



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

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

(Tuesday the 5th day of April, 2022)

Appeal No. 751/2019
(Old No. ATA 934 (7) 2012)

Appellant : M/s. Auto Gas Energy India Ltd.,
39/4141, M.G.Road
Ravipuram
Kochi – 682 016

By Adv. C.B Mukundan

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

By Adv. Sajeev Kumar K. Gopal

This appeal came up for hearing on 28/09/2021 and this Industrial Tribunal cum Labour Court issued the following order on 05/04/2022.

ORDER

Final order in this appeal was issued on 05/04/2022. A typographical error crept in the date of the order. Instead of 05/04/2022, the date of the order was furnished as

07/01/2022. Hence the necessary correction in the date of the order is incorporated U/s 7L (2) of EPF & MP Act.

Present appeal is filed from Order No.KR/KC/21902/Enf-1(3)/2012/4656 dt. 25/07/2012 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 03/2012. The total dues assessed is Rs.78,212/-.

2. Appellant is a registered company and is covered under the provisions of the Act. An Enforcement Officer of the appellant conducted an inspection and submitted a report dt. 23/12/2011. The respondent initiated an enquiry U/s 7A of the Act. A representative of the appellant attended the hearing. The case of the Enforcement Officer was that the entire salary paid by the appellant was not taken into account while remitting provident fund contribution. The appellant remitted contribution on basic + DA as required under the provisions of the Act. As per Sec 6 of the Act, the appellant is required to pay contribution on basic, DA and retaining allowance. The 3rd component of the salary is "other allowance". The allowances are paid towards

HRA and conveyance expenses of the employees. The allowance varies from person to person. Disputed allowances are not paid at a fixed percentage to all employees. The appellant is paying contribution on total wages without restricting to the statutory limit of Rs. 6500/-. The respondent authority failed to examine the contentions raised by the appellant during the enquiry.

3. The respondent filed counter denying the above allegations. The pay structure of the appellant establishment is basic + DA and “other allowances”. The appellant is contributing on basic and DA. During the enquiry the General Manager of the appellant establishment attended the hearing. The respondent authority specifically requested the representative of the appellant to explain the component of “other allowances”. However he could not explain the component of other allowances in their wage structure. The “other allowance” is seen paid to all employees universally. The respondent authority therefore came to the conclusion that the “other allowance” also will form part of basic wages and therefore quantified the dues. On a combined reading of Sec 2(b) and Sec 6, it is clear that all allowances other

than those which are specifically excluded U/s 2(b)(2) will form part of basic wages.

4. The wage structure of the appellant establishment is basic, DA and “other allowance”. The appellant was remitting contribution on basic and DA. However the “other allowance” component is excluded for the purpose of calculating provident fund contribution. The respondent authority initiated an enquiry U/s 7A of the Act to decide whether the other allowance component will form part of basic wages. In the enquiry the appellant establishment was represented by its General Manager. It is seen from Para 4 of the impugned order that the respondent authority specifically directed the representative of the appellant to explain the other allowance component in the wage structure. He did not explain the component. In this appeal the learned Counsel for the appellant made an attempt to explain the other allowances stating that it includes HRA and conveyance allowance. It is rather difficult to accept the contention of the learned Counsel for the appellant. If it was so, the General Manger of the appellant establishment could have explained the

same at the time of the enquiry U/s 7A before the respondent authority.

5. 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 there were 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.

6. 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”.

7. 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 employees. 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”.

8. In a recent decision in **Gobin (India) Engineering Pvt. Ltd Vs The Presiding Officer, CGIT cum Labour Court and Another** the Hon'ble High Court of Kerala considered the classification of allowance. According to the Hon'ble High Court “ 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 workman during the relevant period.” The Hon'ble High Court felt that if the allowances are linked to any incentive for production resulting in greater output by an employee and that 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, such allowances can be excluded from the definition of basic wages, though the basic wages would also include allowances. In this particular case, as already pointed out, the respondent authority during the 7A enquiry tried to explore the nature of “other

allowance” being paid to its employees universally. However the appellant establishment could not clarify the same. In view of the above there is no further scope for any investigation into the nature of “other allowance”.

9. Considering the facts, circumstances pleadings and evidence in this appeal, I am not inclined to interfere with the impugned order.

Hence the appeal is dismissed.

Sd/-

(V. Vijaya Kumar)
Presiding Officer