(2013) 06 BOM CK 0168

In the Bombay High Court

Case No : Writ Petition No. 559 of 2008

The Assistant Provident Fund Commissioner	APPELLANT
Vs	
V.M. Salgaoncar and Brother Pvt. Ltd.	RESPONDENT

Date of Decision : 24-06-2013

Acts Referred:

Citation : (2014) 3 ABR 53

Hon'ble Judges : F.M. Reis, J

Bench : Single Bench

Judgement

F.M. Reis, J.—Heard Shri P.P. Singh, learned Counsel appearing for the Petitioner and Shri A.F. Diniz, learned Counsel appearing for the Respondent. The above Petition, inter alia, seeks to quashed and set aside the Order dated 26.11.2007 passed by the Employees Provident Fund Appellate Tribunal, New Delhi.

2. Upon hearing the learned Counsel appearing for the respective parties, the short point for consideration is as to whether the supplementary allowances paid by the Respondent to the employees which is in the nature of grooming allowances, payable to some of the employees of the Respondent concern have to be included as basic wages for determining the contribution payable towards the provident fund?

3. To appreciate the rival contentions with regard to the above point for determination, the undisputed facts of the case are that such supplementary allowances are not paid to the employees of the Respondent. In the background of such undisputed fact, the point for consideration in the present Petition is no longer res integra in view of the Judgment of the Apex Court in the judgment reported in Manipal Academy of Higher Education Vs. Provident Fund Commissioner, where it is observed at Paras 6 and 9 thus:

6. In Bridge and Roof Co. (India) Ltd. Vs. Union of India (UOI), it was inter alia observed as follows:

8. The main question therefore that falls for decision is as to which of these two rival contentions is in consonance with S. 2(b). There is no doubt that "basic wages" as defined therein means all emoluments which are earned by an employee while on duty or on leave with wages in accordance with the terms of the contract of employment and which are paid or payable in cash. If there were no exceptions to this definition, there would have been no difficulty in holding that production bonus whatever be its nature would be included within these terms. The difficulty, however, arises because the definition also provides that certain things will not be included in the term "basic wages", and these are contained in three clauses. The first clause mentions the cash value of any food concession while the third clause mentions that presents made by the employer. The fact that the exceptions contain even presents made by the employer shows that though the definition mentions all emoluments which are earned in accordance with the terms of the contract of employment, care was taken to exclude presents which would ordinarily not be earned in accordance with the terms of the contract of employment. Similarly, though the definition includes "all emoluments" which are paid or payable in cash, the exception excludes the cash value of any food concession, which in any case was not payable in cash. The exceptions therefore do not seem to follow any logical pattern which would be in consonance with the main definition.

9.......It seems that the basis of inclusion in S. 6 and exclusion in Clause (ii) is that whatever is payable in all concerns and is earned by all permanent employees is included for the purpose, of contribution under S. 6, but whatever is not payable by all concerns or may not be earned by all employees of a concern is excluded for the purpose of contribution.

4. The observations of the Apex Court referred to in the said judgment clearly provide that in order that allowances are to be included in the basic wages for the purpose of determining the provident fund contribution, such allowances have to be paid to all the employees of a concern. In the present case, the undisputed facts disclose that such payments are in fact not paid to all employees and, as such, the question of including the payments made towards the supplementary allowances for the purpose of determining the basic wages in terms of Section 2(b) of the Employees'' Provident Fund Act to determine the provident fund contribution, cannot be accepted. The learned Appellate Tribunal has as such rightly noted the means of supplementary allowance and found that such payment was paid by the Respondent concern to some of the employees depending upon their duties and responsibilities assigned to them which are essential for the betterment of the Respondent hotel. As such, no interference is called for in the impugned Order. Consequently, the Petition stands rejected. Rule stands discharged.