB COPY

further submitted that the standing order would indicate that such persons are Trainees and Apprentices. The EPF organization did not accept the explanation of the 2nd respondent and passed an order, directing the 2nd respondent to enroll the said persons and pay a sum of Rs.4,03,250/-. Aggrieved over the same, the 2nd respondent filed an appeal before the Tribunal. The Tribunal after perused the reports had come to the conclusion that the EPF authority has not rendered any finding that the said persons were engaged as employees. There is no reason to disbelieve that the said persons are Apprentices. Therefore, the order passed by the EPF authority was set aside as illegal. Aggrieved over the same, ***W.P.No. 15022 of 2017*** is filed.

4. Heard Mr.K.Murali Shankar, Learned Counsel appearing for the petitioner EPF organisation in in W.P.(MD)No.15022 of 2017 and M/s.A.John Xavier for the petitioner EPF organisation in W.P.(MD)No.15023 of 2017 and Mr. M. Elanchezhian for the 2nd respondent in both the writ petitions and perused the material documents available on record.



W.P.(MD)Nos.15022 & 15023 of 2017

WEB COPY

5. The 2nd respondent is a Hospital and has filed typed set of papers, wherein, it is clearly stated that the Hospital is having standing orders for Apprentice training and also having Apprentice training syllabus for the Departments namely, Anesthesia Department, X Ray Department, Nursing Department, Department of Physiotherapy, Hospital Pharmaceutical Department, Laboratory, EMG/EEG Department, Blood Bank Department, Dialysis Department, Dietician Department, ECG Department, Biomedical Department. The Hospital has also submitted that the Hospital have appointed five persons, as Trainees, namely; Ms.C.Karpagam, as nursing Superintendent, Mr.J.A.Mangalraj, as Housekeeping Executive, Ms.K.Padmini, as Head of the Department of Lab and Blood bank, Ms.S.M.Neelavathy, as Accounts Officer and Ms.P.Raji, as ECG Executive.

6. The learned counsel appearing for the Employees Provident Fund Organization objected to the training for Housekeeping Executive, since there is no Department for housekeeping. The Learned Counsel for the 2nd respondent clarified that after the ECG process, the Hospital would clean and sanitize the room, and for the said process training is necessary. He also relied on the Training



W.P.(MD)Nos.15022 & 15023 of 2017

WEB COPY

syllabus for ECG department, wherein it is stated that the Trainee would be trained to dry the apparatus and room after the process. Likewise for all the department there are syllabus and Training personals appointed to the said post.

7. The learned counsel appearing for the 2nd respondent has also relied on the Apprentice training stipend register and ledger account, wherein, it is stated that 71 students were paid stipend. However, the petitioner organization submitted that the 2nd respondent has never stated or produced any stipend register or ledger before the Enquiry Officer. But the 2nd respondent refuted the same and submitted that the stipend registers and stipend account was produced. From the above rival submission, it would clearly indicate that the EPF organization misunderstood and misconstrued the Apprentice training and there is no evidence to substantiate the claim of the EPF organization. Therefore, this Court is of the considered opinion that the Tribunal has rightly come to the conclusion.

8. The brief facts as stated in the ***W.P(MD)No.15023 of 2017*** is that 2nd respondent has granted Tiffin/Meals Allowance, Washing Allowance and



W.P.(MD)Nos.15022 & 15023 of 2017

WEB COPY

Conveyance Allowance and the same will not form part of basic wages as per the definition. However, disbelieving the claim of the 2nd respondent, the EPF organization added those allowances along with basic wages. The tribunal has set aside the order passed by the EPF organization. Aggrieved over the present writ petition is filed. According to the definition under EPF Act, the Tiffin Allowance, Washing Allowance and Conveyance Allowance are not forming part of the basic wages. Therefore, the Tribunal has rightly passed the impugned order.

9. On considering the rival submissions, both the Writ Petitions are not having any merits and the same are liable to be dismissed.

10. Accordingly, these Writ Petitions are dismissed. No Costs. Consequently, connected miscellaneous Petitions are closed.

Index : Yes / No
Internet : Yes
ksa

28.11.2022



W.P.(MD)Nos.15022 & 15023 of 2017

WEB COPY

To

The Presiding Officer,
Employee's Provident Fund Appellate Tribunal,
Scope Minor, Core II, 4th Floor,
Lakshmi Nagar District Centre,
Lakshmi Nagar, New Delhi.



WEB COPY



W.P.(MD)Nos.15022 & 15023 of 2017

S.SRIMATHY, J

ksa

Common Order made in
W.P.(MD)Nos. 15022 &
15023 of 2017

28.11.2022