



सत्यमेव जयते

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

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

(Wednesday the 30<sup>th</sup> day of March, 2022)

**APPEAL No.231/2019**

(Old no.431(7)2015)

Appellant : M/s.Warrier's Hospital &  
Panchakarma Centre  
Nellad P.O.  
Muvattupuzha  
Ernakulam – 686669

By Adv.K. K. Premalal

Respondent : The Regional PF Commissioner  
EPFO, Regional Office, Kaloor  
Kochi - 682017

This case coming up for final hearing on 31.08.2021 and this Industrial  
Tribunal-cum-Labour Court on 30.03.2022 passed the following:

**ORDER**

Present appeal is filed against order no.KR/KC/21781/ENF-  
III(2)/2015/110 dt.07.04.2015 assessing dues U/s 7A of of EPF & MP Act, 1952  
(hereinafter referred to as 'the Act') on evaded wages for the period from  
04/2011 to 03/2013. The total dues assessed is Rs.6,11,785/-.

2. The appellant establishment is engaged in the manufacturing of ayurvedic medicine and is covered under the provisions of the Act. An Enforcement Officer visited the establishment on 03.04.2013, verified the wages records as well as the balance sheet. According to the Enforcement Officer, the appellant is liable to pay contribution on all components of remuneration paid to the employees. An inspection report dt.03.04.2013 was issued to the appellant. A copy of the same is produced and marked as **Annexure 1**. The appellant received a summons dt.31.07.2013 from the respondent. The appellant appeared and filed a detailed written statement explaining the true facts. A copy of the written statement dt.10.11.2014 is produced and marked as **Annexure 2**. The wage structure of the appellant upto 31.08.2012 consisted of basic wages, house rent allowance, medical allowance, travelling allowance and educational allowance. The appellant remitted contribution only on basic wages and DA. The basic wages was revised taking into considering the variation of cost of living by providing increments every year. Hence DA was not separately paid to the employees. The salary structure of the employees was revised in consultation with the representative of the employees and a simplified wage structure was introduced from September 2012. The wage structure from September 2012 is basic wages, DA, house rent allowance and washing allowance. The house

rent allowance and washing allowance are put together in one column having a heading 'other allowances'. The respondent authority without considering the above contentions, issued the impugned order, a copy of which is produced and marked as **Annexure 3**. The decision of the respondent authority is not based on the contentions and evidence adduced during the enquiry. The house rent allowance, medical allowance, travelling allowance, education allowance and washing allowance are being paid to meet the special expenditure incurred by the employees under the heads and not for the work done. These allowances squarely fall under the category of 'other similar allowances' payable to the employees in Sec 2(b)(ii) of EPF & MP Act. The percentage of house rent allowance has no relevance. The only question is whether the amount paid under the head 'house rent allowance' is more than the prevailing rates of rent in the locality. The term 'in accordance with the terms of contract of employment' used in the definition of wages U/s 2(b) of the Act is quite relevant as the wage structure as per the contract of employment has to be reckoned for the purpose of contribution. The respondent authority is not competent to alter or modify the pay structure that has been accepted by the employees.

3. The respondent filed counter denying the above allegations. The appellant establishment was brought under the purview of the Act w.e.f.

01.04.2006. The Enforcement Officer who conducted the inspection of the appellant establishment reported underreporting of wages as the wages paid to the employees are divided into basic, DA and other allowances. Provident fund dues were being remitted only on basic and DA and other allowances were not considered for provident fund deduction. An enquiry U/s 7A was initiated vide notice dt.31.07.2013 fixing an enquiry on 18.09.2013. In the enquiry, a copy of the report of the Enforcement Officer was provided to the representative of the appellant. On the request of the appellant, the enquiry was adjourned to various dates. Finally on 10.11.2014 the appellant filed the Annexure 2 written statement. According to the appellant, upto 31.08.2012 the wage structure of the appellant consisted of basic wages, house rent allowance, medical allowance, travelling allowance and educational allowance. Contribution was restricted to basic wages only. On the basis of the settlement between the appellant and the employees, the wage structure was changed to basic, DA, house rent allowance and washing allowance. However in the wage register, washing allowance and house rent allowance are put together as 'other allowances'. After taking into account all the submissions the respondent authority came to the conclusion that various allowances classified by the appellant are nothing but basic wages as defined U/s 2(b) of the Act and the appellant is liable to remit contribution on all

allowances, subject to the statutory limit of Rs.6500/-. The quantification of dues was done on the basis of the records produced by the appellant and the report of the Enforcement Officer dt.09.05.2013. 'Other allowances' which the appellant has claimed to be house rent allowance vide letter dt.20.01.2014 comprises about 50% of the basic wages. The appellant was remitting contribution only on a portion of wages without including DA and other allowances paid to the employees. A combined reading of Sec 2(b) and Sec 6 of the Act would clearly establish the fact that the appellant establishment is liable to remit contribution on all emoluments except those which are specifically excluded U/s 2(b)(2) of the Act. The Hon'ble High Court of Gujarat in **Gujarat Cypromet Ltd Vs APFC, 2004 (103) FLR 908** held that the term basic wages as defined U/s 2(b) of the Act includes all emoluments received by the employees under the headings of medical allowance, conveyance allowance and lunch allowance and these allowances are to be considered for the purpose of calculating the provident fund contribution. The term emoluments envisaged under the U/s 2(b) of the Act subsumes in its ambit all emoluments which are earned by an employee while on duty or on leave or on holidays with wages in accordance with the terms of contract of employment and which are payable in cash to him other than those specifically excluded at (i) to (iii) to Sec 2(b). The wage register produced by the appellant

sufficiently indicates that house rent allowance and other emoluments are paid to all employees of the establishment. The Division Bench of the Hon'ble High Court of Calcutta in **RPFC Vs Vivekananda Vidya Mandir and others** held that in order to exclude any allowances from the purview of Sec 6, such allowances should fall under Clauses (i), (ii), (iii) of Sec 2(b) which enumerate allowances which are not included in the definition of basic wages. The Division Bench of the Hon'ble High Court of Karnataka in **Group 4 Securities Guarding Ltd Vs RPFC and others**, held that the Commissioner U/s 7A of the Act can examine whether splitting of the pay by employer to its employees is a subterfuge intended to avoid payment of its contribution to provident fund. The Hon'ble Supreme Court of India in **Rajasthan Prem Kishan Goods Transport Co Vs RPFC**, 1996 (9) SCC 454 held that the Commissioner can lift the veil and read between the lines to find out the pay structure fixed by the employer to its employees and to decide the question whether the splitting up of pay has been made only as a subterfuge to avoid contribution to provident fund.

4. The appellant filed rejoinder denying the contentions in the written statement filed by the respondent. It is stated that the maximum percentage of allowances after September 2012 was only 25% of the gross salary. It was also stated that other allowances are not paid to all employees in the

appellant establishment. He also pleaded that as per the prevailing instructions issued by the respondent organisation, the cases where the percentage of basic wages falls below 50% of the total earning only is required to be investigated by the respondent authority. The learned Counsel for the appellant also produced two additional documents. The 1<sup>st</sup> document shows the salary statement for the month of August 2011 and the 2<sup>nd</sup> document shows the salary statement for the month of September 2012.

5. An Enforcement Officer who conducted the inspection of the appellant establishment noticed that the appellant establishment is not paying contribution on the allowances paid by them to the employees. He accordingly suggested an enquiry U/s 7A of the Act by the respondent authority on the basis of the report filed by him after verifying the records of the appellant establishment. The respondent authority initiated an enquiry U/s 7A of the Act. In the 7A enquiry, the appellant took a stand that for the period upto 31.08.2012, the wage structure consisted of basic wages, house rent allowance, medical allowance, travelling allowance and education allowance and contribution was paid only on basic wages. According to the appellant from September onwards the wage structure was changed and the present structure includes basic wages, DA, house rent allowance and washing allowance. However for the sake of convenience house rent allowance and

washing allowance are grouped together as 'other allowances'. The appellant is paying provident fund contribution on basic wages and DA as stipulated under Para 29 of EPF Scheme. The respondent authority after hearing the appellant and also perusing the records produced by the appellant and the report of the Enforcement Officer came to the conclusion that the appellant is paying all allowances uniformly to all employees and therefore they are liable to remit contribution on all allowances and issued the impugned order.

6. The learned Counsel for the appellant argued that the pay structure is fixed by the appellant in consultation with the representative of the employees and the respondent authority has no say in the same. It is true that the appellant can decide the pay structure of the employees. However the respondent authority U/s 7A of the Act can examine the pay structure to decide whether there is any subterfuge or evasion in payment of contribution. The learned Counsel for the appellant also pointed out that the pay structure upto August 2012 consisted of basic, house rent allowance, medical allowance, travelling allowance and education allowance and provident fund contribution is confined only to basic, excluding all other allowances. From September 2012 onwards the appellant introduced a new pay structure which included basic, DA and other allowances. According to the learned Counsel other allowances includes house rent allowance and washing allowance.



According to the learned Counsel for the respondent, this is an after thought to ensure exclusion of house rent allowance from assessment of provident fund dues. The relevant provisions of the Act to decide the issue whether the conveyance allowance and special allowance paid to the employees by the appellant will attract provident fund deduction are Sec 2(b) and Sec 6 of EPF & MP Act.

**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 Govt, 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 where 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.

The confusion regarding the exclusion of certain allowances from the definition of basic wages and inclusion of some of those allowances in Sec 6 of the Act

was considered by the Hon'ble Supreme Court in **Bridge & Roof Company Ltd Vs UOI**, (1963) 3 SCR 978. After elaborately considering all the issues involved, the Hon'ble Supreme Court held that on a combined reading of Sec 2(b) and Sec 6 where the wage is universally, necessarily and ordinarily paid to all across the board such emoluments are basic wages. Where the payment is available to be specially paid to those who avail the opportunity is not basic wages. The above dictum laid down by the Hon'ble Supreme Court was followed in **Manipal Academy of Higher Education Vs RPFC**, 2008 (5) SCC 428. In a recent decision in **RPFC, West Bengal Vs Vivekananda Vidya Mandir & Others**, AIR 2019 SC 1240 the Hon'ble Supreme Court reiterated the dictum laid down by the Hon'ble Supreme Court in **Bridge & Roof Company Ltd** case (Supra). In this case the Hon'ble Supreme Court was considering various appeals challenging the orders whether special allowance, travelling allowance, canteen allowance, lunch incentive and special allowance will form part of basic wages. The Hon'ble Supreme Court dismissed the challenge holding that the "wage structure and 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 basic wages camouflaged as part of an allowances so as to avoid deduction and contribution accordingly to the provident fund

accounts of the employees. There is no occasion for us to interfere with the concurrent conclusion of facts. The appeal by the establishments are therefore merit no interference “ .

7. In **Montage Enterprises Pvt Ltd Vs EPFO, Indoor**, 2011 LLR, 867 (MP.DB) the Division Bench of the Hon'ble High Court of Madhya Pradesh held that conveyance and special allowance will form part of basic wages. In **RPFC, West Bengal Vs Vivekananda Vidya Mandir**, 2005 LLR 399 (Calcutta .DB) the Division Bench of the Calcutta High Court held that the special allowance paid to the employees will form part of basic wages particularly because no dearness allowance is paid to its employees. This decision was later approved by the Hon'ble Supreme Court in **RPFC Vs Vivekananda Vidya Mandir** (Supra). In **Mangalore Ganesh Beedi Workers Vs APFC**, 2002 LIC 1578 (Karnat.HC) the Hon'ble High Court of Karnataka held that the special allowance paid to the employees will form part of basic wages as it has no nexus with the extra work produced by the workers. In **Damodarvalley Corporation, Bokaro Vs UOI**, 2015 LIC 3524 (Jharkhand .HC) the Hon'ble High Court of Jharkhand held that special allowances paid to the employees will form part of basic wages. The Hon'ble High Court of Kerala also examined the above issue in a recent decision dt.15.10.2020, in the case of **Employees Provident Fund Organisation Vs M.S.Raven Beck Solutions (India) Ltd**,

W.P.(C) no.17507/2016. The Hon'ble High Court after examining the decisions of the Hon'ble Supreme Court on the subject held that the special allowances will form integral part of basic wages and as such the amount paid by way of these allowances to the employees by the establishment are liable to be included in basic wages for the purpose of deduction of provident fund.

The Hon'ble High Court held that

“ This makes it clear that uniform allowance, washing allowance, food allowance and travelling allowance forms the integral part of basic wages and as such, the amount paid by way of these allowances 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 “.

Hence the law is now settled that all special allowances paid to the employees excluding those allowances specifically mentioned in Sec 2(b)(ii) of the Act will form part of basic wages, depending on facts and circumstances of

each case. In a recent decision dt.24.03.2022 in **Gobin India Engineering Pvt Ltd Vs Presiding Officer, CGIT and another**, W.P.(C) no.8057/2022 the Hon'ble High Court of Kerala examined the categorisation of allowances and the test evolved by the Hon'ble Supreme Court in **RPFC, West Bengal Vs Vivekananda Vidyamandir & Other**, 2020 17 SCC 643. The Hon'ble High Court held that there is no doubt that basic wages would also include allowances except HRA but the respondent authority will have to examine the nature of allowances and the duties of the employees including the timings. The Hon'ble High Court held that

“ But the fact of the matter is both the authorities framed an opinion that the said allowances would be applicable to all the allowances. That finding according to me required a detailed examination of the records by considering the nature and duties of the jobs including the timings etc. In other words the universal formula of adding all allowances would not be appropriated as to what were the norms of the work prescribed for the workmen during the relevant period ”.

8. In this case the liability to pay contribution is required to be examined in two parts. Upto August 2012, the pay structure consisted of basic, house rent allowance, medical allowance, travelling allowance and educational allowance. House rent allowance is excluded U/s 2(b)(2) of the Act and

therefore will have to be excluded from the assessment of provident fund liability. All other allowances such as medical allowance, travelling allowance and educational allowance, as the nomenclature indicates, is only a method of splitting up of basic wages or DA and is not paid for any additional work done by the employees and therefore will form part of basic wages and therefore will attract provident fund liability. The 2<sup>nd</sup> part of the assessment involves the pay structure from September 2012 and involves basic, DA and other allowances. It is indeed clear that the claim of the appellant that other allowances includes house rent allowance and washing allowance is a further move by the appellant to exclude the house rent allowance component of the pay structure from provident fund deduction. However since house rent allowance is an excluded allowance, it can be excluded from the assessment of provident fund contribution. According to the learned Counsel for the respondent, the house rent allowance component is almost 50% of the basic wages which would clearly prove the subterfuge by the appellant establishment. The learned Counsel for the appellant also pleaded that the 'other allowances' component is not paid to all the employees. However it is seen from the statement filed by the appellant that out of 80, 67 employees are paid other allowances and 13 employees are not even paid the DA component and therefore cannot be taken this as an excuse for not remitting

contribution on other allowances. However as pointed out above, the house rent allowance component is required to be excluded from the assessment for the period September 2012 also.

9. Considering the facts, circumstances, pleading and evidence in this appeal, I am not inclined to uphold the impugned order.

Hence the appeal is allowed, the impugned order is set aside and the matter is remitted back to the respondent to re-assess the dues within a period of 6 months after issuing notice to the appellant and excluding the house rent allowance component from the assessment of dues. The appeal was admitted subject to remittance of 40% of the assessed dues. Neither the appellant nor the respondent confirmed the remittance of the 7(O) amount of pre-deposit. Hence the respondent is directed to confirm the pre-deposit of 40% as directed by this Tribunal vide order dt.05.02.2020 before initiating the further enquiry U/s 7A of the Act. If the appellant failed to remit the Sec 7(O) amount, the original order will survive and the respondent is at liberty to recover the assessed amount from the appellant.

Sd/-

(V. Vijaya Kumar)  
Presiding Officer