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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: 10th October, 2023*

+ **LPA 712/2012, CM APPL. 18237/2012 & CM APPL. 18238/2012**

REGIONAL PROVIDENT FUND COMMISSIONER

..... Appellant

Through: Mr. Rajesh Kumar (SC EPFO),
Ms. Ramneet Kuar, Mr. Shivam
Singh, & Ms. Mishika Pandita,
Advocates.

versus

GROUP 4 SECURITY GUARDING LTD

..... Respondent

Through: Mr. Amitabh Chaturvedi, Mr.
Ankit Monga, Mr. Prakriti
Jalan, Adv.

+ **LPA 713/2012, CM APPL. 18240/2012 & CM APPL. 18241/2012**

REGIONAL PROVIDENT FUND COMMISSIONER

..... Appellant

Through: Ms. Inderjeet Sidhu, Adv.

versus

WHIRLPOOL OF INDIA LTD

..... Respondent

Through: **None.**

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE AMIT MAHAJAN

VIBHU BAKHRU, J.



1. The appellant has filed the present intra-court appeals impugning an order dated 20.09.2011 (hereafter '**the impugned order**'), passed by the learned Single Judge, whereby the respective petitions filed by the respondents were disposed of.

2. The principal controversy involved in these appeals is whether Section 6 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereafter '**EPF Act**') casts an obligation on the employer to contribute to the provident fund in respect of wages and allowances other than the basic wages payable to the employees. According to the appellant, the respondents are liable to contribute to the provident fund not only on the basis of basic wages, but also taking into account minimum wages, dress allowance, and conveyance allowance.

3. The learned Single Judge had noted the definition of basic wages under Section 2(b) of the EPF Act, and had observed that the definition of the term "basic wages" did not include dearness allowance, house rent allowance, overtime allowance, bonus, commission or similar allowances payable to the employees. The Court, thus, concluded that the decision of the learned Tribunal for including any of the aforesaid allowances for calculating the contribution to the Fund was based on an incorrect interpretation of the provisions of law. The learned Single Judge had also noted that a similar question had arisen in the case of the respondent, G4S Security Services (India) Ltd., before the Punjab and Haryana High Court, in *Asstt. Provident Fund Commissioner, Gurgaon v. M/s. G4S Security*



Services (India) Ltd. and Another: 2011 LLR 316, whereby the Court held that the respondent [G4S Security Services (India) Ltd.] had rightly excluded certain allowances such as house rent allowance, washing allowance and conveyance allowance while determining their liability for contribution to the provident fund. The appellant's appeal (LPA No. 1139/2011) against the said decision was dismissed by the Division Bench of the Punjab and Haryana High Court by order dated 20.07.2011.

4. It is material to note that the present appeals were not filed within the time as stipulated, but the same were filed after a delay of 357 days. The appellant has filed accompanying applications seeking condonation of delay. The reason set out in the said applications are similar and read as under:

“2. That the applicant/appellant did not file the instant appeal within time because of the guidance given by the counsel as the Special Leave Petition between the same parties involving similar issues is pending before Hon'ble Supreme Court. The said SLP bearing No. 32744/11 titled as “Assistant Provident Fund Commissioner, Gurgaon Versus M/s. G-4s Security Services (India) Ltd. & Another” against the Division Bench judgment dated 20.07.2011 in LPA No. 1139/2011 passed by Hon'ble Punjab and Haryana High Court is pending. That notice has been issued in the said SLP and next date of hearing fixed for 21.09.2012. That petitioner was under false impression due to the guidance given by the counsel that the decision in the above stated pending SLP would be applicable in the present case also and hence instant appeal was not filed within time.”

5. It is apparent from the above that it is the appellants case that



the issue involved in the present appeals is identical to the issue involved in the **Special Leave Petition bearing No.32744/2011** captioned ***Assistant Provident Fund Commissioner Gurgaon v. M/s. G4S Security Services (India) Ltd. & Another*** which was filed against the judgment dated 20.07.2011, passed by the Division Bench of Punjab and Haryana High Court in LPA No. 1139/2011.

6. These appeals were listed for the first time on 19.10.2012, and on a number of dates thereafter. However, these were not pressed by the appellant on the ground that the issue raised in the present appeals was pending before the Hon'ble Supreme Court in SLP No.32744/2011. Thus, this Court had deferred the present matter awaiting the decision of the Hon'ble Supreme Court in the said appeal.

7. The Hon'ble Supreme Court has since dismissed the Civil Appeal, being Civil Appeal No. 9284/2013, arising out of SLP No. 32744/2011 by an order dated 17.08.2023 and has upheld the decision of the Punjab and Haryana High Court in ***Asstt. Provident Fund Commissioner Gurgaon v. M/s. G4S Security Services (India) Ltd. & Another (supra)*** (which as stated above was affirmed by the Division Bench of Punjab and Haryana High Court in LPA No.1139/2011).

8. The Supreme Court considered the term 'basic wages' as defined under Section 2(b) of the EPF Act and held as under:

“4. In our opinion, once the EPF Act contains a specific provision defining the words 'basic wage' (under Section 2b), then there was no occasion for the appellant to expect the Court to have travelled to the Minimum Wages Act, 1948, to give it a different



connotation or an expansive one, as sought to be urged. Clearly, that was not the intention of the legislature.”

9. The learned counsel appearing for the appellant now states that there is another question, which requires consideration in these appeals. This question relates to the applicability of Section 12 of the EPF Act, which has not been considered by the Hon’ble Supreme Court. He earnestly contended that the decision of the Hon’ble Supreme Court in Civil Appeal No.9284/2013 is *per incuriam* as it overlooks the provisions of Section 12 of the EPF Act.

10. Concededly, the question regarding applicability of Section 12 was not considered by the Employees Provident Fund Appellate Tribunal in the orders from which these appeals arise [Case No. ATA/16/(6)/99 captioned *M/s. Whirlpool of India Limited, Faridabad v. Regional Provident Fund Commissioner Faridabad & Anr.* and Case No. ATA/16/(11)/99 captioned *M/s. Group 4 Securities Guarding Ltd, Faridabad v. Regional Provident Fund Commissioner, Faridabad*] and there is no mention of the said provision in the order dated 01.05.2000 passed by the Tribunal. This issue was also not the subject matter of controversy before the Learned Single Judge. This question also does not find any mention in the order dated 31.05.1999 passed by the Assessing Authority under Section 7A of the EPF Act. Thus, we are unable to accept that the said question would arise in these appeals.

11. Further, we are of the view that the appellant cannot be permitted to contend that the present appeals involves issues other



than those involved before the Supreme Court in in Civil Appeal No.9284/2013. As noted above, the only reason as stated in the application seeking condonation of delay is that the matter involving the same issue, is pending before the Hon'ble Supreme Court and therefore, the appellant had not filed the present appeals. That issue has since been decided.

12. We are unable to accept that the order passed by the Supreme Court in Civil Appeal No.9284/2013 is *per incuriam*. The said order is binding on this Court and covers the issue involved in this appeals.

13. In view of the above, the present appeals are dismissed.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

OCTOBER 10, 2023

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