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W.A.No.3095 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 09-11-2023

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

AND

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

W.A.No.3095 of 2023

M/s.Computer Age Management
Services Limited

...

Appellant

-VS-

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

2.Mr.M.S.Subramaniam

...

Respondents

Appeal under Clause 15 of the Letters Patent against the order, dated
10.08.2023, passed in W.P.No.26081 of 2021.

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

For Respondent 1 : Mr.R.Vishnu

For Respondent 2 : Mr.M.S.Subramaniam,
Party-in Person.



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JUDGMENT
(By *S.Vaidyanathan,J.*)

This *intra-court* has been filed challenging the order, dated 10.08.2023, passed in W.P.No.26081 of 2023.

2. The case of the appellant employer before the authority was that they paid a sum of Rs.20,000/- per month to the respondent employee towards medical assistance, which was not taken into account for the purpose of Provident Fund, and that on the complaint made to the Provident Fund authority, the determination under Section 7-A of the Employees' Provident Funds and Miscellaneous Provisions Act,1952, in short, "the Act", was done. Aggrieved by the said order, an appeal was preferred to the Tribunal by the employer, whereupon the employer was directed to pay the amount as determined by the authority in the order under Section 7-A of the Act, dated 25.01.2016. Further aggrieved over the order of the Tribunal, the employer preferred W.P.No.26081 of 2021, which was dismissed by the learned single Judge, against which the present Writ Appeal is filed.

3. Admittedly, the person, who had approached the authority for claiming Provident Fund, is now aged 70 years. Model Standing Orders are applicable to the establishment and, in terms of the said Model Standing Orders, the age of retirement of an employee is 58 years and the authority has taken into account the gratuity and



determined the amount following the subsequent amendments and not restricted the contribution to Rs.6500/-, which was maximum under the Act. This was without prejudice to the right that this amount could not be attracted towards Provident Fund, as the employee ceased to be an employee of the organisation, based on the resignation letter, dated 10.07.2009, stating that relieving order would be issued as soon as possible. This alone cannot be weighed to decide whether the resignation has been accepted or not, but the totality of circumstances has to be taken into account. The employer has paid gratuity, which has been accepted as full and final settlement, apart from other benefits that have been extended to the employee.

4. A reading of the communication, dated 10.07.2009, produced before this Court would make it clear that the employee has approached the employer after his resignation seeking for medical assistance and the employer has paid Rs.20,000/- per month towards the same. Though the said communication has put forth various conditions, it nowhere has stated that the employer has offered employment, which has been accepted by the employee. The employee has also not rendered any service. According to the employer, at the most, they are liable to pay EPF contribution for a period of three months, that too on a ceiling of Rs.6500/-, which was available at that point of time and that no amount on the said medical assistance can be taken into account.



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5. Whether the medical assistance, which is an allowance, that has been given, should be taken as wages or not, need not be considered, as the employee has already ceased to be in employment, due to the resignation, which was accepted, more-so, on account of the conduct of the employee having accepted the amount.

6. For convenience, Clause 15 of the Tamil Nadu Industrial Employment (Standing Orders) Rules, 1947, is extracted below :

"15. Liability of workmen to give notice before voluntarily leaving services.-

Any permanent workman desirous of leaving the service shall give one month's notice or one month's wages in lieu of notice to the employer or to such other officer as the employer may appoint to exercise the functions of the employer in connection with the business of the industrial establishment. The wages due to such a workman shall, if possible, be paid on the date on which the notice expires and, in any case, within two days after the expiry of the notice.

Provided that the period of notice to be given by the employee in the case of a seasonal factory shall be two months instead of one month, as specified above."

7. We cannot go by the head-notes of the above Clause. A reading of the entire provision would make it clear that a permanent workman, who is to leave the company, will have to give one month's notice or wages to the employer. In this case, the employee submitted resignation and the entire amount has been settled, which has been accepted by the employee, and the conduct will have to be looked into for the



purpose of granting relief to the parties. As, in the present case, the employee has left the services on account of the resignation, which is a voluntary act of the employee, we are of the view, that the amount paid by way of medical assistance, after resignation, cannot be considered as wages/emoluments/salary under any head, more-so under the Act.

8. The case of the employee was that there was no relieving letter given and that the same should be given today. The employee had given resignation letter, which is scanned below :

From
Y. S. Subramanian
Emp 288
101, L.A.S. Hall, Apt 11
Flat 1, 1st floor of Post Box
Kilampalayam
Gandhi Road
Chennai 600028
10/7/09 50
To Mr. N. K. Prasad
C. O. O.
Mys.
Chennai.
Namaste. Sub. S. Subramanian.
On Medical Grounds, being a physically
handicapped, I would like to resign
as per terms & conditions of Service.
Thanking you.
Y. S. Subramanian
Your Faithful
Y. S. Subramanian
enc : letter dated 10/7/09



The typed version of the above said letter is as under :

WEB COPY

Date: 10/07/09

FROM

M.S.Subramaniam
Emp. 388
Srilakshmi Apartment
Flat No.1, 1st Floor,
9, Park Avenue, Kesavaperumalpuram,
Greenways Road,
Chennai – 600 028

TO

Shri N.K.Prasad
C.O.O
CAMS,
Chennai

Namaskar,

Sub.: Submission of Resignation

On Medical grounds, being a physically handicapped, I would like to resign as per terms and conditions of service.

Thanking you,
Vande Mataram

Yours Truly,
Sd/-
M.S.Subramaniam

Encl.: Letter dated 10/07/09

9. This Court suggested the parties to give a quietus to the matter, whereupon, Mr.Sai Prasad, learned counsel for the appellant, would submit that by taking into account Rs.6500/- as the maximum ceiling limit towards Provident Fund contribution, the total amount would come approximately to Rs.66,000/- and not beyond that. Similarly, the employee herein, who was an employee of the management, has given a letter, which is scanned below :



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24/1/2022

To The Registrar General
Hon Madras High Court
Chennai
From M. S. Subramanian
Siddharth KPH
Flat no 1 - 1st floor
9th Ave, Korum Nagar
Vandaloo Crossway, Chennai
Chennai 600 088

Dear Sir Ref Wt 26081/2021
V D 3095/2023 (Cust Appeal)

Ref: T1/100/CHM/28982/Recovery/DIV/
22/ Reg 2023/2010/33 EPT

& enclosing letter with current lab.

I, M. S. Subramanian agree for full
& final settlement for Rs 75000/- Chennai
Security firm (National only) amount of EPT.
I also request Recovery letter to issue
with current status and paid immediately.
The same must be paid immediately in Indian Rupee.
Thanking you request
M. S. Subramanian

The typed version of the above said letter is as under :



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8/11



W.A.No.3095/2023

9/11/2023

To
The Registrar General
Hon Madras High Court
Chennai

From
M.S.Subramaniam
Srilakshmi Apartment
Flat No.1, 1st Floor
9, Park Avenue, Kesavaperumalpuram
Greenways Road
Chennai-600028

Dear Sir

Ref. W.P.26081/2021
W.A.3095/2023 (Writ Appeal)

TN/RO/CHN/26982/Recovery/DIV/22/Reg 2023/20/10/33
EPF
& Relieving Letter with current date

I, M.S.Subramaniam, agree for full & final settlement for Rs.75000/- (Rupees Seventy five thousand only) on a/c of EPF. I also request Relieving Letter be issued with current date only.

The said amount be paid immediately and be deposited in Indian Bank.

Regards.
Thanking you

M.S.Subramaniam



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Though the employee has stated that he should be allowed to leave with effect from today, the said contention cannot be accepted, as it is the discretion of the employer to continue the employee beyond 58 years as per the Standing Orders. That apart, acceptance of all terminal benefits, particularly, gratuity, and claiming Provident Fund, would make it very clear that there is no employer-employee relationship and the said amount has been paid by the employer, for which no services have been rendered.

10. Taking note of the submissions of the parties, we are of the considered opinion that a sum of Rs.75,000/-, as agreed by the employee towards full and final settlement of all claims, including Provident Fund, shall be paid by the employer and the employer has agreed to pay the same.

11. Mr.Sai Prasad would submit that pursuant to the orders of this Court, the amount has already been deposited with the Provident Fund authority.

12. In view of the above development, the Authority/Department is directed to release the said sum of Rs.75,000/- to the employee, namely, second respondent herein, and the balance amount to the employer, namely, appellant herein, within fifteen days from the date of receipt of this order.

13. We make it clear that the amount of Rs.75,000/-, mentioned above, cannot be considered towards wages for the purpose of contribution towards Provident Fund and no interest or damages shall be leviable by the authority on the said amount.



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W.A.No.5075/2023

14. Writ Appeal is disposed of accordingly. No costs. Consequently, the connected C.M.P.No.25754 of 2023 is closed.

Index : Yes/No
Internet : Yes/No
dixit

(S.V.N.,J.) (K.R.S.,J.)
09-11-2023

To

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



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W.A.No.3095 of 2023

S.VAIDYANATHAN,J.
AND
K.RAJASEKAR,J.

dixit

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09-11-2023