IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-290-2006 (O&M)
Date of Decision: 20.11.2023

M/S NICKS INDIA (TOOLS)

…Petitioner

Versus

THE PRESIDING OFFICER, EMPLOYEES PROVIDENT FUNDS APPELLATE TRIBUNAL, NEW DELHI AND ANOTHER

…Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Kanwaljit Singh, Senior Advocate
with Mr. Ankush Gupta, Advocate
for the petitioner.

Mr. Rajesh Hooda, Advocate
for the respondents.

HARSH BUNGER, J.

Petitioner (M/s Nicks India (Tools)) has filed the instant writ petition under Articles 226/227 of the Constitution of India, seeking issuance of a writ in the nature of *certiorari* for setting aside the order dated 15.11.2000 (Annexure P-2) passed by the Regional Provident Fund Commissioner as well as an order dated 05.05.2005 (Annexure P-4) passed by the Employees' Provident Funds Appellate Tribunal, New Delhi.

2. Briefly, the petitioner-Establishment is covered under the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (here-in-after referred to as `the Act, 1952') under Code `PN-10334' and as such, it was required to pay the provident fund dues under the Act as well as the Scheme framed thereunder within 15 days of the close of every month, in terms of Section 6 of the Act, 1952.

3. It appears that a notice dated 13.09.2000 (Annexure P-1) was issued to the petitioner under Section 14-B of the Act, 1952 relating to default in payment of contribution by the employer. The petitioner is stated to have appeared before the concerned authority on receipt of the aforesaid notice and a stand was taken by the petitioner that there was no delay in depositing of Provident Fund dues. It appears that the concerned authority, vide order dated 15.11.2000 (Annexure P-2) levied damages to the tune of Rs.62,467/-.

4. Being dissatisfied, the petitioner herein filed the statutory appeal before the Employees Provident Funds Appellate Tribunal (in short `the Appellate Tribunal') under the Act, 1952; wherein, it was *inter alia* submitted that the department had levied damages with regard to deposit of Provident Fund Contribution on wages in lieu of leave, which is contrary to the provisions of law. Accordingly, it was prayed before the Appellate Tribunal to waive off the damages levied against the petitioner herein with regard to payment of wages in lieu of un-availed leave and administration charges by setting aside the order dated 15.11.2000 (Annexure P-2).

5. The aforesaid appeal was dismissed by the Employees Provident Fund Appellate Tribunal, New Delhi vide its order dated 05.05.2005 (Annexure P-4).

6. In the afore-mentioned circumstances, the petitioner has filed the instant writ petition before this Court.

7. Learned senior counsel appearing for the petitioner has submitted that vide impugned order dated 15.11.2000 (Annexure P-2), while imposing/levying damages to the tune of Rs.62,467/-, the authority below had levied penalty on the amount paid on account of leave encashment to the

extent of 37%. It is the stand of the petitioner that the Provident Fund contribution on leave encashment cannot be applied and accordingly, there was no occasion for calculating damages on account of Provident Fund contribution on leave encashment.

8. In support of the afore-said contentions, learned senior counsel for the petitioner has referred to the judgment rendered by the Hon'ble Supreme Court in the case of ***Manipal Academy of Higher Education Versus Provident Fund Commissioner 2008(2) SCT 421***; wherein, it has been held that the basic wage was never intended to include amounts received for leave encashment. The relevant extract of the aforesaid judgment reads as under :-

> *"11. In **TI Cycles of India, Ambattur v. M.K. Gurumani and Ors., 2001(3) SCT 1139 : (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. I 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, 1999(1) SCT 216 : (1998(8) SCC 90)** the test is uniform treatment or nexus under-dependent on individual work.*
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> *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 Cycle'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."

9. Accordingly, learned senior counsel for the petitioner submits that the instant writ petition be disposed of in the light of the aforesaid authoritative pronouncement by the Hon'ble Supreme Court and an appropriate direction be issued to the authorities that the payment already made by the petitioner on account of damages levied by the authorities below on account of EPF contributions on leave encashment be adjusted for future liabilities of the petitioner-establishment.

10. On the other hand, learned counsel appearing for respondent No.2 (Employees Provident Fund Organization) has fairly conceded the position as regards the judgment rendered by the Hon'ble Supreme Court in ***Manipal Academy of Higher Education's*** *case* (supra). In fact, learned counsel has handed over a photocopy of clarification dated 15.03.2008 on Provident Fund contribution on leave encashment issued by the Employees'

Provident Fund Organization, which reads as under :-

"To

All Regional PF Commissioners- 1,
In-charge of the Regions.

Sub:-PF Contribution on Leave Encashment – clarification

Sir,

The dispute before the Hon'ble Supreme Court of India in Appeal (Civil) No.1832/2004 (Manipal Academy of Higher Education versus Provident Fund commissioner) was whether the amount received by encashing the earned leave is a part of "basic wage" under section 2(b) of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 requiring pro rata employer's contribution.

Hon'ble Supreme Court of India has delivered the judgment on 12.3.2008 in the case and concluded that the basic wage was never intended to include amounts received for leave encashment. The appeal has been allowed by the Hon'ble Apex Court but it has also been decided that 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.

In view of the Hon'ble Supreme Courts' judgment dated 12.3.2008 in Appeal (Civil) No.1832/2004, this is to convey that it is decided (a) to discontinue PF deduction on leave encashment with immediate effect and (b) where PF contribution of the employers' share has been received in the offices of EPFO, the same shall be adjusted against future liabilities.

Yours faithfully

(K. C.J. P. Narayanan)
Regional P.F. Commissioner-1 (Coord)"

11. Learned counsel for respondent No.2/organization submits that the instant writ petition may be disposed of in terms of the judgment rendered by the Hon'ble Supreme Court of India in ***Manipal Academy of Higher Education's*** case supra as well as clarification letter dated 15.03.2008.

12. In view of the afore-said submissions made by learned counsel for the parties, since it has already been held by the Hon'ble Supreme Court that the basic wage does not include amounts received for leave encashment and further in view of the clarification dated 15.03.2008 issued by respondent No.2-organization clearly indicating to discontinue the provident fund deduction on leave encashment with immediate effect, it is held that any provident fund contribution on account of leave encashment amount as well as the damages levied on account of delayed payment of EPF on leave encashment would not be recoverable. Accordingly, any amount recovered from the petitioner on account of EPF contribution towards leave encashment amount as well as any damages levied on account of delayed payment of EPF contribution on leave encashment shall be adjusted against future liabilities of the petitioner-establishment.

13. In view of the above, the instant writ petition is disposed of in the afore-stated terms.

14. No other point has been urged.

15. All pending application/s, if any, shall also stand closed.

November 20, 2023 **(HARSH BUNGER)**
gurpreet **JUDGE**

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No

GURPREET KAUR
2023.11.29 14:26
I attest to the accuracy and
authenticity of this order/judgment