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W.P.No.28896 of 2017

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.P.No.28896 of 2017
and
WMP No.31112 of 2017

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

....Petitioner

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.Akkamalai Tea Factory,
(A Unit of The Peria Karamalai Tea
& Produce Co. Ltd.,)
Akkamalai B.P.O.- 641 127
Coimbatore District,
Tamil Nadu.

...Respondents



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Prayer: Writ Petition filed under Article 226 of Constitution of India praying to issue a Writ of Certiorari to call for the records relating to the proceedings of the 1st respondent dated 26.05.2014 in ATA No.427(13) 2013 and quash the order passed therein.

For Petitioner : Ms.R.Meenakshi

For Respondents : R1-Tribunal
Mr.S.Kaushik Ramaswamy for R2

J U D G M E N T

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

This Writ Petition has been filed challenging the proceedings of the 1st respondent made in ATA No.427(13) 2013 dated 26.05.2014.

2. The issue involved in this writ petition 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 petitioner/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



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held as follows:

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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](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



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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



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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 petitioner would further state that a direction may be issued to the petitioner to proceed under 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. 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***



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Vidyamandir and others), the Writ Petition is allowed, setting aside the order passed by the 1st respondent Tribunal dated 26.05.2014. The petitioner 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
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New Delhi - 110 092



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

vsi

Pre-delivery order in
W.P.No.28896 of 2017

10.09.2024