



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.613/2019**

(Old no.668(7)2013)

Appellant : M/s. Plants Lipids (P) Ltd  
(Plant Lipids Condiments  
– EOU Division)  
Kolenchery  
Kochi - 682311

By Adv.Paul Jacob

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

By Adv.Sajeev Kumar K. Gopal

This case coming up for final hearing on 06.10.2021 and this Industrial Tribunal-cum-Labour Court on 31.03.2022 passed the following:

**ORDER**

Present appeal is filed against order no.KR/KC/21850/ENF-3/2013/7298 dt.31.07.2013 assessing dues U/s 7A of EPF & MP Act, 1952 (hereinafter referred to as 'the Act') on evaded wages for the period from 03/2010 to 03/2013. The total dues assessed is Rs.8,20,362/-.

2. Appellant is an establishment covered under the provisions of the Act. The appellant is remitting contribution to all employees other than the excluded employees as per the EPF Scheme. The amount of contribution is calculated on basic wages and DA as per Para 29(3) of the EPF Scheme. As per Sec 6, the appellant is liable to remit contribution only on basic pay, DA and retaining allowance. As per Sec 2(b) of the Act, basic wages does not include any allowances, bonus or commission payable to the employees. According to the provisions of the Act and Scheme, the travelling allowance paid to the employees which is similar to house rent allowance will not form part of basic wages and hence the appellant was not liable to remit contribution on travelling allowance paid to its employees. On 11.04.2013 an Enforcement Officer of the respondent organisation directed the appellant to produce records for inspection, which is produced and marked as **Annexure A1**. Appellant produced the records vide letter dt.23.04.2013, which is produced and marked as **Annexure A2**. After inspection of the records the Enforcement Officer issued an inspection report dt.07.05.2013, which is produced and marked as **Annexure A3**. As per Annexure A3 the Enforcement Officer assessed an amount of Rs.7,18,695/- towards contribution on the amounts paid to the employees under the heading 'Travelling Allowance' for the period from 03/2010 to 03/2013. The appellant sent a reply on 14.05.2013 disputing the

claim on the ground that travelling allowance cannot be treated as wages to claim provident fund contribution. A copy of the reply is produced and marked as **Annexure A4**. The respondent thereafter issued notice proposing to conduct an enquiry U/s 7A of the Act for determining the amount, a copy of the notice is produced and marked as **Annexure A5**. After conducting the enquiry the respondent issued the impugned order dt.31.07.2013 which is produced and marked as **Annexure A6**. According to Annexure A3 inspection report, contribution was claimed only on amounts paid as travelling allowance. The respondent authority enlarged the scope of the enquiry to include various other allowances such as house rent allowance, salary advance, TSP and conveyance. As per the provisions of the Act and Scheme, contribution is payable only in respect of basic wages and DA and not in respect of house rent allowance or other similar allowances.

3. The respondent filed counter denying the above allegations. The appellant is covered under the provisions of the Act w.e.f. 01.02.2008 under code no.KR/KC/24246. The Enforcement Officer attached to the office of the respondent after conducting an inspection of the appellant establishment vide his report dt.07.05.2013 reported that the appellant failed to remit contribution on the actual wages paid to the employees and the salary is split into basic, DA, house rent allowance, travelling allowance, salary advance, TSP

and conveyance allowance. EPF contribution was paid only on basic salary + DA. The respondent therefore issued a summons dt.10.06.2013 fixing an enquiry on 10.07.2013. The appellant was also directed to produce the relevant records. The representative of the appellant attended the enquiry on 10.07.2013. The respondent authority noticed that the wages of the appellant establishment is split as basic, DA, house rent allowance, travelling allowance, salary advance, TSP and conveyance. It was also noticed that salary advance is given every month but provident fund contribution is not paid on the salary advance. The appellant remitted dues on basic + DA limiting his share for the salary of Rs.6500/-. After verifying the records and the report of the Enforcement Officer, the respondent authority issued the impugned order. The appellant is a chronic defaulter and has challenged various orders issued by the respondent authority in appeal. The contribution under EPF Act is payable in terms of Sec 2(b) and Sec 6 of the Act. As per Sec 2(b) basic wages includes all emoluments which are earned by an employee other than those specifically excluded as per Clauses 1, 2 & 3. As per Sec 6 EPF contribution is payable on basic wages, DA, cash value of food concession and retaining allowance if any. The definition of basic wages thus subsumes in its definition all the emoluments earned by an employee while on duty. The Hon'ble Supreme Court of India in **RPFC-II, West Bengal Vs Vivekananda Vidyamandir & Others**, 2019 KHC 6257

held that all allowances paid by an establishment excluding those allowances U/s 2(b)(2) will come within the definition of basic wages and contribution is required to be paid on the same. The Hon'ble Apex Court reiterated the principle that the crucial test to be applied for inclusion of allowances as basic wages is universality, i.e., all allowances are paid uniformly, universally, necessarily and ordinarily to all employees. It is clear from the splitting up of wages by the appellant that the same was done with the sole objective of evading wages in order to escape from provident fund liability. The appellant manipulated the salary structure and deviced it in such a way to exclude the maximum portion of provident fund deductible salary. It was also pointed out that salary advance is given to the employees every month only as a subterfuge to evade contribution on provident fund. The Hon'ble Supreme Court of India in **Rajasthan Prem Kishan Goods Transport Co. Ltd Vs RPFC and others**, 1996 9 SCC 454 held that it is upto the Commissioner to 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 its contribution to provident fund. The Hon'ble Supreme Court of India in **Maharashtra State Co-operative Bank Ltd Vs Provident Fund Commissioner**, 2009 10 SCC 123 held that since the Act is a social welfare legislation intended to protect the interest of a weaker section

of the society i.e., the workers employed in factories and other establishments, it is imperative for the Courts to give a purposive interpretation to the provisions.

4. It is seen from the documents such as Annexure A1 notice by Enforcement Officer dt.11.04.2013, the Annexure A3 inspection report part-II dt.07.05.2013 and the notice U/s 7A dt.10.06.2013 that all the above documents pertains to an establishment which is covered under the code no.KR/KCH/24246 however in the impugned order the reference is to an establishment which is covered under the code no.KR/KC/21850. It is for the respondent to verify and confirm whether it is only a clerical mistake or the impugned order is assessing dues is against a different establishment.

5. According to the learned Counsel for the appellant, the inspection report in Annexure A3 dt.07.05.2013, the Enforcement Officer is referring to only provident fund payable on travelling allowance paid to the employees whereas the impugned order is referring to all allowances paid by the appellant to its employees and the contribution is also assessed on all allowances paid to its employees. According to the learned Counsel for the respondent, the Annexure A5 notice issued by the respondent authority does not speak about any specific allowance but only refers to the failure of the appellant establishment to remit provident fund dues in accordance with law. Hence

there is no infirmity in the proceedings initiated and the impugned order issued by the respondent.

6. The issue involved in this appeal is whether the allowances paid by the appellant establishment will come within the definition of basic wages U/s 2(b) of the Act and whether the appellant establishment is liable to pay contribution on the same. According to the learned Counsel for the respondent the appellant is paying basic, DA, house rent allowance, travelling allowance, salary advance, TSP and conveyance allowance to its employees. The appellant establishment is remitting contribution only on basic and DA and all together allowances are excluded for the purpose of provident fund contribution. According to the learned Counsel for the appellant, Sec 2(b) and Sec 6 of the Act makes it very clear that the appellant is liable to remit contribution only on basic, DA and retaining allowance. Since the appellant is not paying any retaining allowance, the contribution is confined to basic and DA. According to him, house rent allowance, overtime allowance, commission etc., are specifically excluded U/s 2(b)(2) which also includes "similar allowances". Since travelling allowance, TSP and conveyance etc., will come within the categorisation of "similar allowances", they will not attract any provident fund deduction. The relevant provisions of the Act to decide the issue whether

special 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".

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 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 as already pointed out, the appellant establishment is paying basic, DA, house rent allowance, travelling allowance, salary advance, TSP and conveyance allowance to its employees. House rent allowance is specifically excluded U/s 2(b)(2) of the Act. From the impugned order, it is not clear whether house rent allowance is also included in the assessment. As per the impugned order “ Under the above circumstances, it can be safely concluded that the wage component “Allowance” paid to the employees in the instant case shall form part of basic wages as defined U/s 2(b) of the Act and shall be eligible for provident fund contribution as per Sec 6 of the Act “. From the above it is clear that all allowances including house rent allowance is taken

into account for the purpose of the assessment. Apparently the assessment of dues on house rent allowance is not legally correct as the same is specifically excluded under the Act. According to the learned Counsel for the respondent, salary advance given by the appellant to its employees is another method of bypassing the provision. According to him salary advance is being paid to the employees every month which is only a subterfuge. Travelling allowance, TSP and conveyance allowance are the other allowances paid by the appellant to its employees. It is not clear the difference between travelling allowance and conveyance allowance and it is also not clear for what purpose the TSP is being paid to the employees. As per the Hon'ble Supreme Court of India in **RPFC-II, West Bengal Vs Vivekananda Vidyamandir** (Supra) if the allowances are linked to any incentive for production resulting in greater output by an employee or were being paid especially to those who avail the opportunity, such allowances cannot be taken as part of basic wages. According to the recent decision of the Hon'ble High Court of Kerala in **Gobin India Engineering Pvt Ltd Vs Presiding Officer, CGIT and LC, Ernakulam**, W.P.(C) no.8057/2022 in order that the amount goes 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 respondent authority did

not make any attempt to examine those allowances applying the test evolved by the Hon'ble Supreme Court and High Court.

9. Considering the facts, circumstances and pleadings in this appeal, I am not in a position to sustain 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. If the appellant fails to appear or produce any records called for, the respondent is at liberty to decide the matter according to law.

Sd/-

(V. Vijaya Kumar)  
Presiding Officer