IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2024

CORAM :

THE HONOURABLE **Mr.JUSTICE P.DHANABAL**

**W.P.No.34826 of 2012**
and
**M.P.No.1 of 2012**

The Management of
Sundaram Business Services Ltd.,
No.21, Patullos Road,
Chennai – 600 002.
Rep. By its Head-HR. ....Petitioner

Vs.

The Regional Provident Fund
Commissioner -II(C&R)
Employees Provident Fund Organistaion,
No.37, Royapettah High Road,
Chennai – 600 014. ...Respondent

**PRAYER:** Writ Petition filed under Article 226 of Constitution of India, to issue a writ of certiorari, calling for records of the respondent in its proceedings No.CCI/TN/53310/DOS/Regl/2012 and quash the order dated 05.12.2012.

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| For petitioner | : | Mr.R.Raghunathan<br>for M/s.T.S.Gopalan and Co. |
| For respondent | : | Mr.K.Venkatesan<br>Standing Counsel |

**O R D E R**

This writ petition is filed seeking to quash the proceedings in No.CCI/TN/53310/DOS/Regl/2012 *vide* order dated 05.12.2012 passed by the respondent.

2. The facts in brief as per the affidavit enclosed in this writ petition are as follows:

2.1 The petitioner company is engaged in the business of back office processing services which has a roll of more than 700 employees and the said establishment is covered under the EPF Act. The employees are paid salary/wages comprising of basic wage, productivity linked bonus, special allowance and OT earning.

2.2. On 10.07.2012, the Enforcement Officer of the respondent organization conducted an inspection in the petitioner management and pointed out that there was a difference in wages for the period from April 2011 to June 2012, in which the petitioner was liable to pay contribution on special allowance to the extent the basic wage falls short of the limit of Rs.6,500/- p.m.

2.3. On 21.08.2012, a notice was issued directing the petitioner to pay contribution on the reported difference and directed the establishment to showcause as to why enquiry under Section 7A of the EPF Act cannot be initiated for the failure to remit the above said dues.

2.4. The petitioner management sent a reply on 10.09.2012 and thereafter enquiry under Section 7A *ibid* was fixed on 19.11.2012 and on the very same day, a daily order sheet was made ready which stated that irrespective of the stand taken by the EPFO, the petitioner management was at liberty to file their objections and for the purpose of hearing the objections, the matter was posted on 26.11.2012.

2.5. The petitioner management sent another reply on 23.11.2012 disputing the stand taken by the EPFO that allowances other than HRA should be treated as part of basic wages. However, the respondent has passed an order dated 05.12.2012 holding that IV Schedule of the IT act deals with the recognized PF where the contribution to the fund by an employee and his employer is to be treated as income and tax on income and therefore the provisions of the IT Act cannot be pressed into service for interpreting the term basic wages under Section 2 (b) of the EPF Act. The respondent by order dated 05.12.2012 held that the exclusion part of Section 2(b) should be treated as basic wages is vitiated by errors of law and jurisdiction and the same is liable to be quashed.

3. The learned counsel for the petitioner submitted that the petitioner's management is engaged in the business of back office processing services which has a roll of more than 700 employees and the said establishment is covered under the EPF Act. During the inspection conducted by the Enforcement Officer of the respondent Organization a difference in wages was pointed out for the period from April 2011 to June 2012 stating that special allowance should also be treated as a part of the basic wage. The respondent passed daily order sheet and the petitioner management has replied for the same and also disputed the stand taken by the EPFO.

4. The learned counsel for the petitioner further submitted that the respondent has passed an order dated 05.12.2012 holding that IV Schedule of the IT act deals with the recognized PF where the contribution to the fund by an employee and his employer is to be treated as income and tax on income and therefore the provisions of the IT Act cannot be pressed into service for interpreting the term basic wages under Section 2 (b) of the EPF Act. The allowances other than those mentioned in the exclusion part of the definition of Section 2(b) should be treated as basic wages was considered by the other High Courts and the same were

conflicting judgments. Hence, this was the reason for filing of this writ petition instead of approaching the respondent for further hearing and also pursuing the appeal under the Act and therefore, prayed for quashment of the proceedings as stated in the opening paragraph.

5. The learned counsel for the respondent submitted that the impugned order is only a daily order charge sheet and enquiry was also conducted, the petitioner also participated and thereafter, the petitioner filed a letter before the respondent authorities stating that:

> *"all allowances" other than HRA will have to be treated as basic wages attracting payment of contribution to EPF. We do not subscribe to such view. However, without prejudice to out stand, we are enclosing a list of employee members excluding the members who had settled their duties as well as the extend of quantum of allowances required to make good the maximum wage of Rs.6,500/- p.m. For the period of 01.04.2011 to 30.06.2012. If you find any contribution is payable, you may pass orders accordingly. However, it shall be without prejudice to our right to vindicate our stand in a higher judicial forum."*

6. Therefore, the petitioner himself participated in the proceedings and agreed to pass orders without prejudice to our right to vindicate our stand in a higher judicial forum. Further, the case was already settled by the Hon'ble Supreme Court of India in ***(2020) 17 Supreme Court Cases 643*** reported in ***Provident Fund Commr. Vs. Vivekananda Vidyamandir.*** These wages which are universally necessary and ordinarily paid to all the employees across the Board are basic wages where the payment is available to those who avail the opportunity more than the amount paid for the employees need to be included in the basic wages.

Moreover, the respondent has not passed any order under Section 7 A of the EPF Act and only passed daily order sheet based on the enquiry. Hence, the present writ petition is liable to be dismissed.

7. Heard the learned counsel for the petitioner and perused the records.

8. In this case on hand, it is clear that no order was passed under Section 7 A of the EPF Act. After hearing the petitioner, the respondents have passed only daily order sheet holding that other allowances forms

part of the basic wages under Section 2 (b) of the Act subject to the provisions of Section 6 of the EPF and MP Act 1952 and posted the matter for final orders on 21.12.2012. In the meantime the writ petitioner has filed this present writ petition.

9. The main contention of the learned counsel for the petitioner is that Section 9 of the EPF Act treats on a part with the recognized PF under para A of Schedule IV of the IT Act. As per the respondent under the IT Act, salary would include to the exclusion of other allowances and perquisites and therefore, there is no scope to treat any allowances as part of basic wages for the purpose of payment of contribution to EPF. Further, the term 'basic wages' is an evolution of scheme of payment of DA linked to the cost of living index.

10. The learned counsel for the petitioner also contended that the employees who joined the service between 01.04.2011 and 30.06.2011 and were admitted as members of the EPF based on the special allowances would not constitute basic wages and if special allowances were to be treated as part of basic wages, then they are not liable to be covered under the scheme and therefore, no contribution would be payable.

11. But the contentions putforth by the learned counsel for the petitioner has to be raised before the respondent. The petitioner has also issued letter dated 10.09.2012 to the department stating that:

*"all allowances" other than HRA will have to be treated as basic wages attracting payment of contribution to EPF. We do not subscribe to such view. However, without prejudice to out stand, we are enclosing a list of employee members excluding the members who had settled their duties as well as the extend of quantum of allowances required to make good the maximum wage of Rs.6,500/- p.m. For the period of 01.04.2011 to 30.06.2012. If you find any contribution is payable, you may pass orders accordingly. However, it shall be without prejudice to our right to vindicate our stand in a higher judicial forum."*

12. Therefore, it is clear that if the authorities find any contributions payable then they can pass orders accordingly after hearing the petitioner. The respondents have not passed orders under Section 7 A of the Act. While the facts are being so before passing order under Section 7 A of the EPF Act the present writ petition was filed challenging the daily order sheet dated 05.12.2012.

13. As far as the judgment referred by the learned counsel for the respondent is concerned, this Court need not consider the same at this

stage since no order was passed under Section 7 A of the Act and the present writ petition is filed to challenge the daily order sheet.

14. In view of the above circumstances, it is appropriate to direct the respondent to hear the petitioner once again and pass appropriate orders. Therefore, the petitioner is at liberty to approach the respondent and on such event the respondent is directed to fix a date for hearing suitable for both the parties and after such hearing, the respondent shall pass orders in accordance with law.

15. In view of the above, the present writ petition is disposed of with the above directions. Connected W.M.P is close. Costs made easy.

**21.12.2024**

***vca***
Index : Yes/No
Internet : Yes/No
Citation : Yes/No

**P.DHANABAL,J.**

***vca***

To:

The Regional Provident Fund
Commissioner -II(C&R)
Employees Provident Fund Organistaion,
No.37, Royapettah High Road,
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