IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.06.2023

CORAM :

THE HON'BLE MR.JUSTICE V. LAKSHMINARAYANAN

W.P.No.20403 of 2013

The Assistant Provident Fund Commissioner
Employees Provident Fund Organisation,
Bhavishya Nidhi Bhawan, Dr.Balasundaram Road,
Coimbatore – 641 018. .. Petitioner

vs

1.The Special Officer,
M/s.Kinnakorai Industrial Cooperative Tea Factory,
Kinnakorai (Post)
The Nilgiris – 643 219.

2.Employees Provident Fund Appellate Tribunal
Rep. By its Presiding Officer,
Scope Minar, 4th Floor,
Core 2, Laxmi Nagar,
New Delhi – 110 092. .. Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari calling for the records of the 2nd respondent relating to passed in ATA No.620(13) of 2012 dated 08.03.2013 and quash the same.

For Petitioner	:	Mr.C.Kulanthaivel
For Respondents	:	Mr.G.Anand Gopalan for R1 R2 – Court

ORDER

The Assistant Provident Fund Commissioner challenges the order of the Appellate Tribunal in ATA No. 620(13)2012 dated 08.03.2013.

2. The facts leading to the writ petition are that the respondent / Management retrenched eight employees from its services. They raised Industrial Disputes in I.D.Nos. 11 to 18 of 2003 before the Labour Court at Coimbatore. The said Industrial Dispute ended in favour of the workmen on 18.07.2003 and the order of retrenchment was set aside.

2.1 Challenging the same, W.P.No.1819 of 2004 is filed, which was later dismissed as withdrawn on 17.12.2008.

2.2 During pendency of the writ petition, the respondent / Management herein was approached by the workmen for amicable settlement and settlement was also arrived at on 17.04.2008. In terms of the settlement, the parties agreed that the respondent / Management will not pay to its workmen any salary from the date of retrenchment till January, 2004. It was, however, agreed that the respondent / Management will remit EPF Contributions for the entire period from the date of retrenchment till January, 2004.

2.3 In addition, the compromise was that from February, 2004 i.e., from the date of re-instatement, the respondent will pay EPF contribution on its side alone and the employees contribution for the same may be paid in the event any amount is found to be due by the factory to the retrenched employee.

2.4 On the basis of this compromise, the employees, who had been retrenched were taken back into service. A claim was for the period from August, 2002 till July, 2010 was made by the writ petitioner. However, the respondent would submit that all the dues were paid from 17.04.2008 onwards and that Section 14B would be attracted if and only if there is default in payment of contribution and not for backwages. Not being satisfied with the explanation, the writ petitioner levied damages as well as interest.

3. Learned counsel for the writ petitioner / authority would rely on a decision of this Court in W.P.No.20658 of 2012 to the extent of imposition of interest under Section 7Q of the Act. The same came to be dismissed on 18.09.2012. Insofar as the damages is concerned, an appeal was preferred before the

Provident Fund Appellate Tribunal, which came to be allowed. Challenging the same, the present petition has been filed.

4. Mr.C.Kulanthaivel, learned counsel would vehemently contend that default period commenced from August 2002 and continued till July 2010 and, therefore, the respondent / management is liable to pay the damages.

5. Mr.G.Anand Gopalan, learned counsel appearing for the first respondent would submit that in light of the agreement, the EPF contribution alone was paid. It was due only under the agreement and since the workmen had been retrenched parties to the agreement dated 17.04.2008, the question of paying their wages for the relevant time does not arise at all.

6. I have carefully considered the arguments of either side and perused the materials placed on record, including the impugned order.

7. When the workmen are retrenched, the question of paying wages does not arise at all. Wages are paid only when the employee / employer relationship continues. Here is a case, where

the employees were retrenched and they challenged the same before the Labour Court, succeeded and the said order was kept in abeyance by virtue of order of this Court in the writ proceeding. Pending writ proceedings, an agreement was arrived at in Clause (1) and the same is extracted hereunder:-

> *"The parties of the second part agree that the First party shall not pay any salary to the second party for the period from the date of retrenchment upto January, 2004. It is however agreed that the Management shall remit the EPF contribution of both the employer and employee from the date of retrenchment to January, 2004 from out of the amounts deposited into the court. It is further agreed that as and from February, 2004 the Management shall pay EPF contribution on the side of the employer alone and in regard to the employees contribution the same may be paid in the event of any amount is found to be due by the factory to the employees. Alternative the factory may be at the liberty to pay advance to the Second Party to meet the employees contribution which shall be deducted in future from the salary of the employee."*

8. Therefore, liability of the petitioner arose under the contract and not by virtue of continuance of relationship of employer / employee. The appellate authority has rightly given the reason that where no wages have been paid, the question of contribution of Provident Fund does not arise at all. If the question of contribution does not arise, consequently the question of

damages also under 14B also would not arise. Further, the appellate authority has rightly appreciated the position and has set aside the order with respect to damages. Therefore, it does not require any interference. There is no perversity or illegality in the order under challenge. I am not interfering with the same.

9. In view of the above, this writ petition is dismissed. No costs.

07.06.2023

Index:Yes/No
Neutral Citation:Yes/No
ssm

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V. LAKSHMINARAYANAN,J.

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