(2011) 07 KAR CK 0226

In the Karnataka High Court

Case No : Writ Petition No. 5264 of 2011 (L-PF)

M/s Raffles Solution Pvt. Ltd. APPELLANT

Vs

The Regional P.F. Commissioner Employees Provident Fund Organisation, Regional Office, Bangalore, No. 13. Raja Ram Mohan Roy Road, Post Box No. 25146, Bangalore RESPONDENT

Date of Decision : 22-07-2011

Acts Referred:
Employees Provident Fund and Miscellaneous Provisions Act, 1952 — Section 2 (b), 6, 7 A

Citation : (2011) 07 KAR CK 0226

Hon'ble Judges : Ram Mohan Reddy, J

Bench : Single Bench

Advocate : B.C. Prabhakar, for the Appellant;

Final Decision : Dismissed

Judgement

Mr. Justice Ram Mohan Reddy

1. Petitioner an establishment covered under the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (for short the ''Act'') when directed by letter dated 2.5.2007 of the respondent Provident Fund Organisation, to furnish details regarding special pay to employees, for the period March. 2006 to November. 2007 and for the period March, 2006 to April. 2008. for calculating provident fund dues, there was no response, hence the respondent instituted proceeding invoking Section 7(A) of the Act, whence too, the petitioner though extended an opportunity of hearing, did not place on record the details of special pay, extended to its employees. The respondent by order dated 4.6.2008 held that the special pay was not excluded from the definition of the term wages u/s 2(b) of the Act, since it did not constitute cash value of food allowance, dearness allowance, house rent allowance, overtime allowance, bonus commission and any other similar allowance payable to the employee in respect of his employment or of work done in such employment, but fell within Section 6 of the Act to be

included as basic wages, if any, paid to the employees for the purpose of determining the share of contributions of both the employer and employee and accordingly, directed petitioner to remit Rs. 1,72,74,532/- being dues for the period March, 2006 to November, 2007 after deducting Rs. 87,81,090/- since remitted, by order dated 4.6.2008 Annexure-D. That order when called in question in A.T.A. No. 524/6/2008 before the Provident Fund Appellate Tribunal was confirmed by order dated 23.12.2010, dismissing the appeal. Hence, this petition. Undoubtedly, petitioner did not respond to letter dated 2.5.2007 Annexure-C of the respondent, calling upon it to furnish details regarding the special pay extended to its employees for the period March, 2006 to November, 2007. In that view of the matter, the respondent having bestowed his serious con side ration over the special pay, held it to constitute basic wage for the purpose of contribution u/s 6 of the Act, which in my opinion cannot be found fault with.

2. It must be pointed out that the petitioner though extended an opportunity of hearing, did not place on record the details of special pay and therefore, the authority did not have any option, but to hold that the special pay does not fall under the exceptions to the definition of the term basic pay u/s 2(b) of the Act.

3. Learned counsel for the petitioner points to paragraphs 3 and 4 of the written argument Annex.K tiled before the Appellate Tribunal, and submits that special pay varies from employee to employee depending upon his qualification experience, roles and responsibilities assigned and other relevant factors, to contend that it is excluded from the definition u/s 2(b) of the Act. A bare perusal of the written arguments at paragraphs 3 and 4 Annexure-K, in my opinion do not disclose as to what constitutes, special pay paid to the employees. That contention stands rejected. Even otherwise, no plea was advanced before the authority in the proceeding u/s 7(A) of the Act to contend that special pay would not fall within the definition of basic pay or for the purpose of contribution u/s 6 of the Act.

4. It is lastly contended that the order Annexure-D, determining the amounts due as difference in remittance of contributions by including special pay to the basic wage, would go beyond the ceiling limit of Rs. 6,500/- and therefore, the determination is perverse, I am afraid, is yet another contention, which cannot be countenanced. I say so, because, in paragraph 3 of the written argument Annexure-K filed by the appellant, it is stated thus:

It may not he out of place to state that the Company is contributing equal amount to the Provident Fund even in case of those employees whose basic salary exceeds Rs. 6,500/- per month.

Even otherwise, petitioner is unable to point out to one given case where, by inclusion of special pay to the basic wage the pay would be in excess of Rs. 6.500/-.

5. The findings in the orders of the authorities under the Act are not shown to be perverse or illegal calling for interference in exercise of writ jurisdiction under

Article 227 of the Constitution of India.

Petition, devoid of merit, is rejected.

