



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.704/2019**

(Old. no.04(7)2012)

Appellant : Sreenath M.R.  
Managing Director  
M/s.IPIX Solutions (P) Ltd  
Kakkancherry  
Malappuram - 673634

By Adv.Vinod Singh Cheriyan

Respondent : The Assistant PF Commissioner  
EPFO, Regional Office  
Eranjipalam P.O.  
Kozhikode - 673006

By Adv.(Dr.)Abraham P. Meachinkara

This case coming up for final hearing on 21.09.2021 and this Industrial Tribunal-cum-Labour Court on 30.03.2022 passed the following:

**ORDER**

Final order in this appeal was issued on 30.03.2022. There was a typographical error in the date of the order. Instead of 30.03.2022, it was indicated as 06.01.2022. 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/KK/23799/ENF-1(5)/2011-12/1843 dt.27.07.2011 assessing dues U/s 7A EPF & MP Act, 1952 (hereinafter referred to as 'the Act') on evaded wages for the period from 07/2009 to 11/2010. The total dues assessed is Rs.7,67,504/-.

3. The appellant is a private limited company engaged in the business of software development, web designing etc. The appellant enrolled all the employees to the provident fund membership irrespective of their salary limits. The appellant establishment also comes within the purview of Standing Orders Act. The provisions of the Industrial Employment (Standing Orders) Act is automatically applicable to the appellant establishment. The appellant establishment is covered under the provisions of the Act w.e.f. 01.07.2009. Since the trainees are not engaged as regular employees, no contribution is paid on these trainees. As per the impugned order, the respondent authority directed the appellant to remit contribution on the alleged evasion of wages for the period from 01.07.2009 to 31.11.2010. The appellant was not provided for adequate opportunity to explain its position. The impugned order is a non speaking order. The respondent authority ought to have noticed that the officials of the respondent organisation visited the appellant on many occasions and advised them regarding the procedure to be

followed to comply with the provisions of the Act. No irregularities were pointed out till 25.04.2011.

4. The respondent filed counter denying the above allegations. The appellant establishment is covered under the provisions of the Act w.e.f. 01.07.2009. The appellant remitted provident fund dues on lesser wages thus evading provident fund contribution. The appellant had violated the provisions contained in Para 30 and 38 of EPF Scheme. The appellant formulated a structure of pay which includes basic pay and some allowances. The basic pay is fixed as the minimum so that the liability under the Scheme on account of payment of provident fund contribution and allied dues is reduced to the minimum. The respondent provided more than adequate opportunity to the appellant to produce evidence to substantiate their case. During the enquiry the appellant produced the wage slip for 02/2011 in which apart from basic, the DA also reflected apart from other allowances. It is seen that the pay structure of the appellant includes basic pay, TA, HRA, and other allowances. None of the employees are paid DA. The basic pay of employees ranges from Rs.1500-4000. But the gross salary of the employees ranges from Rs.2500-20,000. The provident fund contribution are paid in respect of employees whose gross salary is below Rs.6500/- but the contribution in respect of others are paid for basic pay only and no allowances

are included. In the salary slip for 02/2011 produced by the appellant before the respondent authority the appellant has included DA, apart from HRA and other allowances. This clearly shows that the respondent authority is justified in assessing the dues in respect of evaded wages.

5. The issue involved in the appeal is whether the allowances paid by the appellant establishment to its employees will attract provident fund deduction. According to the learned Counsel for the appellant, the pay structure of the appellant establishment includes basic, TA, HRA and other allowances. According to the learned Counsel for the respondent, all the emoluments paid by the appellant will attract provident fund deduction subject to the salary limit. The relevant provisions of the Act to decide the issue whether the travelling allowance and other 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 " .

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 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 ”.

Accordingly the Hon'ble High Court found that the respondent authority will have to examine whether the allowances in question being paid to its employees are either variable or were linked to any incentive for production in greater output by an employee and the allowances in question were not paid across the board to all employees in a particular category or were being paid especially to those who avail the opportunity. In order that the amount goes beyond the basic wages it has to be shown that the workman concerned has become eligible to get this extra amount beyond the normal work which he was otherwise required to put in. On perusal of the impugned order, it is seen that the respondent authority failed to investigate into the nature of allowances and the purpose for which it is paid as discussed above. It is seen that TA is being paid universally to all employees and therefore it will form part of basic wages. HRA is specifically excluded as per Sec 2(b)(2) of the Act

and is therefore required to be excluded from assessing provident fund contribution. The nature of other allowances and the purposes for which it is paid is not at all clear from the impugned order as well as from the reply filed by the respondent authority. This requires further investigation by the respondent before concluding the enquiry.

7. Considering the facts, circumstances and pleadings 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-decide the matter within a period of 6 months after issuing notice to the appellant. If the appellant failed to appear or fails to produce the documents called for, the respondent is at liberty to decide the matter according to law. The pre-deposit made by the appellant as per the direction of this Tribunal U/s 7(O) of the Act shall be adjusted or refunded after finalising the enquiry. Since the matter pertains to very old period, the respondent shall complete the enquiry within 6 months. The appellant shall co-operate by producing the relevant records for proper adjudication.

Sd/-  
(V. Vijaya Kumar)  
Presiding Officer