2024:PHHC:144153

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

123 CWP-29932-2024
Date of Decision : 06.11.2024

CENTRAL BOARD OF TRUSTEES, EMPLOYEES PROVIDENT FUND ORGANIZATION

.... PETITIONER

V/S

M/S ARCOTECH LTD. AND ANOTHER .... RESPONDENTS

CORAM : HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr.Sandeep Goyal, Advocate
for the petitioner.

****

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of order dated 07.06.2024 (Annexure P-4) passed by Central Government Tribunal-cum-Labour Court-II, New Delhi.

2. The petitioner is an authority constituted under Employees Provident Fund and Miscellaneous Provisions Act, 1952 (for short '1952 Act'). The respondent No.1 (hereinafter referred as 'respondent') is an industrial undertaking and has engaged more than 20 employees. As per provisions of 1952 Act, prior to 01.09.2014, an employer was required to deposit contribution in provident fund with respect to employees getting salary less than Rs.6,500/-. The ceiling of Rs.6,500/- was increased to Rs.15,000/- w.e.f. 01.09.2014. The respondent prior to 2014 was not

depositing contribution in the provident fund as its employees were paid more than Rs.6,500/-. The respondent post September' 2014, with intent to keep itself out of purview of 1952 Act, enhanced salary of its employees by way of merging different components in the basic pay. The total amount of salary of employees remained almost same, however, allowances were reduced and basic amount was increased.

3. The petitioner initiated enquiry against the respondent and vide order dated 31.12.2018 held that the respondent is liable to make contribution in provident fund with respect to its employees because it has merged allowances in the basic pay just to avoid the liability under 1952 Act. The petitioner determined liability of respondent to the tune of Rs.46,81,377/- for the period from September' 2014 to March' 2018.

4. The respondent feeling aggrieved from order dated 31.12.2018 passed by assessing authority preferred an appeal before Appellate Tribunal. The matter came up for consideration before Tribunal on 07.06.2024 which vide impugned order allowed appeal of the respondent-establishment. The Tribunal has held that it is discretion of the employer to fix salary of its employees and the petitioner-Provident Fund Authority cannot direct an employer to determine salary of its employees in a particular manner.

5. Mr. Sandeep Goyal submits that the Tribunal has wrongly set aside the assessment order. The respondent with intent to avoid liability under 1952 Act merged allowances of its employees in the basic pay. It was a camouflage and colourable exercise of power. The employees have been deprived of their valuable right of provident fund.

2024:PHHC:144153

6. I have heard the arguments of counsel for the petitioner and perused the record.

7. From the perusal of record, it is evident that Tribunal has considered all the arguments of petitioner as well as respondent. The Tribunal has found that it is discretion of the employer to determine salary and allowance of the employees. The Provident Fund Authority cannot ask any employer to fix salary in a particular manner. The Tribunal has further noted that employees of respondent were not even covered under 1952 Act prior to 01.09.2014. They were exempted employees and no contribution was made even prior to 01.09.2014.

8. This Court does not find any jurisdictional error or factual infirmity in the impugned order warranting interference. There is neither any statutory provision nor judicial precedent holding that salary of employees cannot be fixed as per choice of employer or Provident Fund Authority can look into pattern of salary.

9. Dismissed.

(JAGMOHAN BANSAL)
JUDGE

06.11.2024
anju

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No