IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.11.2023

PRONOUNCED ON : 17.04.2024

CORAM:

THE HON'BLE Dr. JUSTICE D.NAGARJUN

W.P.No.170 of 2015

Central Board of Trustees
rep., by (EPF),Assistant Provident Fund Commisioner,
O/o, Regional Provident Fund Commissioner,
Bhavishiyanidhi Bhavan,Dr.Balasundaram Road,
Coimbatore-641 018. ...Petitioner

versus

1. Presiding Officer,
Employees Provident Fund Appellate Tribunal,
(Ministry of Labour & Employment,
Government of India)
SCOPE MINAR, CORE II, 4th floor,
Lakshmi Nagar District Centre,
Lakshmi Nagar, New Delhi 110 092.
2. M/s. Lakshmi Electrical Drives Ltd,
(Textile Division- Sun Spintex)
Sundrapuri, Tathur PO.
Annamali Via Pollachi-642 104. ... Respondents

Prayer: This Writ petition has been filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the records of the 1st respondent pertaining to ATA No.598(13) of 2012 dated 08.03.2013 and to quash the same and direct the 2nd respondent to remit the amount asessed by the petitioner towards the EPF dues.

For Petitioner : Mr.C.Kulanthaivel

For Respondents : Mr.S.Gunalan for R2

: R1 Labour Court

ORDER

This Writ Petition is filed by the Central Board of Trustees, represented by Assistant Provident Fund Commisioner seeking for certioraified mandamus and to quash the orders passed by first respondent pertaining to ATA No.598(13) of 2012 dated 08.03.2013 and consequently direct the second respondent to remit the amount assessed by the petitioner towards the EPF dues.

2. The second respondent establishment was carrying of business of manufacturing of cotton and man made fibre yarn. It was brought under the purview of the Employee's Provident Fund & Miscellaneous Provisions Act, 1952. There were 80 employees working with second respondent establishment of which only 53 employees were enrolled. On inspection of the squad Enforcement Officers, they found that wages have been split up into stipend per day, conveyance allowance, attendance incentive and speacial allowance etc.

3. The petitioner authorities have issued summons and after hearing both sides orders have been passed on 03.07.2012, directing the second respondent to pay an amount of Rs.5,15,822/- towards the Provident Fund dues payable by the

second respondent. The second respondent has preferred an Appeal before the first respondent/ Employees Provident Fund Appeallate Authority. Employees Provident Fund Appeallate Authority having gone through the said appeal, by way of impugned order has allowed the appeal in favour of the second respondent. Aggrieved by the same, the present Writ Petition is filed by the Central Board of Trustees (EPF).

4. It is submitted by the learned counsel for the petitioner that the finding of the first respondent/Emloyees Provident Fund Appellate Authority that the stipend per day, conveyance allowance, attendance incentive and speacial allowance etc., are part of basic wages as defined under Section of 2(b) of the Employee's Provident Fund & Miscellaneous Provisions Act, 1952, and therefore the said amount must also be included in the definition of the wages, thereby Provident Fund has to be paid in respect of the said allowances.

5. On the other hand, learned counsel for the second respondent has filed counter affidavit and submitted that the washing allowance, medical allowance, daily wages, conveyance allowance and attendance incentive, etc., have been paid to encourage the workers and thereby they are not part of the wages.

Section 6 of the Employee's Provident Fund & Miscellaneous Provisions Act, 1952 provides for contribution which shall be paid by the employer to the fund on basic wages, dearness allowance and other allowance if any. Therefore, to exclude any other allowance from the purview of Section 6 of the Employee's Provident Fund & Miscellaneous Provisions Act, 1952 such allowances should fall under clauses (i), (ii) and (iii) of Section 2(b) of the said Act which enumerate allowances which are not included in the definition of basic wage. The second respondent further contended that the allowances are not being uniformly paid among workers and are being paid based on their performance, conveyance allowances is being paid to staff members according to their category and not to all uniformly.

6. Learned counsel for the second respondent has referred the case of ***Bridge and Roofs Company India Ltd., vs. Union of India,*** reported in 1962 (3) SCR, 978, wherein the Hon'ble Supreme Court has held that the basis for exclusion in clause (ii) of the exception in Section 2(b) is that all that is not earned in all concerns or by all employees concerned is excluded from basic wages. It is further submitted that in the present case, since the disputed components are not paid across the board to all employees, these allowances

cannot be included within the definition of basic wages for the purpose of contribution by Section 6 of the Employee's Provident Fund & Miscellaneous Provisions Act, 1952 and prays to dismiss the Writ Petition.

7. Heard both sides and perused the records.

8. The definition of Section 2(B) of the Employee's Provident Fund & Miscellaneous Provisions Act, 1952, which defines basic wages as under:

> *"Section 2(b): Basic wages means all emoluments which are earned by an employee while on duty or (on leave or on holidays with wages in either case) in accordance with the terms of contract of the employment and which are paid or payable on cash to him, but does not include*
>
> *(i) The cash value of any food concession.*
>
> *(ii) Any dearness allowance (that is to say, all cash payments by whatever name called paid to an employee on account of raise in the cost of living) house rent allowance, over time allowance, bonus commission or any other similar allowances payable to the employee in*

respect of his employment or of work done in such employment.

(iii) Any payments made by the employer.

The term "basic wages" therefore includes all emoluments which are earned by the employee unless they are specifically excluded by the Act."

9. Admittedly, the second respondent has not paid the Provident Fund in respect of conveyance allowance, medical allowance and attendant incentive stating that they are not part of the definition of basic wages defined under Section 2(B) of the Employee's Provident Fund & Miscellaneous Provisions Act, 1952.

10. On analysing the above definiton of Section 2(b) of the Employee's Provident Fund & Miscellaneous Provisions Act, 1952, it is clear that all the emoluments are the part of basic wages. However, the cash value for food consession, dearness allowance, house rental allowance, over time allowance, bonus commission or any other similar allowance payable to the employees are not part of the basic wages. The medical allowance, attendant allowance,

conveyance allowance are not specifically excluded as per the definition, therefore, the interpretation required to be given, whether " Any other similar allowance payable to the employee in respect of his employment or work done in such employment" in Section 2(b)(ii) includes the medical allowance, conveyance allowance and incentive for attending the work.

11. The law in respect of this, is now very much settled. The Hon'ble Supreme Court of India in a case ***Regional Provident Fund Commissioner and others vs. Vivekananda Vidyamandir,*** reported in 2019 (2) CTC 302, has held that:

> *"**13.** That the Act was a piece of beneficial Social Welfare Legislation and must be interpreted as such was considered in **The Daily Partap v. Regional Provident Fund Commissioner, Punjab, Haryana, Himachal Pradesh and Union Territory, Chandigarh,** 1998 (8) SCC 90.*
> ***14.** 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."*

12. Similarly, the Hon'ble Supreme Court in ***Manipal Academy of Higher Education vs. Provident Fund Commissioner***, reported in (2008) 5 SCC 428 has held that:

> ***"10.*** *The basic principles as laid down in Bridge & Roofs case 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."

13. This Court in W.P.No.34827 of 2014 has observed that the conveyance allowance, medical allowance, washing allowance, attendance inscentive have to be treated as components of basic wages.

14. On considering the test in ***Bridge and Roofs Company Ltd., vs. Union of India***, reported in AIR 1963 SC 1474, it is clear that the test of universality has to be followed, thereby any allowance is necessarily and ordinarily paid to all accross the board, such emoluments are basic wages, in the contratry, if any of the payment is specially made to those who avail the opportunity is not the basic wages. In the case on hand, the issue is in respect of payment of medical allowance, conveyance allowance and attendance allowance are not selective to any of the employees. All the employees who attend the work will be paid these allowances and there is no discrimination. However in respect of over time allowances is concerned for example, though all the workers are entitled for over time allowance, it will be paid only to those who work over time.

Therefore, it is a selective allowance and not part of the basic wages.

15. In view of the above discussions, the impugned orders of the first respondent/ Appellate Authority, which were passed by misinterpriting the settled legal position shall not sustain. Accordingly, this Writ Petition is allowed and the order of the first respondent dated 08.03.2013 in ATA No.598 (13) of 2012 is hereby set aside. No costs.

17.04.2024

Index : Yes / No
Speaking/Non-speaking Order
Neutral Citation: Yes/No
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Dr.D.NAGARJUN, J.
jai

To

1. Presiding Officer,
Employees Provident Fund Appellate Tribunal,
(Ministry of Labour & Employment,
Government of India)
SCOPE MINAR, CORE II, 4th floor,
Lakshmi Nagar District Centre,
Lakshmi Nagar,
New Delhi 110 092.

Pre-Delivery Order

W.P.No.170 of 2015

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