IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.08.2023

CORAM
THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

W.P.No.26081 of 2021
and
WMP.No..27526 of 2021

M/s.Computer Age Management Services Limited,
Rayala Towers, 158, Anna Salai,
Chennai – 600 002,
Rep. by Sr.Vice President. ...Petitioner

Vs.

1. The Regional Provident Fund Commissioner -II,
Employees Provident Fund Organisation,
37, Royapettah High Road, Regional Office,
Chennai – 600 014.

2. M.S.Subramaniam ...Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records connected with the order dated 22/09/21 made in EPFA 528 of 2021 passed by the CGIT Cum Labour Court and Employees Provident Fund Appellate Tribunal, Chennai confirming the order of the 1st respondent dated 25/01/16 made in Ref.CCII /22/TN/26982/Enf/Regl under section 7A of the Employees Provident Fund and Misc. Provisions Act, 1952 and quash the same.

For Petitioner : Mr.Sai Prasad
for M/s. Sai Raaj Associates

For Respondents : Mr.Vishnu Ramu, for R1
: Mr.M.S.Subramaniam(Party-in-person), R2

O R D E R

The petitioner has come up with this Writ petition seeking quashment of the order of the CGIT Cum Labour Court and Employees Provident Fund Appellate Tribunal, Chennai dated 22/09/2021 made in EPFA 528 of 2021.

2. The case of the petitioner is that the 2nd respondent joined the service of the petitioner in the year 2000, however, due to his ill-health, the 2nd respondent resigned from the service on 10.07.2009. While so, upon receipt of the request from the 2nd respondent, the petitioner paid a sum of Rs.20,000/- per month to the 2nd respondent from July 2009 to July 2012 towards medical assistance, however, he was not called upon to discharge his duties. In such circumstances, the 2nd respondent, after receiving the above said amounts, filed various complaints before the 1st respondent claiming that the above said monthly payment attracts Provident Fund, upon receipt of which, the 1st respondent, without considering any of the replies and reports submitted by the petitioner, passed an order dated 25.01.2016 under Section 7A of the EPF Act, directing the petitioner to pay a sum of Rs.1,33,920/-. Aggrieved by the said order, the petitioner preferred an appeal in EPFA 528 of 2018, before the CGIT Cum Labour Court and

Employees Provident Fund Appellate Tribunal, however, the same was dismissed, vide order dated 22/09/2021, confirming the order passed by the 1st respondent. Challenging the same, the petitioner has come up with this Writ petition.

3. Learned counsel for the petitioner submitted that, admittedly, the 2nd respondent joined the petitioner company in the year 2000 and subsequently he resigned from the service on 10.07.2009 and the same was accepted by the petitioner company. When the resignation submitted by the 2nd respondent was accepted, he ceased to be the employee of the petitioner company and without considering the said facts, the 1st respondent has mechanically determined contributions on the sums paid to the 2nd respondent by the petitioner company as an act of benevolence for the purpose of his medical assistance and directed the petitioner to pay a sum of Rs.1,33,920/-. He further submitted that, Section 2F of the EPF Act clearly describes the term employee. For better appreciation, the relevant portion is extracted hereunder:

(f) "employee" means any person who is

> *employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an establishment and who gets his wages directly or indirectly from the employer, and includes any person,-*
>
> *(i) employed by or through a contractor in or in connection with the work of the establishment;*
>
> *(ii) engaged as an apprentice, not being an apprentice engaged under the Apprentices Act, 1961 (52 of 1961) or under the standing orders of the establishment;*

4. In view of the above provision, in the present case, as the 2nd respondent had already submitted his resignation on 10.07.2009 and the same was also accepted by the petitioner on the same day, he is no longer an employee under the petitioner and there exist no employer-employee relationship between the petitioner and the 2nd respondent. Further, the subsequent monthly payment of Rs.20,000/- made in favour of the 2nd respondent by the petitioner for the period July 2009 to July 2012 was only a benevolent gesture, in order help the 2nd respondent with his medical expenses and the same cannot be held against the petitioner. He further relied upon the decision the Hon'ble Apex Court in the case of ***Manipal Academy of Higher Education Vs. Provident Fund Commissioner*** in ***Civil Appeal Nos.1832, 2535, 2536, 2539, 2540 & 2541 of 2004*** dated ***12.03.2008***. For better appreciation, the relevant portion is extracted

hereunder:

> *"10. The basic principles as laid down in Bridge Roof's case (supra) on a combined reading of Sections 2(b) and 6 are as follows:*
>
> > *(a) Where the wage is universally, necessarily and ordinarily paid to all across the board such emoluments are basic wages.*
> >
> > *(b) Where the payment is available to be specially paid to those who avail of the opportunity is not basic wages. By way of example it was held that overtime allowance, though it is generally in force in all concerns is not earned by all employees of a concern. It is also earned in accordance with the terms of the contract of employment but because it may not be earned by all employees of a concern, it is excluded from basic wages.*
> >
> > *(c) Conversely, any payment by way of a special incentive or work is not basic wages.*
>
> *11. In TI Cycles of India, Ambattur v. M.K. Gurumani and Ors. (2001 (7) SCC 204) it was held that incentive wages paid in respect of extra work done is to be excluded from the basic wage as they have a direct nexus and linkage with the amount of extra output It is to be noted that any amount of contribution cannot be based on different contingencies and uncertainties. The test is one of universality. In the case of encashment of leave the option may be available to all the employees but some may avail and some may not avail. That does not satisfy the test of universality. As observed in Daily*

Partap v. Regional Provident Fund Commissioner (1998 (8) SCC 90) the test is uniform treatment or nexus under-dependent on individual work.

12. The term 'basic wage' which includes all emoluments which are earned by an employee while on duty or on leave or on holidays with wages in accordance with the terms of the contract of employment can only mean weekly holidays, national holidays and festival holidays etc. In many cases the employees do not take leave and encash it at the time of retirement or same is encashed after his death which can be said to be uncertainties and contingencies. Though provisions have been made for the employer for such contingencies unless the contingency of encashing the leave is there, the question of actual payment to the workman does not take place. In view of the decision of this Court in Bridge Roof's case (supra) and TI Cycles's case (supra) the inevitable conclusion is that basic wage was never intended to include amounts received for leave encashment.

13. Though the statute in question is a beneficial one, the concept of beneficial legislation becomes relevant only when two views are possible. 14. The appeals deserve to be allowed which we direct. But if any payment has already been made it can be adjusted for future liabilities and there shall not be any refund claim since the fund is running one. There will be no order as to costs."

5. He further submitted that, the petitioner management has already settled the entire gratuity amount to the 2nd respondent, which itself makes it clear that, there exists no employer-employee relationship in between the petitioner management and the 2nd respondent. Hence, he prayed for

appropriate orders.

6. The 2nd respondent / party-in-person submitted that, admittedly, the 2nd respondent has submitted his resignation on 10.07.2009 and the same was acknowledged by the petitioner company on the very same date, however, till date, the 2nd respondent was not issued with the relieving order. He further submitted that, even from the letter of the petitioner company dated 10.07.2009, it is evident that, the petitioner company paid the above said sum of Rs.20,000/- to the 2nd respondent every month on condition that, the 2nd respondent should not accept employment or have any business connection with other organization during the period from July 2009 to July 2012, which itself shows that, the 2nd respondent was not relieved from the service of the petitioner. Hence, both the Original as well as the Appellate authority, after carefully considering all the above said facts and considering the said monthly payment of Rs.20,000/- as wages held in favour of the 2nd respondent and thereby directed the petitioner management to pay a sum of Rs.1,33,920/- to the 2nd respondent which is reasonable and the same cannot be interfered with.

7. Heard learned counsel on either side and perused the materials

available on record.

8. There is no dispute about the 2nd respondent submitting his resignation and the acknowledgement of the same by the petitioner. The whole case revolves around the payment of Rs.20,000/- for a period of three years to the 2nd respondent, which according to the petitioner is on account of an act of benevolent gesture to the 2nd respondent. However, it is the claim of the 2nd respondent that he has never been relieved from the company, which would be evident from the conditions laid down for the purpose of payment of the amount to the 2nd respondent.

9. The definition of the term "basic wage" has been appreciated by the Apex Court in the aforesaid decision. Whether, in the circumstances of the case, the 2nd respondent would fall within the ambit of employee is the only question that requires determination.

10. In this regard, the material on which the impugned order has come to be passed is only on the premise that the conditions that have been prescribed for payment of Rs.20,000/- to the 2nd respondent is that he should not accept any employment.

11. Be that as it may. Though the fact that the payment of gratuity to the 2nd respondent is impressed upon by the petitioner to hold severance of employer-employee relationship, however, the fact, which stares writ large on the face of the petitioner from maintaining the same is the payment of Rs.20,000/- per month to the 2nd respondent and in addition to the same imposing a condition that the 2nd respondent should not take up any employment elsewhere.

12. Though the petitioner claims that as an act of benevolent gesture the said amount of Rs.20,000/- per month has been paid, however, the reason for putting in the aforesaid condition is not explained. Further, this Court was not inclined to accept the stand of the petitioner that it had shelled out a sum of Rs.20,000/- every month to the 2nd respondent, while not getting any work out of the 2nd respondent. No employer would pay such exorbitant sums to its employee, even as an act of benevolence, more especially in the current economic condition, which is faced throughout the country. That too, the said benevolence was not for a month or two till such time, the 2nd respondent settles himself. It was for a period of three years,

and computing the amount paid by the petitioner, it comes to about Rs.8 Lakhs.

13. It is to be pointed out that the condition that the 2nd respondent should not take up any employment with any other entity has prevailed upon the authorities in passing the impugned order to hold that there was no severance of employer-employee relationship. When a condition like the above has been put in the order, while making payment of Rs.20,000/- per month towards allowance to the 2nd respondent, the inference drawn by the authorities cannot be said to be perverse or unreasonable. Knowing fully well that the amount paid to the 2nd respondent is covered by the conditions entered into between the two entities, it is incumbent on the petitioner to properly explain the reason and cannot claim acts of benevolence.

14. The aforesaid facts have been properly appreciated by the authorities while passing the impugned order, and it is not borne out by sympathy. Therefore, on the materials placed before this Court and for the reasoning aforesaid, this Court is of the considered view that the orders impugned herein does not deserve interference.

15. Accordingly, for the reasons aforesaid, this Court is not inclined to interfere with the impugned order and the petitioner management is directed to deposit the amount awarded by the Original authority, vide order dated 25.01.2016, which was subsequently confirmed by the Appellate authority, vide order dated 22.09.2021, to the 2nd respondent within a period of two weeks from the date of receipt of a copy of this order.

16. For the reasons aforesaid, this Writ Petition stands dismissed. No costs. Consequently, connected Miscellaneous petition is closed.

10.08.2023

skt

NCC : Yes / No
Speaking Order : Yes / No
Index : Yes / No

Note to office: Issue order copy on 05.09.2023

M.DHANDAPANI., J.

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To

The Regional Provident Fund Commissioner -II,
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