



W.P.Nos.31333 to 31338, 32035 & 32036 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.07.2023

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

W.P.Nos.31333 to 31338, 32035 & 32036 of 2016

and

W.M.P.Nos.27198, 27199, 27200, 27787 & 27789 of 2016

W.P.No.31333 of 2016

The Assistant Provident Fund Commissioner,
Employees' Provident Fund Organisation,
Regional Office, Bhavishyanidhi Bhavan,
Dr.Balasundaram Road, Coimbatore.

... Petitioner

Vs.

1.The Presiding Officer,
Employees Provident Fund Appellate Tribunal,
Scope Minar Core – II,
4th Floor, Lakshmi Nagar,
New Delhi – 110 092.

2.M/s.Sai Manpower Suppliers Ltd.,
K K Nagar, Mettupalayam – 641 301.
Respondents

...

Prayer in W.P.No.31333 of 2016 : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for the records relating to the proceedings of 1st respondent dated 08.05.2014 in ATA No.542(13) of 2013 and quash the order passed therein.



WEB COPY



W.P.Nos.31333 to 31338, 32035 & 32036 of 2016

For Petitioner : Ms.R.Meenakshi
(in all WPs)
For Respondents : Court [R1]
(in all WPs) Mr.G.Anand Gopalan
for M/s.T.S.Gopalan & Co [R2]

COMMON ORDER

Since the issue raised in these writ petitions are one and the same, with the consent of the learned counsel appearing for both sides, these Writ Petitions were heard together and disposed of by this common order.

2. The case of the petitioner-EPF is that, the second respondent in all the writ petitions are the Establishments covered under the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (in short 'the Act') and they are required to pay Provident Fund dues. The second respondent in all the writ petitions are contractor establishment, extending manpower service to M/s.Pricol Limited, Perianaickenpalayam, Coimbatore – 641 020. M/s.Pricol Limited, the principal employer was inspected by the Enforcement Officer to ascertain the compliance status of the establishment under the Act and Schemes. Consequent to the inspection, it was found that the principal employer is engaging multiple



W.P.Nos.31333 to 31338, 32035 & 32036 of 2016

WEB COPY

contractors for various services and the second respondents are one among them. As per the report of the Enforcement Officer, the principal employer, namely M/s.Pricol Limited is having 2205 operators as permanent workers in the employment strength of the above establishments and 688 Apprentices as per establishment's standing orders. Apart from the above, contract workers numbering approximately 1100 are also engaged through 13 contractors and 54 apprentices under the category Graduate/Diploma Holders under the Apprentices Act, 1961 are also employed in the establishment. As per the Enforcement Officer report, they paid H.R.A., Conveyance Allowance, Attendance Bonus and Shift Allowance to all the apprentices. However, the same was not considered for payment of Provident Fund contribution, thereby the Provident Fund authorities passed order as against the principal employer and the second respondents. Thereafter, the second respondents preferred appeal before the appellate authority and the appellate authority reversed the same. Challenging the same, the above writ petitions are filed before this Court.

3. The learned counsel for the petitioner submitted that, from the



W.P.Nos.31333 to 31338, 32035 & 32036 of 2016

WEB COPY

apprentice stipend payment abstract for the month of April 2022 filed along with the inspection report, it is clear that, they have paid conveyance allowance, shift allowance and attendance bonus to all the apprentice. However, the same was not considered for payment of provident fund contribution to the trainees and employees of the second respondent establishments. That itself is sufficient to arrive at a conclusion that the same was extended to all the apprentice, which was not extended to the trainees and employees of the second respondent establishments. Hence, the order of the appellate authority is perverse and the same needs to be interfered with. Accordingly, he prays for allowing the writ petition.

4. The learned counsel appearing for the second respondents submitted that, if the second respondents Management extend the said benefits to all the employees, necessarily they have to pay the same to the trainees and other persons similarly placed. However, the mere calculation sheet is not sufficient to arrive that the same was extended to the apprentice, which was not extended to trainees and others. The said issue was elaborately considered by the appellate authority while passing



W.P.Nos.31333 to 31338, 32035 & 32036 of 2016

the order, which does not require any interference. Accordingly, he prays for dismissal of these writ petitions.

5. In support of his contentions, he relied upon the judgment passed by the Division Bench of this Court in W.A.No.1655 of 2022, dated 06.02.2023 and judgment passed by the Apex Court in Civil Appeal No.3221 of 2011 in the case of ***Regional Provident Fund Commissioner (II) West Bench Vs. Vivekananda Vidyamandir & Ors.*** reported in ***2019 SCC OnLine SC 291***.

6. Heard the learned counsel for the petitioner and the learned counsel appearing for the second respondents Management and perused the materials available on record.

7. Admittedly, it is an admitted fact that whatever amount is paid as wages, contribution towards PF has to be paid on the said amounts. If any such allowances is paid to the employees, the said amount would also attract inclusion for calculation of payment of provident fund contribution



W.P.Nos.31333 to 31338, 32035 & 32036 of 2016

WEB COPY

in respect of the employees to the petitioner. In the present case, it appears that the original authority passed the order against the second respondents, which order, on a perusal reveals that the apprentice stipend payment abstract for the month of April 2022 was taken into account, which revealed that conveyance allowance, shift allowance and attendance bonus was provided to all the apprentice employees for which Provident Fund contributions was paid, whereas, the same was not paid in respect of trainees and others. However, the said statement, which was the basis of the finding of the original authority was not taken into consideration by the appellate authority while arriving at a conclusion to reverse the order of the original authority. In the absence of the same, the view arrived at by the appellate authority is perverse, which cannot be sustained. In view of the same, this Court is inclined to set aside the order of the appellate authority.

8. Accordingly, the impugned order passed by the first respondent is set aside and these Writ Petitions stand partly allowed. Further, the second respondents are directed to pay the provident fund contributions in respect of the trainee and other persons towards shift allowances and



W.P.Nos.31333 to 31338, 32035 & 32036 of 2016

conveyance allowance within a period of six (6) weeks from the date of receipt of a copy of this order. However, insofar as attendance bonus is concerned, the same would not attract PF contribution in view of the judgment rendered by the Division Bench of this Court in W.A.No.1655 of 2022, dated 06.02.2023.

9. The writ petitions are allowed in part as aforesaid. No costs. Consequently, the connected miscellaneous petitions are closed.

20.07.2023
($\frac{1}{2}$)

Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation Case : Yes / No
sp

To

The Presiding Officer,
Employees Provident Fund Appellate Tribunal,
Scope Minar Core – II,
4th Floor, Lakshmi Nagar,
New Delhi – 110 092.



WEB COPY



W.P.Nos.31333 to 31338, 32035 & 32036 of 2016

M.DHANDAPANI, J.

sp

W.P.Nos.31333 to 31338, 32035 & 32036 of 2016

20.07.2023
(¹/₂)



WEB COPY



W.P.Nos.31333 to 31338, 32035 & 32036 of 2016

W.M.P.Nos.27198, 27786,
27788 of 2016

in

W.P.Nos.31333, 32035,
32036 of 2016

M.DHANDAPANI, J.

Dispensed with for the
present.

20.07.2023

sp
(2/2)