IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on 23.07.2024

Order delivered on 10.09.2024

CORAM

THE HONOURABLE Mrs. JUSTICE J.NISHA BANU
and
THE HONOURABLE Mr.JUSTICE.P.DHANABAL

W.A.No.2287 of 2021
and
C.M.P.No.14525 of 2021

The Assistant Provident Fund Commissioner,
Employees Provident Fund Organisation,
Regional Office, Bhavishyanidhi Bhavan,
Dr.Balasundaram Road,
Coimbatore - 641 018. ....Appellant

Vs

1. The Presiding Officer,
   Employees Provident Fund Appellate Tribunal
   Scope Minar core-II,
   4th Floor, Lakshmi Nagar,
   New Delhi - 110 092

2. M/s.J.Karthik Narayan Division,
   Warwick Estate, Kotagiri 643 217,
   The Nilgris. ...Respondents

Prayer: Writ Appeal filed under Clause 15 of Letter Patent as against the order passed in W.P.No.34450 of 2017 dated 08.01.2018 by this Court.

For Appellant	: Mr.R.Meenakshi Standing Counsel
For Respondents	: R1-Tribunal Mr.P.Thangaraj for R2

JUDGMENT

(The judgment of this Court was delivered by J.Nisha Banu,J.)

This Writ Appeal has been filed challenging the order passed in W.P.No.34450 of 2017 dated 08.01.2018, dismissing the writ petition on the ground of delay.

2. Though the writ petition was dismissed on the ground of delay, the main issue involved in this appeal is whether certain allowances paid to the employees would form part of the basic wage so as to make contribution towards the Provident Fund Contribution account or not.

3. When the matter is taken up for hearing, it is represented by the learned counsel appearing for the appellant/Provident Fund Organisation that the subject matter is covered by the judgment of the Hon'ble Supreme Court reported in ***2020 (17) SCC 643 (The Regional Provident Fund Commissioner (II) West Bengal vs. Vivekananda Vidyamandir and others)***, wherein the Hon'ble Apex Court, after referring to its various judgments has held as follows:

12. The term basic wage has not been defined under the Act. Adverting to the dictionary meaning of the same in Kichha Sugar Company Limited through General Manager v. Tarai Chini Mill Majdoor Union, Uttarakhand, (2014) 4 SCC 37, it was observed as follows:

> *"9.According to http://www.merriamwebster .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 the 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".

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. The Regional Provident Fund Commissioner, Punjab, Harayana, 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 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. Learned counsel for the appellant would further state that a direction may be issued to the appellant to proceed with Section 7A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 in terms of the ruling of the Hon'ble Supreme Court as aforementioned.

5. Though the writ petition was dismissed on the ground of delay and laches, in view of the judgment reported in (1998) 2 SCC 242 (Hindustan Times Ltd. v. UOI & others), wherein the Hon'ble Apex Court has held that the provisions of Limitation Act do not apply to the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, because despite many

amendments since 1952 in the EPF Act, the legislature did not prescribe any period of limitation, the provisions of Limitation Act cannot be made applicable.

6. In view of the legal principles settled by the Hon'ble Apex Court in the aforesaid judgment reported in ***AIR 2019 SC 1240 (The Regional Provident Fund Commissioner (II) West Bengal vs. Vivekananda Vidyamandir and others)***, the Writ Appeal is allowed, setting aside the order passed in W.P.No.34450 of 2017 dated 08.01.2018. The appellant shall proceed in accordance with Section 7A of the Act. No costs. Consequently, connected miscellaneous petition is closed.

(J.N.B.,J.) (P.D.B.,J.)
10.09.2024

vsi
Index : Yes / No
Internet : Yes / No

To

The Presiding Officer,
Employees Provident Fund Appellate Tribunal
Scope Minar Core-II,

4th Floor, Lakshmi Nagar,
New Delhi - 110 092

J. NISHA BANU, J.
and
P.DHANABAL,J.

vsi

Pre-delivery order in
W.A.No.2287 of 2021

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