



**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM**

Present: Shri.V.Vijaya Kumar, B.Sc., LLM, Presiding Officer.

(Wednesday the, 27th day of April 2022)

APPEAL No. 329/2018

Appellant : M/s. St. George Associates
Kolenchery,
Kochi – 682 311

By M/s.Bechu Kurian & Co

Respondent : The Assistant PF Commissioner
EPFO, Sub Regional Office,
Kaloor,
Kochi – 682 017

By Adv. Sajeev Kumar K Gopal

This case coming up for final hearing on 16.02.2022 and this Tribunal-cum-Labour Court on 27.04.2022 passed the following:

ORDER

Present Appeal is filed from order No. KR/KCH/1519472/E-Court/205/2018/COC KRK/146/2018/7572 dated 14.08.2018 assessing dues under Section 7A of EPF and MP Act 1952 (hereinafter referred to as 'the Act') on evaded wages for the

period from 08/2017 – 02/2018. The total damages assessed is Rs. 5,53,531/- (Rupees only)

2. The appellant establishment is covered under the provisions of the Act. The appellant is regular in compliance. Amount of contribution is calculated on basic wages and Dearness Allowance as per Para 29 (3) of EPF scheme. As per Sec 6 of the Act the contribution is paid on basic wages, DA and retaining allowance. As per 2(b) of the Act, basic wages does not include cash value of any food concession, any DA, H.R.A., O.T allowance, bonus, commission or any other similar allowance payable to the employees. An Enforcement Officer under the respondent inspected the appellant establishment and issued the inspection report dated 03.04.2018. A true copy of the report is produced and marked as Annexure A1. The respondent authority initiated an enquiry under Sec 7A of the Act vide notice dated 15.05.2018, a copy of which is produced and marked as Annexure A2. The appellant also produced balance sheet and other related documents before the respondent. The appellant also send a reply dated 01.08.2018 disputing the claim. True copy of the reply send by the appellant is produced and marked

as Annexure A3. Ignoring the contentions, the respondent authority issued the impugned order, a copy of which is produced and marked as Annexure A4. The special allowances paid to the employees are excluded from the definition of basic wages.

3. The respondent filed counter denying the above allegations. The appellant establishment is covered under the provisions of the Act w.e.f 11.07.2016. An Enforcement Officer who conducted the inspection of the appellant establishment in his report dated 08.03.2018 submitted that there is evasion of wages on account of special pay in respect of contract employees. The Enforcement Officer issued a copy of the report to the appellant. Since there was no compliance, the respondent authority initiated an enquiry under Sec 7A of the Act. A representative of the appellant attended the hearing and filed a written statement. After considering the submissions, the respondent issued the impugned order. Sec 2(b)(ii) and Sec 6 of the Act makes it abundantly clear that the appellant establishment is liable to remit contributions on all the emoluments paid to its employees excluding those allowances

provided under Sec 2(b)(ii) of the Act. The Hon'ble Supreme Court of India in ***Rajasthan Prem Kishan Goods Transport Company Vs RPFC***, 1996 (9) SCC 454, held that it is upto the Commissioner to lift the veil and read between the lines to find out the wage structure fixed by the employer to its employees and to decide the question whether the splitting of the wage has been made only as a subterfuge to avoid contribution to the provident fund.

4. An Enforcement Officer of the respondent inspected the establishment and reported that the appellant failed to remit contribution on full wages paid to its contract employees. A copy of the report was also provided to the appellant. Since there was no compliance, the respondent initiated an enquiry under Sec 7A of the Act. A representative of the appellant attended the hearing and filed a written statement stating that as per Sec 6 of the Act and Para 29 of EPF Scheme, they are liable to remit contribution only on basic, DA and retaining allowance. After considering the submissions, the respondent authority issued the impugned order.

5. In this appeal, the learned Counsel for the appellant reiterated its stand taken before the respondent authority that they are not liable to pay contribution on the special pay being paid to the contract employees. The learned Counsel for the respondent argued that the special pay being paid to the contract employees is not shown to be an incentive for production and therefore the appellant is liable to remit contribution on the same.

Sec 2 (b) of the Act defines the basic wages and Sec 6 of the Act provides for the contribution to be paid under the Schemes:

Section 2(b) : “Basic wages” means all emoluments which are earned by an employee while on duty or (on leave or holidays with wages in either case) in accordance with the terms of contract of employment and which are paid or payable in cash to him, but does not include :

1. Cash value of any food concession.
2. Any Dearness Allowance (that is to say, all cash payments by whatever name called paid to an employee on account of a rise in the cost of living) HRA, overtime allowance, bonus,

commission or any other similar allowances payable to the employee in respect of his employment or of work done in such employment.

3. Any present made by the employer.

Section 6: Contributions and matters which may be provided for in Schemes. The contribution which shall be paid by the employer to the funds shall be 10% of the basic wages, Dearness Allowance and retaining allowances if any, for the time being payable to each of the employee whether employed by him directly or by or through a contractor and the employees contribution shall be equal to the contribution payable by the employer in respect of him and may, if any employee so desires, be an amount exceeding 10% of his basic wages, Dearness Allowance, and retaining allowance if any, subject to the condition that the employer shall not be under an obligation to pay any contribution over and above his contribution payable under the Section.

Provided that in its application to any establishment or class of establishment which the Central Government,

after making such enquiry as it deems fit, may, by notification in the official gazette specified, this Section shall be subject to the modification that for the words 10%, at both the places where they occur, the word 12% shall be substituted. Provided further that there were the amount of any contribution payable under this Act involves a fraction of a rupee, the Scheme may provide for rounding of such fraction to the nearest rupee half of a rupee , or quarter of a rupee.

Explanation 1 – For the purpose of this section dearness allowance shall be deemed to include also the cash value of any food concession allowed to the employee.

6. It can be seen that some of the allowances such as DA, excluded U/s 2b (ii) of the Act are included in Sec 6 of the Act. The confusion created by the above two Sections was a subject matter of litigation before various High Courts in the country. The Hon'ble Supreme Court of India in **Bridge & Roof Company Ltd Vs Union of India**, 1963 (3) SCR 978 considered the conflicting provisions in detail and finally evolved the tests to decide

which are the components of wages which will form part of basic wages. According to the Hon'ble Supreme Court of India,

- (a) Where the wage is universally, necessarily and ordinarily paid to all across the board such emoluments are basic wages.
- (b) Where the payment is available to be specially paid to those who avail of the opportunity is not basic wages.

The Hon'ble Supreme Court of India ratified the above position in ***Manipal Academy of Higher Education Vs PF Commission***, 2008(5)SCC 428. The above tests were again reiterated by the Hon'ble Supreme Court in ***Kichha Sugar Company Limited Vs. Tarai Chini Mill Majzoor Union*** 2014 (4) SCC 37. The Hon'ble Supreme Court of India examined all the above cases in ***RPFC Vs Vivekananda Vidya Mandir and Others***, 2019 KHC 6257. In this case the Hon'ble Supreme Court considered whether travelling allowance, canteen allowance, lunch incentive, special allowance, washing allowance,

management allowance etc. will form part of basic wages attracting PF deduction. After examining all the earlier decisions and also the facts of these cases the Hon'ble Supreme Court held that "the wage structure and the components of salary have been examined on facts, both by the authority and the Appellate authority under the Act, who have arrived at a factual conclusion that the allowances in question were essentially a part of the basic wages camouflage as part of an allowance so as to avoid deduction and contribution accordingly to the provident fund account of the employees. There is no occasion for us to interfere with the concurrent conclusion of the facts. The appeals by the establishments therefore merit no interference." The Hon'ble High Court of Kerala in a recent decision rendered on 15/10/2020 in the case of **EPF Organization Vs MS Raven Beck Solutions (India) Ltd**, WPC No. 1750/2016, examined Sec 2(b) and 6 of the Act and also the decisions of the Hon'ble Supreme Court to conclude that

“this makes it clear that uniform allowance, washing allowance, food allowance and travelling allowance, forms an integral part of basic wages and as such the amount paid by way of these allowance to the employees by the respondent establishment were liable to be included in basic wages for the purpose of assessment and deduction towards contribution to the provident fund. Splitting of the pay of its employees by the respondent establishment by classifying it as payable for uniform allowance, washing allowance, food allowance and travelling allowance certainly amounts to subterfuge intended to avoid payment of provident fund contribution by the respondent establishment”.

The Hon'ble High Court of Madras in ***Universal Aviation Service Private Limited Vs Presiding Officer EPF Appellate Tribunal***, 2022 LLR 221 again examined this issue in a recent decision. The Hon'ble High Court of Madras observed that it is imperative to demonstrate that

the allowances paid to the employees are either variable or linked to any incentive for production resulting in greater output by the employee. It was also found that when the amount is paid, being the basic wages, it requires to be established that the workmen concerned has become eligible to get extra amount beyond the normal work which he is otherwise required to put. The Hon'ble High Court held that

“Para 9: The predominant ground raised by the petitioner before this Court is that other allowances and washing allowance will not attract contributions. In view of the aforesaid discussions and law laid down by the Hon'ble Supreme Court in ***Vivekananda Vidya Mandir case (supra)***, the petitioner claim cannot justified or sustained since “other allowance” and washing allowance have been brought under the purview of Sec 2 (b) read with Sec 6 of the Act”.

7. In this case, the allowances paid are special pay being paid by the appellant to its employees. Applying the tests laid down by the Hon'ble Supreme Court in ***RPFC Vs Vivekananda Vidya Mandir and Others***, 2020 17 SCC 643 and also in ***Gobin (India) Engineering Pvt. Ltd. Vs Presiding Officer, CGIT & Labour Court and Another***, W.P.(C)No. 8057/2022, both the above allowances which is uniformly and ordinarily paid to all employees and are not linked to any incentive for production or being paid especially to those who avail the opportunity, will form part of Basic wages and therefore will attract Provident Fund deduction.

8. In this case, the dispute is with regard to the special pay being paid to the contract employees by the appellant. The appellant has no case that the special pay is being paid to its contract employees' link to any incentive for production resulting in greater output by an employee. In order that the amount goes beyond the basic wages, it has to be shown that the workman concerned has become eligible to get this extra amount beyond the normal work which he was otherwise required to put in. The appellant has no such claim. Hence it is clear that the special

pay being paid to the contract workers by the appellant will form part of basic wages and therefore will attract provident fund deduction.

7. Considering the facts, circumstances and pleadings, I am not inclined to interfere with the impugned order.

Hence the appeal is dismissed

Sd/-
(V.Vijaya Kumar)
Presiding Officer