



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

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

(Tuesday the, 12th day of April 2022)

APPEAL No. 468/2018

(Old No. ATA. 641(7)2014)

Appellant : M/s. Oberon Food Circles
Level 4, Oberon Mall, N H Bypass
Edappally, Kochi – 682 024

By M/s. Menon & Pai

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

This case coming up for final hearing on 16.12.2021 and this Tribunal-cum-Labour Court on 12.04.2022 passed the following:

ORDER

Present Appeal is filed from order No. KR/KC/27184/Enf. III(4)/2014/1642 dated 22.05.201 assessing dues under Section 7A of EPF and MP Act 1952 (hereinafter referred to as 'the Act') on evaded wages for the period from 04/2010 – 01/2013. The total dues assessed is Rs.4,17,862/- (Rupees Four lakh seventeen thousand eight hundred and sixty two only)

2. Appellant is a partnership firm registered under the Partnership Act and covered under the provisions of the Act. The service conditions of the employees are fixed on the basis of office orders. The salary of the employees in the establishment consists of Basic pay, Dearness Allowance, House Rent Allowance and City Compensatory Allowance. An Enforcement Officer conducted an inspection during 08.10.2012. On the basis of the report of the Enforcement Officer, the respondent authority initiated an enquiry under Sec 7A of the Act. In the hearing on 20.02.2014, the appellant explained the salary structure. The appellant also explained that House Rent Allowance and City Compensatory Allowance cannot form part of basic wages. Without adverting to any of the contentions raised by the appellant, the respondent issued the impugned order, a copy of which is produced and marked as Annexure A1. House Rent Allowance and City Compensatory Allowance will not attract provident fund deduction. The respondent ought to have appreciated the fact that the appellant was paying contribution on 75% of the gross salary excluding House Rent Allowance and City Compensatory Allowance. House Rent Allowance is an excluded allowance

under Sec 2(b) of the Act. Sec 2(b) and sec 6 of the Act and Para 29 of EPF Scheme clearly establish the fact that the appellant is liable to remit contribution only on basic and Dearness Allowance.

3. The respondent filed counter denying the above allegations. The appellant establishment is covered under the provisions of the Act. An Enforcement Officer inspected the appellant establishment on 08.10.2012 and reported that the appellant establishment is splitting up the wages into allowances to evade remittance of contribution. Hence the respondent initiated an enquiry under Sec 7A of the Act. A representative of the appellant attended the hearing and produced wage register, attendance register and ledger. On verification of the salary register it is seen that 60% of the Gross salary is shown as Basic, 15% as City Compensatory Allowance, 10% as House Rent Allowance and 15% as Dearness Allowance. The allowances are not related to basic. After perusing the records and hearing the representative of the appellant, the respondent concluded that the appellant establishment is liable to remit contribution on City Compensatory Allowance along with basic and Dearness

Allowance. On conclusion of the enquiry, the respondent authority issued the impugned order. As per the impugned order, all allowances excluding House Rent Allowance will form part of basic wages as defined under Sec 2(b) of the Act and the assessment is made subject to the statutory limit of Rs. 6500/-.

In ***Gujarat Cypromet Ltd Vs Assistant Provident Fund Commission***, 2004 (103) FLR 908, the Hon'ble High Court of Gujarat held that the term basic wages as defined under Sec 2(b) of the Act includes all emoluments received by the employees. The Hon'ble High Court also held that the employers are liable to remit contributions on various allowances such as medical allowance, conveyance allowance, lunch allowance etc. which are universally paid to all employees.

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”.

4. In this particular case, the learned Counsel for the respondent pointed out that House Rent Allowance, being an excluded allowance, is not included in the assessment of contribution. The only allowance that is left to be considered is that of city compensatory allowance. The appellant has no case that the City Compensatory Allowance being paid to all its employees at the rate of 15% uniformly were linked to any incentive for production resulting in greater output by an employee. It was also not shown that the employees concerned had become eligible to get the allowance as an extra amount beyond the normal work which he was otherwise required to put in. Further it is an admitted fact that the allowance is being paid at uniform rate of 15% to all the employees of the appellant establishment. Hence the City Compensatory Allowance being paid by the appellant establishment to its employees answers the text laid down by the Hon'ble Supreme Court in **Regional Provident Fund Commissioner, West Bengal Vs Vivekananda Vidhya Mandir and Others (supra)** and also the Hon'ble High

Court of Kerala in **Gobin (India) Engineering Pvt. Ltd. Vs Presiding Officer, CGIT cum Labour Court** WP(C) No. 8057/2022.

5. Considering the facts, circumstances, pleadings and evidences in this appeal, I am not inclined to interfere with the impugned order.

Hence the appeal is dismissed.

Sd/-
(V.Vijaya Kumar)
Presiding Officer