IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED:10.03.2023**

CORAM:

**THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN**
AND
**THE HONOURABLE MRS.JUSTICE R.KALAIMATHI**

**W.A.No.601 of 2021 and**
**C.M.P.No.2575 of 2021**

The Assistant Provident Fund Commissioner,
Employees' Provident Fund Organisation,
No.101, 100 ft Road, Cholan Nagar,
Olandaikeerapalayam,
Puducherry .. Appellant

-vs-

M/s.Ganges International Pvt. Limited
No.5-A Karasur Road,
Sedarrapet,
Puducherry 605 111.
Rep. by its Authorised Signatory
S.Sathiamurthy .. Respondent

Writ Appeal filed under Clause 15 of Letters Patents Act, to set aside the order dated 01.10.2020 passed in W.P.No.33759/2019 and allow the Writ Appeal.

For Appellant : Ms.V.J.Latha
For Respondents : Mr.Ravi
for Ms.Gupta and Ravi

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**J U D G M E N T**

The present Writ Appeal has been preferred against the order dated 01.10.2020 passed in W.P.No.33759/2019 whereby the order of the Employees' Provident Fund Appellate Tribunal, Chennai in EPFA.No.150/2017 dated 17.07.2019 was set aside thereby confirming the proceedings of the EPF Authority and remanding the matter to the Tribunal on the following terms:

> *"(i) The impugned order dated 17.07.2019 in EPFA.No.150 of 2017 passed by the Appellate Authority is set aside and the matter is remitted to the Appellate Authority for the limited purpose to ascertain the exact amount payable towards contribution of Provident Fund for each of the employees of the petitioner during the relevant period.*
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> *(ii) The appeal in EPFA No.150 of 2017 shall stand re-opened and shall be listed for hearing both the Appellate Authority on 03.12.2020, and the petitioner and the Respondent shall appear on that date and continue to attend the subsequent hearings to which it is adjourned till its eventual conclusion;*
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> *(iii) It shall be the obligation of the petitioner to submit revised Forms 3A and 6A showing the actual amount of contribution payable in respect of each employee (with working sheet showing details)*
>
> *(iv) The Appellate Authority shall afford full opportunity of hearing to all parties concerned following the prescribed procedure in consonance with the principles of natural justice and shall pass reasoned orders dealing with each of the contentions raised by the parties in this regard on merits and in accordance with law;*
>
> *(v) The amounts that have been remitted by the Petitioner pursuant to the interim orders of the Appellate Authority and this Court shall continue to remain invested in the interest fetching deposits till the matter is finally decided by the Appellate Authority who shall at that time also pass necessary orders for the*

*extent of amount that the Respondent would be entitled to appropriate from those amounts deposited and for the refund of remaining amount to the Petitioner, if any.*

*(vi) It is also clarified here that the dates on which the amounts had been deposited by the petitioner shall be treated as payment has been made to the Respondent towards the contribution of Provident Fund dues so that there shall not be any further liability on the Petitioner to bear interest for those deposited amounts after those respective dates on which they had been made."*

2. The main contention of the learned Standing Counsel appearing for the appellant-Employees' Provident Fund Organization is that based on the documents produced by the respondent-Management, the Original Authority came to the conclusion and directed remittance of the EPF Contributions. Even though more than 5000 employees were on rolls, during the claim period from March 2010 to December,

2012, 4300 above have left the services after accepting the final dues and as on date, only 700 and odd employees are on rolls. Some of them were drawing less than Rs.6500/- and some of them are drawing above Rs.6500/-. As per the coverage of Employees' Provident Funds Scheme, 1952, those who are drawing monthly wagesexceeding Rs.6500/- would be covered even if they are originally covered under the EPF Act and the claim for contribution is restricted to Rs.6500/- for the purpose of calculating and contributing the employees' provident fund dues in terms of paragraph 26 and 26-A of the Scheme. When the crucial aspect with regard to the determination of the amount towards EPF contribution by the employer has already been taken into account by the Original Authority and the said authority has determined the amount payable by the employer towards employees' and the employees' contributions, there is no need for remand, more so, the employer has accepted the contributions payable by them.

3. The further contention of the learned Standing Counsel for the appellant is that the issue with regard t o the contribution is restricted to the period from March, 2010 to December, 2012 in the Writ Appeal. The Management has stated that they have submitted periodical returns in Forms-3A and 6A in terms of paragraph 35 and 36 of the EPF Schemes and on inspection by the Enforcement Officer, it was found that certain allowances alleged to have been payable to the employees have not been calculated which resulted in lesser contribution by the employer and that an enquiry was conducted in terms of Section 7-A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and the amount was determined to be payable by the employer under the said Act. The appeal preferred under Section 7-I of the Act before the Central Government Industrial-cum-Labour Court, was dismissed on 19.06.2019. The issues revolve around are what is the amount of contribution actually payable by the employer towards the employer contribution and the employees' contribution and whether the

allowance as contended by the Employees' Provident Fund Organization will have to be taken into account for the purpose of payment of contribution. Even though the number of workmen to whom the amounts have been payable has been reflected, the actual amount payable to each of the employees have not been dealt with.

4. According to the learned Counsel for the respondent, the relevant documents have been produced before the authorities concerned and that there was no determination with regard to the contribution payable in respect of each employee and the authority has determined the issue. He would further contend that even though the respondent has not preferred an appeal against the said order in the writ petition that the remand ought to have been made before the original authority, the Tribunal will have no power to determine the amount payable by the employer towards employer and employees' contributions and that the mechanism was available only with the Original Authority.

5. In reply, Mrs.V.J.Latha, learned Standing Counsel appearing for the Employees' Provident Fund Organization would submit that when the amount payable towards Employees' Provident Fund contribution has already been arrived at, there is no need for any remand much less to the Tribunal or the Original Authority.

6. Heard both sides. We have also perused the materials available on record carefully.

7. At the outset, the factum that the amount payable towards EPF contribution per employee has got to be determined by the EPF authority. On such determination, the employer will have to contribute the said amount, unless there is a dispute which can be adjudicated before the appellate Tribunal. Further, as rightly pointed out by the learned Senior Counsel for the respondent, even though the respondent management is not preferring any appeal against the order passed in the Writ Petition, the Tribunal did not have any assistance or infrastructure to determine the amount payable to each of the employees' numbering over 700. The number may be much more or less and it is for the Original Authority to decide with regard to various contributions and allowances that may be included for the purpose of determining the EPF contribution. In view of the above, we find that there is no error in the order of the learned Single Judge in remanding the matter. However, we are inclined to modify the order of remand to an extent that the matter shall be remanded to the Original Authority who shall determine the amount after affording opportunity to the parties concerned. Therefore, it is open to the parties to put forth the available additional materials, if any, before the authorities

concerned for the purpose of determination of the amount. The authority shall determine the issue as per the order of remand by the learned Single Judge, within a period of four months from the date of receipt of a copy of this Order. The Original Authority, not the Appellate Authority, is expected to take up necessary measures to inform the employer concerned who is expected to participate in the enquiry and in case of absence by the employer, if any reason whatsoever, the same may be recorded by the Original Authority and after hearing the employer, the amount payable shall be determined and such exercise shall be carried out on day-to-day basis without adjourning the matter beyond 7 working days at any point of time.

8. At this stage, it is represented that pursuant to the interim orders of the Tribunal and subsequent interim orders of this Court, the amount towards EPF contribution has been remitted before the Tribunal which is lying in deposit. The Tribunal is expected to remit the amount to the Employees Provident Fund Organisation within a period of 15 days from the date of receipt of a copy of this Order. The Original Authority shall take into account the amount already lying in deposit while arriving at the amount payable by the employer towards EPF contribution.

**S. VAIDYANATHAN, J.**
and

**R.KALAIMATHI, J.**

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9. With the above observation and direction, the Writ Appeal is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

**[S.V.N., J.] [R.K.M., J.]**
**10.03.2023**

Index: Yes / No
Internet: Yes / No
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To

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