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.P.Nos.9130, 9131, 16862 of 2014 and 15973 of 2015
and
M.P.Nos.1, 1, 1 of 2014 & 1 of 2015

M/s.Cognizant Technology Solutions India Pvt Ltd.,
Having its registered office address at
5/535, Old Mahabalipuram Road,
Okkiam, Thoraipakkam, Chennai – 600 097,
Rep. by Associate General Counsel,
Ms.Deepa Baburaaj. ...Petitioner in WP.Nos.9130, 9131/2014 & 15973/2015

M/s.Sodexo Food Solutions India Pvt Ltd.,
Remote Site Division,
No.3, Arcot Road, Pushapavanam Complex,
2nd Road, Alwarthirunagar, Chennai – 600 087
Rep. by its Authorised Signatory,
Mr.C.R.Ravichandran – Assistant Manager – HR
...Petitioner in WP.No.16862/2014

Vs.

1.The Regional Provident Fund Commissioner – I,
Employees' Provident Fund Organisation,
No.37, Royapettah High Road,
Royapettah, Chennai – 600 014. ...Respondent in all WPs

2.The Assistant Provident Fund Commissioner
Employees' Provident Fund Organisation,
No.37, Royapettah High Road,
Royapettah, Chennai – 600 014. ...2nd Respondent in WP.Nos.9130 & 9131/2014

Prayer in WP.No.9130/2014: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus to forbear the respondents from continuing with the proceedings initiated against the petitioner under Section 7A of the Employees Provident Fund and Miscellaneous Provisions Act, 1952, pursuant to the notice Ref: No.CHN/TN/31309/CC3(26)/Eng/Regl/2013 dated 30.12.2013 till the pronouncement of the judgment by the Division Bench of this Court in W.A.Nos.982, 985, 1026, 1343 and 1344 of 2011.

Prayer in WP.No.9131/2014: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus to prohibit the respondents from proceedings further in the inquiry in terms of notice bearing CHN/TN/31309/CC3(26)/Eng/Regl/2013 dated 05.12.2013 initiated under Section 7A of the Act claiming contribution on allowances for the past period from 01.04.1994 to 05.12.2013.

Prayer in WP.No.16862/2014: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus to forbear the respondent from continuing proceedings initiated pursuant to No.CC1/21/TN/30223 A//Enf/Regl/14 dated 19.05.2014 and direct the respondent to keep the inquiry in abeyance till such time the pronouncement of the judgment of the Supreme Court on the issue.

Prayer in WP.No.15973/2015: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus to forbear the respondent from continuing with the proceedings initiated against the petitioner under Section 7A of the Employees Provident Fund and Miscellaneous Provisions Act, 1952, pursuant to the notice Ref: No.CHN/TN/31309/Div19/CC-1/Eng/Regl/2015 dated 12.03.2015 till the pronouncement of the judgment by the Division Bench of this Court in W.A.Nos.982, 985, 1026, 1343 and 1344 of 2011 & W.P.Nos.9130 & 9131 of 2014.

For Petitioner : Mr.C.Manhoran Gupta
for M/s.Gupta and Ravi
(in WP.Nos.9130, 9131/2014 & 15973/2015)

For Petitioner : Mr.Anand Gopalan
for M/s.T.S.Gopalan & Co.
(in WP.No.16862/2014)

For Respondents : Mr.V.Sundareswaran,
Senior Panel Counsel
(in all WAs & WPs)

COMMON ORDER

M.S. RAMESH, J.

In all these Writ Petitions, the summons issued under Section 7A of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as "the EPF Act"), are put under challenge.

2. The core issue involved in these Writ Petitions 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 EPF Act?

3. Pending the Writ Petitions, 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. In the light of the aforesaid decision of the Hon'ble Supreme Court in the case of ***Regional Provident Fund Commissioner*** *(supra),* it would be appropriate that the petitioners herein be granted liberty to appear before the Adjudicating Authority under Section 7A of the EPF Act and put forth their objections. The Adjudicating Authority, while passing final orders, shall consider the law laid down in the case of ***Regional Provident Fund Commissioner*** *(supra)* and also grant due opportunity to the petitioners.

5. With the above directions, all these Writ Petitions stand closed. 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

1.The Regional Provident Fund Commissioner – I,
Employees' Provident Fund Organisation,
No.37, Royapettah High Road,
Royapettah, Chennai – 600 014.

2.The Assistant Provident Fund Commissioner
Employees' Provident Fund Organisation,
No.37, Royapettah High Road,
Royapettah, Chennai – 600 014.

M.S. RAMESH, J.
and
M.JOTHIRAMAN, J.

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common order made in
W.P.Nos.9130, 9131, 16862 of 2014 and 15973 of 2015

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