



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

Present: Shri.V.Vijaya Kumar, B.Sc., LLM, Presiding Officer.  
(Friday the 30<sup>th</sup> day of July, 2021)

**APPEAL No.243/2019**  
(Old No. ATA 1115(7) 2015)

Appellant : M/s. Premier Enterprises  
C.C.S.B Road, I.B.P.O  
Alappuzha -688 011

By Adv. R.Sankarankutty Nair

Respondent : The Assistant PF Commissioner  
EPFO, Sub Regional Office,  
Kaloor, Kochi 682 017.

By Adv. Sajeev Kumar K Gopal

This case coming up for final hearing on 16.04.2021  
and this Tribunal-cum-Labour Court on 30.07.2021 passed  
the following:

**ORDER**

Present appeal is filed from order No. KR/  
KCH/27813/Enf -2 (1) 2015/5836 dt. 23/06/2015 assessing  
dues U/s 7A of EPF & MP Act, 1952 (hereinafter referred to as

'the Act'.) in respect of omitted wages and non enrolled employees for the period from 01/2012 to 05/2014. The total dues assessed is Rs. 2,09,749/-.

2. The appellant is an establishment covered under the provisions of the Act. The appellant is regular in compliance. The appellant used to avail service of temporary workmen during festival seasons and due to leave vacancies of permanent workers and lady workers who were on maternity leave. Such temporary workers were working for few days or few months only. The management is not maintaining the address and details of the temporary workers. All these employees are excluded employees and not liable to enrolled. The appellant is paying contribution on basic wages and DA in respect of coverable employees. Since HRA and other allowance are part of wages no contribution is payable on such allowances. The Enforcement Officer of the respondent who conducted inspection of the appellant establishment submitted a report dt.09/07/2014 and showing the dues in respect of non-enrolled employees for the period 04/2012 to 02/2014 and dues on omitted wages for the period 01/12 to

05/2014 and dues in respect of security staff for the period from 01/2012 to 05/2014. On the basis of the report of the Enforcement Officer, the respondent authority initiated an enquiry U/s 7A of the Act. The appellant disputed the claim before the respondent authority on the ground that the employees who were engaged on temporary basis has already left the service of the appellant establishment and the appellant is not liable to pay contribution on allowance paid to its employees and also that the details of the security persons deputed by an independent agency is also not known to the appellant. A copy of the report of the Enforcement Officer is produced as Exbt A1. The appellant send a reply dt.30/08/2014 disputing the claim and requesting the Enforcement Officer to conduct an inspection and quantify the dues, if any. Copy of the letter is produced and marked as Exbt A3. The respondent ought to have seen that the appellant is not liable to enroll the persons who are not identifiable and whose whereabouts were known to the appellant. The respondent ought to have seen that the HRA and other allowances will not attract provident fund deduction.

3. The respondent filed counter denying the above allegations. During the course of inspection conducted by the Enforcement Officer it was noticed that there was large scale evasion by appellant establishment by not enrolling all the eligible and entitled employees under EPF Scheme as mandated under the Act. It was also reported by the Enforcement Officer that two security guards were also not enrolled to the fund. Further it was reported that the contribution is being paid only on a part of the wages. Accordingly the Enforcement Officer issued Annexure A1 inspection report to the appellant establishment. The Enforcement Officer also furnished the details of calculation of provident fund dues. Since the appellant failed to comply with the provision of the Act, an enquiry U/s 7A of the Act was initiated. The enquiry was initiated on 25/11/2014 and concluded on 23/06/2015 after providing adequate opportunity to the appellant. The contention of the appellant that the employees are not identifiable is not correct. The Enforcement Officer in his report has furnished the names of employees, date of joining, monthwise wages in respect of 10 permanent employees and also the names and monthwise dues of two

security staff. The other non-enrolled employees' details such as name monthly wages etc., are also furnished in the Annexure A1 and A2 reports. The appellant maintained the records of all the employees and they have clearly identifiable. The Enforcement Officer derived the information regarding the non-enrolled employees only from the records of the appellant and if there is any dispute regarding the report of the Enforcement Officer the same ought to have been raised before the respondent authority at this time of 7A enquiry and produced records to substantiate the same. Having failed to comply with the said responsibility, the appellant cannot at the appellate stage claim that, the employees who are not enrolled to the fund are not identified. The appellant admitted that they were engaging staff on temporary basis who are not enrolled to PF. As per Para 2 (f) of the Act, employee means, any person who is employed for wages in any kind of work, manual or otherwise in or in connection with the work of an establishment and who gets his wages directly or indirectly from the employer. As per Para 26 of EPF Scheme, every employee employed in or in connection with the factory or establishment to which the EPF Scheme applies other than the

excluded employees shall be entitled and required to become member of the fund from the date of joining of the said establishment. The constitutional validity of the above amendment was upheld by the Hon'ble Supreme Court of India in ***JP Tobacco Company Pvt Ltd Vs Union of India*** , 1996 (1) LLJ 822 )(SC).

4. The salary structure of the employees of the appellant establishment consisted of basic + DA, Municipal allowance, conveyance allowance and HRA. As per Sec 2(b) of the Act, basic wages means all emoluments which are earned by an employee while on duty or on leave or on holiday with wages, in accordance with the terms of contract with the employees which are paid or payable to cash. The above definition of wages read in conjunction with sec 6 would require the appellant to remit contribution on all allowances. "Any other allowance" mentioned in Section 2 (b) of the Act takes its colour from the expression commission, because the said expression used the words similar allowances. There is no similarity in nature of the allowance

mentioned in clause 2 as they are founded on wholly unrelated considerations.

5. The Enforcement Officer of the respondent organization found during inspection that the compliance position of the appellant establishment is not satisfactory due to :

1. The appellant failed to enroll all the employees under the provision of the Act.
2. The appellant failed to enroll 2 security guards to provident fund.
3. The appellant failed to pay contribution on various allowances paid to the employees.

With regard to the first issue regarding non-enrollment the contention raised by the learned Counsel for the appellant is that these employees are engaged on temporary basis when some employees went on leave or during festive season. It is also submitted by the learned Counsel for the appellant that none of these employees are identifiable or identified by the respondent authority. On a perusal of the report of the Enforcement Officer, it

is seen that the non-enrolled employees are clearly identified in the report with date of joining, the salary drawn and their names. For example Shri P.K Jackson joined the service of the appellant establishment on 01/01/2012 and was drawing a salary Rs.6500/- and continued till May 2014. Shri. Vijesh V joined the service on 01/01/2012 drawing a salary of Rs.6500/- and continued working till October 2012. Hence the case of the appellant that these employees worked only for few days and they are not identifiable is not correct. If at all the appellant wanted to disprove the claim of the Enforcement Officer, he ought to have produced documents before the respondent authority to substantiate his contention. Having failed to do so the appellant cannot take the contention that the employees worked only for a few days and they are not identifiable. With regard to the security guards, it is seen that one Sri.Viswambaran and Joseph Xavier were working as security guards Sri.Viswambaran joined the service in January 2012 and continued upto May 2014 Sri.Joseph Xavier joined the service on April 2013 and continued upto May 2014. Both of them were drawing a monthly salary of Rs.3708/- as per the report of Enforcement Officer. Hence the



contention of the appellant that the security guards cannot be identified and they working on rotation etc cannot be accepted as it is seen that they were continuously working with the appellant establishment for more than two years. The third issue raised by the appellant in this appeal is with regard to omitted wages. It is seen that the appellant establishment is paying basic wages, DA, Municipal allowance, conveyance allowance and HRA to its employees universally. According to the appellant HRA and other allowances are excluded from computation of basic wages as per Sec 2(b) of the Act. According to the learned Counsel for the respondent all emoluments paid to the employees will attract provident fund deduction.

**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 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 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 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.

5. 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 was against 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 travel 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”.*

6. From the above discussion, it is clear that the appellant is liable to pay contribution on Conveyance

allowance. In **Montage Enterprises Pvt Ltd Vs EPFO**, 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 Hon'ble High Court of Calcutta held that special allowance paid to the employees will form part of basic wages . This decision of the Hon'ble High Court of Calcutta 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 (Kart.HC) the Hon'ble High Court of Karnataka held that 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 **Damodar Valley Corporation Bokaro Vs. Union of India**, 2015 LIC 3524 (Jharkhand HC) the Hon'ble High Court of Jharkhand held that special allowance paid to the employees will form part of basic wages..

7. In view of the above discussion it is very clear that the allowances such as municipal allowance and conveyance allowance will form part of basic wages and will attract provident fund deduction. HRA being a specifically excluded allowance U/s 2(b)(ii) of the Act the same will not form part of basic wages and therefore will not attract any provident fund deduction.

8. Considering the facts, pleadings and evidence in this appeal I am inclined to hold that the assessment in respect of non-enrolled employees and security guards are legally sustainable. The assessment of provident fund dues on allowances such as municipal allowance and conveyance allowance will attract provident fund deduction. However the assessment of provident fund dues on HRA cannot be legally sustained.

Hence the appeal is partially allowed. The impugned order regarding the assessment of dues on non-enrolled employees for an amount of Rs.1,26,933/- and security guards for an amount of Rs.41,214/-are upheld. The assessment of dues on conveyance allowance and municipal allowances is legally sustainable.



However the assessment of dues on HRA is not correct and the impugned order to that extent is set-aside. Hence the matter is remitted back to the respondent to reassess the dues on omitted wages excluding HRA after issuing notice to the appellant. If the appellant failed to produce the records for proper assessment the respondent is free to assess the dues according to law. The pre deposit made U/s 7(O) by the appellant shall be adjusted or refunded after finalization of the enquiry.

Sd/-  
**(V. Vijaya Kumar)**  
Presiding Officer