



सत्यमेव जयते

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

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

(Tuesday the 19<sup>th</sup> day of April, 2022)

**Appeal No.90/2019**  
(Old No. ATA 925(7) 2014)

Appellant : M/s. Aswathy Labour &  
Security Contractors,  
Maliyakkal Building,  
Azhakam P.O, Karukutty  
Angamali – 6835 77.

M/s. Menon & Pai

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

By Adv.Thomas Mathew Nellimmoottil

This case coming up for final hearing on 29/12/2021  
and this Tribunal-cum-Labour Court on 19/04/2022 passed  
the following:

**ORDER**

Present appeal is filed from order No. KR/ KCH/  
15870/ Enf-3 (6)/2014/4441 dt. 16/07/2014 issued U/s 7A  
of EPF & MP Act, 1952 (hereinafter referred to as ‘the Act’)  
assessing dues on evaded wages for the period from 03/2008 to  
04/2013. The total dues assessed is Rs. 2,47,968/-.

2. The appellant is an establishment is covered under the provisions of the Act. Originally it was a proprietorship concern and subsequently it is registered as a partnership firm. An Enforcement Officer of the respondent organization conducted an inspection and submitted a report. On the basis of the report the respondent authority initiated enquiry U/s 7A of the Act. True copy of the notice is produced and marked as Annexure A1. A representative of the appellant attended the hearing and explained that the allowances paid to the employees do not form part of basic wages. It was also clarified that HRA is excluded from the purview of the definition of basic wages and conveyance allowance being compensatory in nature, the appellant is not liable to pay contribution. The respondent issued the impugned order holding that the appellant is liable to pay contribution allowances such as HRA and conveyance. A true copy of the order is produced and marked as Annexure A2. Sec 6 and Sec 2(b) of the Act and Para 29 of EPF Scheme supports the contentions of the appellant that the contribution is payable only on basic wages and dearness allowance.

3. The respondent filed counter denying the above allegations. The appellant is covered under the provisions of the Act with effect from 01/09/1998. The Enforcement Officer of the respondent after inspection of the appellant establishment reported that the appellant establishment is bifurcating wages into allowances and no contribution is paid such allowances. As per the wage register maintained by the appellant, the wages of the employees are split into basic, Airport allowance, HRA and overtime allowance. The respondent authority therefore initiated enquiry U/s 7A of the Act. A representative of the appellant attended the hearing on 01/01/2014, produced wages and attendance registers and stated that no ledgers, cash book and balance sheet were maintained by the appellant establishment. The respondent authority found that the pay structure of the establishment comprised of basic, airport allowance, HRA and overtime allowance. No dearness allowance was included in the pay structure. All allowances are paid universally regularly and ordinarily to all enrolled employees. The respondent authority concluded that all the allowances will form part of basic wages and therefore assessed the dues. All these allowances are universally regularly and ordinarily being

paid to all employees. The Hon'ble Supreme Court of India in ***Rajastan Premkishan Goods Transport Company Vs RPF***, 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 decide the question whether the splitting up of the pay has been made only as a subterfuge to avoid its contribution to provident fund. Though the HRA falls under the category of excluded allowance. It is to be understood that if the HRA is paid in terms of employment it would not form part of basic wages. In the instant case HRA is allowed not in terms of contract of employment.

4. The Enforcement Officer of the respondent organization reported that the appellant establishment is splitting the wages of its employees into various allowances and the appellant is not remitting contribution on such allowances. It was also reported that the appellant establishment is not paying any DA. The respondent authority initiated an enquiry U/s 7A. A representative of the appellant attended the hearing and argued that he is liable to pay contribution only on basic and the other allowances paid will not form part of basic wages and therefore will not attract provident fund deduction. The

appellant also produced the wages register and the attendance register for the relevant period. After verifying the wage register of the appellant, the respondent concluded that all the allowances are being paid uniformly and ordinarily to all employees and therefore will come within the definition of basic wages.

5. In this appeal, the learned Counsel for the appellant took a plea that provident fund contribution is attracted only on basic and DA. Since no DA is paid by the appellant they are liable to pay contribution only on basic wages. According to him the HRA is specifically excluded U/s 2 (b) of the Act and other allowance such as conveyance will also be excluded from the definition of basic wages. The learned Counsel for the respondent argued that all the allowances are universally regularly and ordinarily paid to all the employees and the allowances including HRA will form part of basic wages.

6. Sec 2 (b) of the Act defines the basic wages and Sec 6 of the Act provides for the contribution to be paid under the Schemes:

**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 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 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.

7. 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 were again 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 travelling 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”.

8. The Hon'ble High Court of Madras in **Universal Aviation Service Private Limited Vs Presiding Officer EPF Appellate Tribunal, 2022 LLR 221** again examined this issue in a recent decision. The Hon'ble High Court of Madras observed that it is imperative to demonstrate that the allowances paid to the employees are either variable or linked to any incentive for production resulting in greater output by the employee. It was also found that when the amount is paid, being the basic wages, it requires to be established that the workmen concerned has become eligible to get extra amount beyond the normal work which he is otherwise required to put. The Hon'ble High Court held that

“Para 9: The predominant ground raised by the petitioner before this Court is that other allowances and washing allowance will

not attract contributions. In view of the aforesaid discussions and law laid down by the Hon'ble Supreme Court in **Vivekananda Vidya Mandir case (supra)**, the petitioner claim cannot justified or sustained since “other allowance” and washing allowance have been brought under the purview of Sec 2 (b) read with Sec 6 of the Act”.

9. In this case even there is no uniformity in the claim regarding the allowances that is being paid by the appellant to its employees. According to the respondent the pay structure of the appellant establishment consists of basic, airport allowance, HRA and overtime allowance. According to the appellant the pay structure consist of basic, HRA and conveyance allowance. It is not clear from the impugned order the nature of allowances on which the dues are assessed. HRA and overtime allowance are specifically excluded U/s 2(b) of the Act and therefore it will not form part of basic wages and therefore will not attract provident fund deduction. The respondent will have to examine the nature of other allowances and see whether the employees concerned became eligible to get the allowances beyond the

normal work which he was otherwise required to put in. Universality alone cannot be a ground for deciding the question whether a particular allowance will form part of basic wages.

10. Considering the facts, circumstances pleadings and evidence in this appeal, the impugned order cannot be sustained.

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 on the basis of the above observations. If the appellant failed to attend or failed to produce records called for the respondent is at liberty to decide the matter according to law.

Sd/-

**(V.VijayaKumar)**  
Presiding Officer