In the High Court of Judicature at Madras

Dated : 20.7.2023

Coram :

The Honourable Mr.Justice M.DHANDAPANI

Writ Petition No.44001 of 2016

M/s.Lumina Datamatics
Ltd., rep.by its Head -
HR Manager Mr.Babu Thoppil ...Petitioner

Vs

1.The Regional Provident Fund
Commissioner-II (C&R),
Employees Provident Fund
Organization, Regional Office,
Chennai-37.

2.The Enforcement Officer,
Employees Provident Fund
Organization, Regional Office,
Chennai-37. ...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for records on the file of the 1st respondent and quash the impugned order No.TN/CHN/CC-1/20/TN51710/Enf/2016 dated 27.6.2016.

For Petitioner : Mr.M.Vijayan for
M/s.King & Patridge

For Respondents : Mr.T.R.Sundaram for R1 & R2

ORDER

This is a petition filed by the petitioner seeking to quash the order dated 27.6.2016 in No.TN/CHN/CC-1/ 20/TN51710/Enf/2016 passed by the first respondent.

2. Heard the learned counsel appearing on behalf of the petitioner and the learned Standing Counsel appearing for the respondents.

3. The facts leading to filing of this case are stated as follows :

(i) The petitioner is a company incorporated under the Companies Act. They have been employing regular employees and made recruitments for specific projects. According to the petitioner, some of the projects would be for a period less than a year and the employees appointed for such projects would be discharged after completion of the specific projects. Further, the employee strength would fluctuate based on the projects.

(ii) The first respondent initiated proceedings under Section 7A of the Employees Provident Fund and Miscellaneous Provisions Act claiming sum of Rs.26,16,237/- after taking note of the basic pay, conveyance, medical allowance, special allowance, personal allowance 1 and 2 and bonus. According to the petitioner, they made contribution towards basic pay. However, the first respondent passed an order dated 27.6.2016 demanding the petitioner a sum of Rs.26,16,237/- towards EPF contribution. Seeking to review the order dated 27.6.2016, the petitioner filed a review petition before the first respondent mainly to waive the dues to the tune of Rs.9,60,570/- towards bonus. It was rejected by order dated 20.9.2016.

(iii) As against the said rejection order, an appeal would lie before the Appellate Authority within a period of sixty days. A further period of 60 days can be condoned by the Tribunal concerned. However, by order dated 30.9.2016, the first respondent recovered the amount from the bank account of the petitioner. Challenging the order dated 27.6.2016, the petitioner is before this Court.

4. When the matter came up for admission on 22.12.2016, this Court granted an order of interim stay for a period of three weeks and it was subsequently extended from time to time. Further, by order dated 12.4.2017 in WMP.No.37811 of 2016, this Court made the order of interim stay

absolute.

5. The learned counsel for the petitioner submits that the first respondent passed an order dated 27.6.2016 demanding the petitioner a sum of Rs.26,16,237/- towards EPF contribution. Though the statutory bonus paid under the Payment of Bonus Act has been specifically excluded from the purview of basic wages as defined under Section 2(b) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (for brevity 'the Act'), the first respondent vide order 27.6.2016 claimed a sum of Rs.9,60,570/- in respect of bonus which is *per se* unsustainable. He further submits that Section 6 read with Section 2(b) of the Act explicitly exempts Bonus component from Provident Fund Contribution and the petitioner company has been making payments of bonus on a monthly basis to the category of employees merely to benefit them. Hence, making Provident Fund contributions based on the monthly paid bonus does not arise.

6. In support of his contentions, he relied upon the decision laid down by Hon'ble Apex Court in ***AIR 1963 SC 1474*** in the case of ***Bridge & Roof***

Co. (India) Ltd. Vs. Union of India and ors.

7. The learned counsel for the respondents 1 and 2 submit that the Enforcement Officer of the respondent organization inspected the petitioner management and after conducting an enquiry submitted a final report before the first respondent, who in turn passed an order dated 27.06.2016 in terms of 7A of the Act demanding a sum of Rs.26,16,237/- as contribution. Seeking to review the 7A order, an application was filed by the management u/s.7B of the Act before the second respondent and the same was rejected vide order dated 20.09.2016. However, without challenging the order u/s.7B passed by the second respondent, challenging the 7A order which is wholly unsustainable.

8. Heard the learned counsel appearing on either side and perused the materials placed on record.

9. Admittedly, the original authority passed 7A order demanding a sum of Rs.26,16,237/- as contribution, in and by which a sum of

Rs.9,60,570/- was claimed as statutory bonus and a sum of Rs.16,55,667/- was claimed in respect of other component. The issue arises in the present writ petition is whether the bonus can be included along with the basic pay or not. At this juncture it is relevant to quote Section 2b of the Act, which provides for :-

> ***"Section 2(b) in the Employees' Provident Funds and Miscellaneous Provisions Act, 1952***
> *(b) "basic wages" means all emoluments which are earned by an employee while on duty or on leave or on holidays with wages in either case in accordance with the terms of the contract of employment and which are paid or payable in cash to him, but does not include-*
> *(i) the case value of any food concession;*
> *(ii) any dearness allowance that is to say, all cash payments by whatever name called paid to an employee on account of a rise in the cost of living, house-rent allowance, overtime allowance, bonus, commission or any other similar allowance payable to the employee in respect of his employment or of work done in such employment;*
> *(iii) any presents made by the employer."*

10. A careful perusal of the above said provisions makes it clear that bonus is exempted from the purview of the term "basic wages". So necessarily, when bonus is not inclusive of the term basic wages, no necessity would arise for the petitioner to pay EPF contribution for the sum paid towards bonus and rightly the petitioner has not paid any contribution. The demand made by the authorities for the amount paid towards bonus is wholly impermissible and, accordingly, the same deserves to be interfered with.

11. Accordingly, this writ petition is allowed and the orders impugned herein are set aside. The authorities are directed to adjust a sum of Rs.9,60,570/-, which has been deducted from the bank account of the petitioner towards future contribution which would not carry any interest. No costs.

20.7.2023

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Index : Yes (or) No
Neutral Citation : Yes (or) No
Speaking Order : Yes (or) No

M.DHANDAPANI,J

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To

1.The Regional Provident Fund
Commissioner-II (C&R),
Employees Provident Fund
Organization, Regional Office,
Chennai-37.

2.The Enforcement Officer,
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Organization, Regional Office,
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