सत्यमेव जयते

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

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

(Wednesday the, 30th day of March 2022)

APPEAL No. 766/2019

(Old No. ATA.932(7)2012)

Appellant : M/s.Seemas Wedding Collections,
Irumpupalam,
Alappuzha
Kerala – 688011.

ByAdv.C.B.Mukundan

Respondent : The AssistantPF Commissioner
EPFO, Sub Regional Office,
Bhavishya Nidhi Bhavan
Kaloor, Kochi – 682 017

By Adv. Sajeevkumar K Gopal

This case coming up for final hearing on 30.09.2021 and this Tribunal-cum-Labour Court on 30.03.2022 passed the following:

ORDER

Present Appeal is filed from order No. KR/KC/27324/Enf-II(5)/2011/8994 dated 27.09.2012 assessing dues under Sec 7A of EPF and MP Act (hereinafter referred to as 'the Act')on regular dues of non-enrolled employees and on evaded wages for the period from

02/2011 – 03/2012. Total dues assessed is Rs. 2,46,632 (Rupees Two lakh forty six thousand six hundred and thirty two only)

2. The appellant is a partnership firm and is covered under the provisions of the Act. The appellant is engaged in trading of textile items. The appellant is regular in compliance. An Enforcement Officer of the respondent organisation inspected the records of the appellant establishment on 19.04.2012. On the basis of the report of the Enforcement Officer, the respondent authority initiated an enquiry under Sec 7A of the Act. The appellant establishment is paying washing allowance to its employees since they are required to wear uniforms during duty hours. It is only a reimbursement of expenses incurred by the employees towards washing and ironing of their uniforms. The respondent also raised a dispute regarding non-enrolment of employees. The establishments like appellant,normally takes some employees as trainees before they are regularised. Many of them may not be regularised. The respondent did not furnish a copy of the inspection report on the basis of which the enquiry under Sec 7A was initiated. Without considering the pleadings of the appellant, the respondent issued the impugned order, a copy of which is produced and marked as AnnexureA1. As per Sec 6 of the

Act, the appellant is required to pay contribution only on basic, DA and retaining allowance. It is a settled legal position that the DA element need not be shown separately in the wages register. The respondent has wrongly taken a view that according to Sec 2(b) of the Act, basic wages is defined to include all emoluments except those that are specifically excluded. Washing allowance paid to the employees is not as per any terms of implied or express contract. It is a settled legal position that the definition of basic wages under Sec 2(b) excludes certain allowances which cannot be taken as 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. 12.08.2010. The Enforcement Officer of the respondent organisation visited the appellant establishment on 19.04.2012 and reported that the appellant failed to remit regular contribution for the month of March 2012. The wages are split into Basic and DA, HRA and TA and Washing allowance. Washing allowance is nearly 23% of Basic and DA and is being paid to all employees. The appellant establishment failed to enrol 7 employees for the period from 12/2011 – 03/2012. The respondent authority initiated an enquiry under Sec 7A. There was no dispute regarding

the dues payable for the month of March 2012. The appellant disputed its liability to pay contribution on various allowances. The appellant also pointed out that the 7 non-enrolled employees are trainees and therefore they are not eligible to be enrolled to the fund. After considering the submissions made by the appellant and considering the wages registers, the respondent authority issued the impugned Annexure A1 order.

4. In this appeal, the learned Counsel for the appellant did not dispute its liability to remit the regular contribution for March 2012. However he disputed its liability to pay contribution on allowances and also contribution on 7 non-enrolled employees. According to the learned Counsel for the appellant, the impugned order quantified the dues on washing allowance paid to its employees. According to him, the employees are required to wear uniforms and therefore washing allowances is given to these employees as a reimbursement to defray the expenses incurred by the employees. According to the learned Counsel for the respondent, the appellant is paying 23% of the Basic and DA as Washing allowance universally apart from HRA and Travelling allowance. The appellant is remitting contribution only on Basic and DA. He also pointed out that no separate amount is being paid

by the appellant as DA to its 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 :
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> 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.
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> ***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".

In this case, the allowances paid are uniform allowance and special equipment allowance being paid to the employees by the appellant. According to the learned Counsel for the appellant, uniform allowance is being paid to all security guards for maintaining their uniform. Special equipment allowance is given to guards as a special allowance for working on weekly off days and national holidays. Though the nomenclature is misleading, this allowance is also being paid to all security guards deployed by the appellant establishment to BSNL. Hence 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, washing allowance 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.

5. In this case, though the appellant is paying Basic and DA, HRA, Travelling allowance and Washing allowance to its employees, the respondent authority decided to quantify the dues only in respect of the Washing allowance being paid by the

appellant to its employees. Washing allowance is paid @ 23% of Basic and DA. It is very clear that Washing allowance being paid to its employees were not linked to any incentive for production resulting in a greater output by an employee or being paid especially to those who avail the opportunity. As already pointed out, in order to treat an allowance beyond the Basic wages it has to be shown that the workman concerned had become eligible to get this extra amount beyond the normal work which he was otherwise required to put in. The appellant has no case that the washing allowance paid to the employees are for getting any extra work done by the employees. Therefore washing allowance being paid to the employees universally an uniformly will form part of Basic wages and therefore will attract Provident Fund deduction.

6. The next issue involved in this appeal is with regard to the enrolment of 7 eligible employees for the period from 12/2011 to 03/2012. According to the learned Counsel for the appellant, these 7 employees were engaged as trainees before absorption as regular employees. The definition of employee as per Sec 2(f) includes any person who is employed for wages in or in connection with the work of an establishment and who gets his wages directly or indirectly from the employer and includes any person employed

by or through a contractor or engaged as an apprentice not being an apprentice engaged in the Apprentices Act 1961 or under the Standing Orders of the establishment. It is very clear from the above definition that Apprentices/Trainees engaged by establishments will come within the definition of employee with a specific exclusion of apprentices engaged under the Apprentice Act or trainees under the standing orders of the appellant establishment. The appellant has no case that the trainees are engaged either under the Apprentice Act, 1961 or under the standing orders of the appellant establishment. Considering the legal position as above, the trainees are required to be enrolled to the fund and the assessment of dues in respect of trainees are also upheld.

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

Hence the appeal is dismissed

Sd/-
(V.Vijaya Kumar)
Presiding Officer