



W.P.(MD)No.2149 of 2015

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.06.2023

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No. 2149 of 2015

and

M.P(MD)No.1 of 2015

M/s. Livia Polymer Bottles Private Ltd.,
Rep. by its Chairman & Managing Director,
B.V. Ramanan,
Mandaiyur Salai,
Pudukkottai District,
PIN - 625 515.

... Petitioner

Vs.

The Regional Provident Fund Commissioner,
Employees Provident Fund Organization,
Sub-Regional Office,
Trichy.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari to call for the records pertaining to the Impugned order in No.Enf.B2/TN/TR/27508/SRO-TRY/2013-14 dated 08.12.2014 and 22.01.2015 passed by the respondent and quash the same.



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For Petitioner : Mr.K.Saravanan
For Respondent : Mr.I.Robert Chandrakumar

ORDER

This writ petition is filed challenging the impugned orders, dated 08.12.2014 & 22.01.2015.

2. Heard Mr.K.Saravanan, the Learned counsel appearing for the Petitioner and Mr.I.Robert Chandrakumar, the Learned counsel appearing for the Respondent and perused the material documents available on record.

3. The petitioner is a Private Company Limited and is covered under the EPF Act. The petitioner has not remitted full EPF contribution for a period from April 2011 to March 2013, hence a Show Cause Notice, dated 11.07.2013 was issued, wherein it is stated that the petitioner's establishment has contributed Provident Fund only for Basic allowance but Dearness Allowance and other allowances have been left out, in respect of the employees whose salary is less than Rs.6,500/-. Hence, the petitioner was directed to show cause why an enquiry under Section 7A of the EPF Act, should not initiated.



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4. The petitioner has submitted reply on 22.07.2013, wherein the petitioner has explained that the other Allowances paid to the employees are Traveling allowance and Medical Allowance and House Rent Allowance. The said allowances are not wages as contemplated under the Act and if such allowances are taken into account for the purpose of wages, most of the employee's salary would be exceeded Rs.6,500 and they would go out of the purview of provisions of the Provident Fund Act.

5. The petitioner has taken an alternative plea that from April 2013 the petitioner had included other allowances, namely Traveling allowance and Medical allowance for the purpose of calculation of Provident Fund.

6. The contention of the petitioner is that he has received summons, dated 25.07.2013 under Section 7A of the EPF Act, to appear for the enquiry on 21.08.2013. After considering the explanation, the respondents have passed the impugned order, dated 08.12.2014 and determined Rs.12,27,531/- are dues on account of non-remittance for the period from April 2011 to March 2013. The respondents have included the Traveling allowance granted to the employees.



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The petitioner's company is located in a remote and backward area of the Pudukkottai District. In order to motivate the employees, the petitioner is paying House Rent Allowance and Traveling Allowance and Medical Allowance based on their designation in addition to the basic wages. Periodically, the above amounts paid under the above heads are increased based on the inflation trend. The petitioner has not paid any allowance under the name of Dearness Allowance. However, the authority has viewed the inflation rate as subterfuge and determined them as dues for Provident Fund remittance. The petitioner has filed a Review petition under 7B of the EPF Act, against the order, dated 08.12.2014, which had directed the petitioner to pay a sum of Rs.12,27,531/-on account of non-remittance of dues on Traveling Allowance and Medical Allowance and the review petition was rejected on 22.01.2015. Even though, the petitioner is having an alternate remedy to file a petition before the Tribunal, there was no Presiding Officer in the Tribunal who was superannuated on that date. Hence the petitioner has filed this petition before this Court.

7. The respondents have filed counter stating that the petitioner is having alternate remedy to file a petition before the Tribunal.



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8. The contention of the petitioner is that the respondents have included House Rent Allowance, Traveling Allowance and Medical Allowance, while calculating the basic wages. However, the same was refuted by the respondents stating that they have not taken House Rent Allowance at all. However, they have taken into account Traveling allowance and Medical allowance that was granted to the employees. Moreover, the contention of the petitioner is that the Medical allowance and Traveling allowance was not paid to all the employees and paid to certain employees alone.

9. The issue of components to be added in salary to calculate EPF is already dealt with by the Hon'ble Supreme Court in the case of Provident Fund Commissioner Vs. Vivekananda Vidyamandir reported in (2020) 17 SCC 643

10. By taking all facts into consideration, this Court is inclined to set aside the impugned orders passed by the respondent, dated 08.12.2014 & 22.01.2015 and remitted back to the authorities concerned in the light of the Vivekananda Vidyamandir's case. The petitioner is at liberty to submit all evidences before the authorities concerned and the authorities shall grant



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personal hearing and thereafter pass orders. The said exercise shall be completed, within a period of four months, from the date of receipt of a copy of the order.

II. With the above terms, this Writ Petition is disposed of. No Costs.

Consequently, connected miscellaneous petition is closed.

Index : Yes / No
Internet : Yes
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To

The Regional Provident Fund Commissioner,
Employees Provident Fund Organization,
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S.SRIMATHY, J

ksa

**Order made in
W.P.(MD)No. 2149 of 2015**

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