IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	19.10.2024
Pronounced on	15.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE M.S. RAMESH
AND
THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN

W.A.Nos.1343, 1344, 982, 983, 1026 and 2252 of 2011
and M.P.Nos.1, 1, 1, 1, 1 & 1 of 2011

WA.No.1343/2011

The Management of
L.M.Van Moppes Diamond Tools India Ltd.,
P.B.No.853, Hozur Gardens,
Sembium, Chennai – 600 011. ...Appellant

Vs.

1.The Presiding Officer,
Employees Provident Fund Appellate Tribunal
(Ministry of Labour & Employment),
Core II, 4th Floor, Laxmi Nagar District Centre,
Laxmi Nagar, Delhi,
Camp: Coimbatore.

2.The Assistant Provident Fund Commissioner
Employees' Provident Fund Organisation,
Regional Office,
37, Royapettah High Road,
Chennai – 600 014. ...Respondents

Prayer: Writ Appeal filed under Clause 15 of Letters Patent praying to allow the appeal and set aside the order of the learned Judge dated 07.06.2011 in WP.No.2908 of 2011.

For Appellant	: Mr.Anand Gopalan
For R1	: Presiding Officer
For R2	: Ms.Sunita Kumari

COMMON JUDGMENT

M.S. RAMESH, J.

In all these Writ Appeals, the common question that arises for consideration is as to whether the various allowances namely, medical, special holidays, night shift incentives, conveyance, special allowances, city compensatory allowances, education allowances, cost of living allowances and food concessions, would fall within the meaning of 'basic wage', as per Section 2(b) of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as “the EPF Act”)?

2. The learned Single Judge had upheld the orders passed by the Provident Fund Appellate Tribunal and rejected the Writ Petitions in

W.P.Nos.2908, 970, 3986 of 2011 and 19751, 25443 of 2010, through a common order dated 07.06.2011 and in W.P.No.19116 of 2011 dated 18.10.2011, by placing reliance on several decisions of the Hon'ble Supreme Court. These orders of the Writ Court are assailed in the present Writ Appeals.

3. Pending the Writ Appeals, the Hon'ble Supreme Court, in the case of ***Regional Provident Fund Commissioner Vs. Vivekananda Vidyamandir & others*** reported in ***2019 SCC OnLine SC 291***, had passed a judgment, holding that, except the allowances, which are not earned by all employees equally and may vary from one workman to other, the rest of the wages which are universally, necessarily and ordinarily paid, would fall within the definition of 'basic wage' under Section 2(b) of the EPF Act. The relevant portion of the judgment reads as follows:-

> **.....** ***"19.*** *The term "basic wage" has not been defined under the Act. Adverting to the dictionary meaning of the same in Kichha Sugar Co. Ltd. v. Tarai Chini Mill Majdoor Union [Kichha Sugar Co. Ltd. v. Tarai Chini Mill Majdoor Union, (2014) 4 SCC 37 : (2014) 1 SCC (L&S) 773] , it was observed as follows:*

"9. According to http://www.merriam-webster.com (Merriam-Webster Dictionary) the word "basic wage" means as follows:

'(1) a wage or salary based on the cost of living and used as a standard for calculating rates of pay

(2) a rate of pay for a standard work period exclusive of such additional payments as bonuses and overtime.'

10. When an expression is not defined, one can take into account the definition given to such expression in a statute as also the dictionary meaning. In our opinion, those wages which are universally, necessarily and ordinarily paid to all the employees across the board are basic wage. Where the payment is available to those who avail the opportunity more than others, the amount paid for that cannot be included in the basic wage. As for example, the overtime allowance, though it is generally enforced across the board but not earned by all employees equally. Overtime wages or for that matter, leave encashment may be available to each workman but it may vary from one workman to other. The extra bonus depends upon the extra hour of work done by the workman whereas leave encashment shall depend upon the number of days of leave available to workman. Both are variable. In view of what we have observed above, *we are of the opinion that the amount received as leave encashment and overtime wages is not fit to be included for calculating 15% of the hill development allowance."*

20. *That the Act was a piece of beneficial social welfare legislation and must be interpreted as such was considered in Daily Partap v. Provident Fund Commr. [Daily Partap v. Provident Fund Commr., (1998) 8 SCC 90 : 1999 SCC (L&S) 113]*

21. *Applying the aforesaid tests to the facts of the present appeals, no material has been placed by the establishments to demonstrate that the allowances in question being paid to its employees were either variable or were linked to any incentive for production resulting in greater output by an employee and that the allowances in question were not paid across the board to all employees in a particular category or were being paid especially to those who avail the opportunity. In order that the amount goes beyond the basic wages, it has to be shown that the workman concerned had become eligible to get this extra amount beyond the normal work which he was otherwise required to put in. There is no data available on record to show what* *were the norms of work prescribed for those workmen during the relevant period. It is therefore not possible to ascertain whether extra amounts paid to the workmen were in fact paid for the extra work which had exceeded the normal output prescribed for the workmen. The wage structure and the components of salary have been examined on facts, both by the authority and the appellate authority under the Act, who have arrived at a factual conclusion that the allowances in question were essentially a part of the basic wage camouflaged as part of an allowance so as to avoid deduction and contribution accordingly to the provident fund account of the employees. There is no occasion for us to interfere with the concurrent conclusions of facts. The appeals by the establishments therefore merit no interference. Conversely, for the same reason the appeal preferred by the Regional Provident Fund Commissioner deserves to be allowed*.....”

4. The aforesaid decision of the Hon'ble Supreme Court was rendered on 28.02.2019, during the pendency of these Writ Appeals. Now that the law has been well settled with regard to the definition of 'basic wage', the claim of the appellants that the allowances that are paid by them to their

employees will not fall under the definition of 'basic wage', cannot be legally sustained.

5. In the result, all the Writ Appeals stand dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

[M.S.R., J.] [M.J.R., J.]
15.11.2024

Index:Yes
Neutral Citation:Yes
Speaking order

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To

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common judgment made in
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