



सत्यमेव जयते

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

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

(Thursday the 31<sup>st</sup> day of March, 2022)

**APPEAL No.455/2018**

(Old no.968(7)2014)

Appellant : M/s.Nice Chemicals (P) Ltd  
50/221 A, P.B.No.2217  
Manimala Road, Edappally  
Kochi - 682024

By Adv.C. B. Mukundan

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

By Adv.Sajeev Kumar K. Gopal

This case coming up for final hearing on 23.09.2021 and this Industrial Tribunal-cum-Labour Court on 31.03.2022 passed the following:

**ORDER**

Final order in this appeal was issued on 31.03.2022. There was a typographical error in the date of the order. Instead of 31.03.2022, it was indicated as 11.01.2022. Hence necessary correction in the date of the order is incorporated U/s 7L(2) of the EPF & MP Act, 1952.

2. Present appeal is filed against order no.KR/KC/13161/ENF-III(4)/2014/5402 dt.11.08.2014 assessing dues U/s 7A of EPF & MP Act, 1952 (hereinafter referred to as 'the Act') on evaded wages for the period from 03/2011 to 12/2012. The total dues assessed is Rs.2,11,666/-.

3. The appellant is a SSI unit and covered under the provisions of the Act. The appellant is regular in compliance. An Enforcement Officer of the respondent inspected the records of the appellant establishment and submitted an inspection report. On the basis of the inspection report, the respondent authority initiated an enquiry U/s 7A of the Act. The representative of the appellant attended the hearing along with relevant records. From the records itself it was clear that the appellant had remitted EPF dues on basic wages, daily living wages, and travelling allowance paid to the employees. The appellant was not remitting contribution on HRA, performance allowance, lunch allowance and other allowance paid by the appellant to its employees. From the wages register produced by the appellant before the respondent authority, it was clear that the appellant was remitting contribution on basic pay, DA and travelling allowance. However ignoring the contentions, the respondent issued the impugned order which is produced and marked as Annexure A1. The respondent authority found that the appellant is paying provident fund only on basic and

not basic + DA as stated by the employer in his statement. The finding of the respondent authority is wrong as the appellant had paid dues on basic, daily living allowance and on travelling allowance. This can be seen from the EPF dues worksheet and challan produced as Annexure A4 & A5. The respondent authority also found that the salary is divided only to avoid provident fund liability. Payment of additional allowances cannot be described as splitting of salary. Though the appellant is not required, he is enrolling even the employees whose pay are beyond the statutory limit fixed under the Act. The appellant is not only enrolled such high paid excluded employees but also is paying EPF contribution on the entire salary subject to a ceiling of Rs.16,000/- instead of Rs.6500/-. The documents produced as Annexures 3, 4 & 5 would clearly show that the appellant is remitting contribution on basic, DA and travelling allowance without restricting the contribution on the salary limit of Rs.6500/-. It can be seen that an employer who wants to reduce or avoid EPF liability will not voluntarily come forward to enroll all the excluded employees and to pay dues even on their higher salary. It is upto the appellant to fix the wages structure of its employees. The allowances paid are not fixed percentage of total salary. These allowances vary from person to person.

4. The respondent filed counter denying the above allegations. The appellant establishment is covered under the provisions of the Act w.e.f. 31.12.1989. The respondent authority noticed from the copy of the wages register produced by the appellant that the appellant is paying provident fund dues only on basic and not on basic + DA as stated by the appellant. The appellant establishment is paying large number of allowances. The allowances are being paid universally, regularly and ordinarily to all enrolled employees. As such the allowances come under the definition of basic wages which includes all emoluments. In **Gujarat Cypromet Limited Vs APFC** the Hon'ble High Court of Gujarat and in **Ponni Sugars and Chemicals Ltd Vs Cauvery Sugar and Chemicals Ltd and others**, 2001 2 LLJ 1201 the Hon'ble High Court of Madras held that all emoluments paid to the employees will form part of basic wages. In the case of Sri.Bineesh P. V., the salary structure is basic – Rs.1775/- , daily living allowance – Rs.3344/-, travelling allowance – Rs.350/-, HRA – Rs.1000/-, performance allowance -- Rs.2100/-, lunch allowance – Rs.2300/- and other allowance -- Rs.25/- is seen paid by the appellant establishment. The appellant establishment failed to explain the criteria for basic and other allowances. It is clear that the basic is very low as compared to the allowances and the appellant has resorted to splitting of wages with the sole purpose to curtail the liability of the employer for

contribution under the Act. The respondent authority has issued the impugned order after analysing the report of the Enforcement Officer and the records produced by the appellant establishment. In Annexure A3 the basic, daily living allowance and travelling allowance in respect of Sri.Vinu Jayachandran (SI no.63) is Rs.1395/-, Rs.2869/-, Rs.350/- respectively, amounting to Rs.4614/- as EPF wages where as HRA is Rs.1000/-, performance allowance is Rs.2100/- and lunch allowance Rs.240/-. The appellant failed to produce any evidence to this effect during the course of the enquiry.

5. The issue involved in this appeal is whether the appellant establishment is resorting to splitting up of wages to evade provident fund contribution on actual wages paid to the employees. According to the learned Counsel for the appellant, the appellant establishment is paying basic, daily living allowance, travelling allowance, HRA, performance allowance, lunch allowance and other allowance to the employees of the appellant. According to him, contribution is being paid on basic, daily living allowance and travelling allowance to all the employees. According to the learned Counsel for the respondent, the contribution is restricted to only basic. The learned Counsel for the appellant relied on Annexure A3 wage register for the month August 2012 and Annexure A4, ECR dt.18.09.2012 and also Annexure A5 the combined challan dt.13.09.2012 to substantiate his

claim that the contribution in respect of the employees of the appellant establishment is being paid on basic, daily living allowance and travelling allowance paid to its employees. The learned Counsel for the respondent submitted that no such evidence was produced before the respondent authority at the time of hearing. It is surprising that the respondent authority failed to verify the actual remittances made by the appellant during the course of 7A enquiry, before issuing the impugned order. The other allowances which are not taken into consideration for the purpose of provident fund contribution are HRA, performance allowance, lunch allowance, overtime allowance and other allowance. According to the learned Counsel for the appellant on the basis of Sec 2(b) and also Sec 6, the appellant is remitting contribution as required under the Act and the Schemes thereunder. The relevant provisions of the Act to decide the issue whether the allowances 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 " .

6. 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 formed 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 appropriate as to what were the norms of the work prescribed for the workmen during the relevant period ”.

7. In the present case the HRA and overtime allowance are components paid to its employees by the appellant is specifically excluded U/s 2(b)(2) of the Act and therefore these allowance will not form part of basic wages and the appellant establishment is not liable to pay contribution on the same. With regard to the performance allowance, lunch allowance and other allowance being paid to the employees of the appellant, the respondent will have to examine whether these allowances are paid linked to any incentive for production resulting in greater output by an employee or the allowances are being paid especially to those who avail the opportunity. As already pointed out, though basic wages will also included allowances, the universal formula

is subject to the above test as discussed above in the case of **RPFC Vs Vivekananda Vidya Mandir (Supra)** and **Gobin India Engineering Pvt Ltd Vs Presiding Officer, CGIT and Labour Court and another (Supra)**. The respondent authority cannot plead ignorance regarding the fact that the appellant establishment is remitting contribution on basic wages, daily living allowance and travelling allowance paid to their employees as the same was claimed by the appellant in the Annexure A2 representation submitted before the respondent authority at the time of 7A enquiry. Hence the impugned order cannot be sustained under any circumstances. The respondent authority will have to examine on the basis of the office records whether the claim of the appellant that they are paying contribution on basic, daily living allowance and travelling allowance is correct. If that is correct, then the appellant will have to examine whether the allowances such as performance allowance, lunch allowance and other allowance will form part of basic wages in view of the above directions.

8. Considering the facts, circumstances and pleadings in this appeal, I am not inclined to sustain the impugned order.

Hence the appeal is allowed, the impugned order is set aside and the respondent is directed to reassess the dues on the basis of above directions, within a period of 6 months, after issuing notice to the appellant. If the appellant fails to appear or fails to produce the records called for, the respondent is at liberty to decide the matter according to law.

Sd/-

(V. Vijaya Kumar)  
Presiding Officer