

**BEFORE THE HON'BLE PRESIDING OFFICER, CENTRAL
GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT-
II, ROUSE AVENUE, DISTRICT COURT COMPLEX, DELHI.**

Present:

Smt. Pranita Mohanty,
Presiding Officer, C.G.I.T.-Cum-Labour
Court-II, New Delhi.

M/S Shahi Exports Pvt. Ltd.

Appellant

Versus

1-RPFC Noida

Respondent no 1

2-Smt. Ranjana Jha

Respondent no 2

3-Smt. Geeta Bharadwaj

Respondent no 3

ATA NO. D-2/21/2020

ORDER Dated:- 30/4/2021

Present— Shri Mukesh Kumar Saxena, Ld. Counsel for the Appellant

Shri S N Mahanta, Ld. Counsel for Respondent no 1

Shri Abhishek Diwakar, Ld. Counsel for the Respondents No 2
and 3.

The appeal has been preferred u/s 7-I of the EPF and MP Act 1952(herein after referred to as the Act). challenging the order dated 30/9/2020 passed by the RPFC ,Regional Office, Noida directing the appellant to deposit the PF dues amounting to Rs. 5,91,324/- towards the deficit EPF dues payable by the employer in respect two employees namely Smt. Ranjana Jha and Smt. Geeta Bharadwaj.

The stand of the appellant, according to the narrative in the appeal memo in short is that, the Respondent No 2 and 3 were the employees of the appellant establishment, against whom disciplinary action was taken and their services were terminated with effect from 17/10/2001 and 16/1/2001 respectively. The order of termination being challenged by the said terminated employees, the Labour court of Noida, by two separate awards came to hold the order of termination illegal and directed for reinstatement of the workmen with continuity of service with full back wages. The workmen /Respondent moved applications for implementation of the award of the Labour Court invoking the provisions of sec 6H (1) of U.P. Industrial Disputes Act 1947. In the said proceeding before the Asst. Labour Commissioner, the appellant employer paid the amount of back wages towards full and final compliance of the award of the Labour Court and the same was received by respondent No. 3 and 4 without insisting for their reinstatement.

However, the employer/appellant as an abundant caution wrote two separate letters to the Respondent no 2&3 calling them to join as directed by the labour court or to submit their resignation. By filing the office copies of those letters as Annexure D&E along with the postal receipts evidencing dispatch of the same, the appellant has stated that the Respondent No 2&3 did not join their duty and as such the award of the Labour court stood fully complied.

The appellant has further stated that the dispute leading to the impugned order started when the Respondent No 2&3 made a complaint to the Provident Fund Commissioner alleging that the employer did not deduct and deposit the provident fund and pension fund contribution from the back wages paid to them, though the same is mandatory and obligatory on the part of the employer. Notice for 7A inquiry was served on the appellant who participated in the same and submitted its written submission. The plea taken before the PF Commissioner was that the complainants took the money computed towards back wages as per the award of the Labour Court. The said amount was received towards full and final compliance of the award by a mutual agreement arrived between the parties. Hence no amount was payable by the appellant towards PF contribution of the said employees. It was also pleaded during the inquiry that the back wages paid to the employee by the order of the Labour Court cannot be computed towards basic wage for deposit of PF dues. The appellant establishment, in support of the stand taken, placed reliance in the case of **Swastik Textile Engineers Pvt. Ltd vs. Virjibhai Mavjibhai Rathod (2008) 1 GLR670** decided by the Hon'ble High court of Gujarat. In this appeal the appellant has challenged the impugned order on two grounds that is proper opportunity was not granted to the establishment to prove its stand and the money paid as back wages by the order of the court can't be considered as basic wage under the frame work of EPF and MP Act for computation of the Provident Fund dues payable. Moreover the commissioner took a wrong view of the matter ignoring the principle decided in the case of Swastika Engineering by the Hon'ble High court of Gujarat.

The respondent appeared through its counsel and filed written reply supporting the impugned order. The stand taken by the respondent in reply is that the RPFC after considering all the material on record and being fully aware of the different provision of EPF and MP Act and scheme has passed the impugned order. It has further been stated that the appellant has intentionally omitted to deposit the PF dues of Respondent no 2&3 in respect of the back wages paid to them by the order of the Labour Court. In support of the contention reliance has been placed by the respondent no. 1 in the case of **Shree Changdeo Sugar Mills and Another vs. UOI** decide by the Hon'ble SC. The respondent thereby submitted that RPFC has rightly passed

the impugned order directing the establishment to make contribution of PF dues on the back wages paid to Respondent No 2&3. The allegation of the appellant with regard to denial of proper opportunity has also been denied by the respondent.

Ld. Counsel for both the parties advanced detail argument in support of their respective stand.

The Ld. Counsel for the appellant during course of argument submitted that the appellant could not defend itself properly before the commissioner as the proceeding was held in an arbitrary manner. The appellant had filed its written submission on 11/02/20 and the department representative filed his reply on 27/02/20. On that day the matter was adjourned to 26/03/20. But due to COVID lock down the appellant could not appear on that date and the commissioner did not intimate the next date of adjournment till the establishment received an e-mail on 28/08/20 wherein it was directed to file rejoinder by 31/08/20. On that day the appellant filed rejoinder and asked for an adjournment to advance oral argument. The said prayer was not allowed and the commissioner closed the inquiry on that day and final order impugned in this appeal was passed on 30/09/20. With that submission, the learned counsel for the appellant argued that the commissioner without considering the stand taken by the appellant during inquiry and without giving any valid reason, passed the order deciding the liability of the appellant for contribution on the back wages.

Perusal of the impugned order shows that the inquiry on the basis of the complaint of Respondent No 2&3 was held and several adjournments were allowed to the appellant. The commissioner has rightly observed in his order that the appellant had the opportunity of advancing the oral argument on 31/08/20 when its written reply was on record. Instead it prayed for time. Thus the commissioner keeping in view the long time consumed in the proceeding, rightly closed the proceeding. The said action of the commissioner can not be held as denial of opportunity to the appellant to set up a proper defence.

Thus the only question which is left to be answered in this order is 'if the back wages paid to the employee by order of a court or pursuant to an award can be computed as basic wage for the purpose of EPF contribution.

Section 6 of the EPF&MP Act prescribes the components of salary/wage on which EPF contribution is required to be made and the proportion of the deposit by the employer and the employee. According to this provision, contribution is required to be made on the basic wage, dearness allowance and retention allowance. Further Para 29 of the EPF scheme, in the exact line of the law laid u/s 6 of the Act provides for contribution to be made proportionately at the rate of 10% on the basic pay,

dearness allowance which includes cash value of food subsidy paid and retention allowance.

The learned counsel representing the respondent during course of his argument submitted that the establishment is required to make contribution on the entire back wage calculated and paid as the same is the basic pay of the employees. To avoid the liability, the establishment has intentionally described the same as the amount arrived during a settlement before the labour commissioner though it is the amount of back wage calculated during the proceeding held u/s 6H(1) of the U P ID Act 1947. He also relied upon the judgment of the Hon'ble SC in the case of **Shree Changdeo Sugar Mills** referred supra to submit that the said judgment has settled the position of law and the judgment of the Hon'ble High Court of Gujarat cannot be taken as the authority in the given facts of the matter.

The learned counsel for the appellant in reply focused his argument on the judgment of Swastik Textile case and submitted that the back wage paid by order of the labour court is nothing but the amount paid to compensate the loss for the termination of service. More over when the employee took the amount towards full and final settlement of the dues, can not advance a claim for PF contribution on a later date. In this regard the learned counsel for the appellant placed reliance in the case of **State of MP and Ors. Vs. Anees Khan decided by the Hon'ble SC in Civil Appeal No 7391/2014.**

On a careful reading of the judgment of Anees Khan referred supra , the facts of the said case are found completely distinguishable from the facts of the present appeal. In the case of Anees Khan the labour court had passed an ex parte award for reinstatement with back wages. The employer prayed for setting aside of the ex parte Award, but could not succeed. The workman then sought for enforcement of the Award, where prayer for back wage only was made. The claim was contested by the employer on the ground that the workman pursuant to the award never reported for duty. Hence the order was passed for the back wages only and the employer paid the full amount of back wage. The workman thereafter filed the second round of litigation before the labour court claiming re instatement, which ultimately came up before the Hon'ble SC. The Hon'ble SC came to hold that the workman since never reported for duty pursuant to the award and enforced the award with regard to the back wages only, and since the award has attained finality, no further relief is available to the work man. But in this case the claimant employees who are the Respondent NO 2&3 had never abandoned their right for the PF dues. The appellant has not placed on record any document containing the terms of settlement if any entered between the parties before the labour

commissioner during the proceeding held u/s 6H(1) of the UP I D Act 1947.

Though in the written reply of the appellant given to the notice of 7A inquiry, filed as Annexure-G it has been mentioned that the PF deduction was not made as per mutual agreement, the learned counsel representing the respondent No 2&3 took serious objection to the same and denied about any such agreement. The Learned Counsel Shri. A. Diwakar for Respondent no 2&3 further submitted that the employer is under the statutory obligation of deducting the Pf contribution and depositing the same.

Now it is to be examined if the back wage paid pursuant to an award is to be treated as basic wage for computation of the PF dues payable. The Hon'ble High Court of Gujarat in the judgment of **Swastik Textile Engineers** in Para 11 have distinguished between the period 'on duty' and 'period spent on duty' and further held that in absence of a specific order to the effect that the period during which the workman could not work for his termination be treated as duty and order was passed for back wages only, the same can not be construed as period spent on duty, thereby creating the liability on the employer for deduction and deposit of the PF dues. In the said judgment it has been further held that when the court directed for back wages for the period during which the employee was kept away from duty, the back wage ordered is to compensate the damage and the same can not be treated as basic wage for the purpose of PF contribution.

The principle decided in the judgment of **Swastik Textile Engineering** referred supra came up for consideration before the Hon'ble High Court of Delhi in the case of **Oswal Petrochemicals VS Union of India in LPA 667/2012**. The learned counsel for the appellant pointed out that the order passed in LPA can not be accepted as a judicial precedent. While fully agreeing to the said submission, it is felt proper to observe that the Hon'ble High Court of Delhi in the judgment have referred to the judgment of the Hon'ble SC in the case of **Shree Changadeo Sugar Mills** referred supra where, in Para 11 it has been clearly held that

“Undoubtedly contribution towards Provident Fund can only be on basic wage. However it is not at all necessary that the work man must actually be on duty or that the workman should actually have worked in order to attract the provisions of EPF Act.

Therefore on a careful analysis of the matter in the light of the principle decided by the Apex Court in the case of **Chagdeo Sugar Mills**, and the decision of the Hon'ble High Court of Delhi in the case of **Oswal Petrochemicals**, it is held that the amount paid towards back wage, by the award of the

Labour Court is the basic wage on which EPF contribution is payable by the employer and the impugned order of the RPFC is based upon a careful analysis of the fact and law and does not suffer from any infirmity or patent illegality entailing interference.

The last leg of the submission of the learned counsel for the appellant is with regard to the liability to be created on the employer for both employer's share as well as the employees' share when the later was not deducted from the back wage paid as per mutual agreement. At the cost of repetition it is stated that no document except the pleading of the appellant containing the terms of mutual agreement has been placed on record to accept that the Respondent No 2&3 had foregone their right for PF Contribution. Hence this Tribunal is unable to accept that submission since the employer is under the statutory obligation of making the contribution which cannot be defied by mutual agreement.

In view of the foregoing discussion it is held that the impugned order does not suffer from any illegality and the appeal has no merit. Hence, ordered.

ORDER

The appeal be and the same is dismissed on merit and the impugned order is hereby confirmed. Consign the record as per Rules.

Sd/-
Presiding Officer