



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

सत्यमेव जयते

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

(Thursday the 21<sup>st</sup> day of January, 2021)

**Appeal No. 335/2019**

(Old No.ATA-171(7)2015)

Appellant

M/s. Muthoot Securities Ltd.,  
1st Floor , Alpha Plaza,  
KP Vallon Road, Kadavanthra  
Kochi – 682 020.

By M/s. Ashok B. Shenoy &  
Adv. PS Gireesh

Respondent

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

This case coming up for hearing on 11.01.2021 and this Industrial Tribunal-cum-Labour Court issued the following order on 21/01/2021.

**ORDER**

Present appeal is filed from order No.KR/KCH / 24261 / Enf-1 (2) 2014 / 10774 dt. 22/12/2014, U/s 7A of EPF & MP Act, 1952 (hereinafter referred to as 'the Act') on evaded wages for the period from 12/2011 to 12/2012. Total dues assessed is Rs. 12,62,990/-

2. The appellant is an establishment covered under the provision of Act. The appellant was regular in compliance. While so the respondent issued a summons dt. 26/7/2013 under 7A of the Act, for the determination of dues on the basis of an inspection report given by an Enforcement Officer of the respondent. The appellant appeared before the respondent and informed that the contribution in respect of all their employees were paid and the contribution is paid on the basic wages as required under the Act. It was also informed that the allowances paid will not attract any provident fund deduction as required under the Act. Without considering the above submissions the respondent issued the impugned order, finding that the allowances paid by the appellant to their employees should be included as part of basic wages subject to the limit of Rs.6500/-. It is clear from the impugned order that the proceedings U/s 7A was initiated on the basis of the report of the Enforcement Officer. However the basis of the information or material relied by him were not disclosed to the appellant. The impugned order reckons allowances other than DA for assessment of contribution which is not according to law. The finding of the respondent that

allowances are universally and regularly paid to all employees is wrong and illegal and such finding is not based on any material evidence or on any specific particulars.

3. The respondent filed counter denying the above allegations. The appellant is a public limited company incorporated under Company's Act, 1956 and covered under the provisions of the Act w.e.f 02/05/2008. The Enforcement Officer who conducted the inspection of the appellant establishment reported that the compliance position of the appellant establishment is not satisfactory as there was underreporting of basic wages and evasion of statutory contribution to the detriment of the employees. The Enforcement Officer reported that contribution was being paid only on basic wages and huge amounts are shown as allowances on which no contribution was paid. The Enforcement Officer also verified records of the appellant establishment and gave a provisional assessment of dues for the period from 12/2011 to 12/2012. An enquiry U /s 7A of the Act was initiated on the basis of the report of the Enforcement Officer. The representative of the appellant attended the hearing and requested for a copy of

the report of the Enforcement Officer. A copy of the report of the Enforcement Officer dt. 18/3/2013 was handed over to the representative and the enquiry was adjourned to 12/12/2013. On the date of hearing the representative gave their comments on the report of the Enforcement Officer regarding allowances. The authority U/s 7A came to the conclusion that the special allowance components will also attract PF deduction. The appellant failed to furnish any reasons for giving such huge components of wages as special allowance. It was also noticed that no DA was being paid by the appellant to its employees. There is no other allowance such as DA, HRA or variable DA that was being paid to their employees. Taking into account all aspects, the respondent issued the impugned order assessing dues on the special allowance also. The contention of the appellant that the report of the Enforcement Officer was not handed over to the appellant is not correct. A copy of the report of a Enforcement Officer was handed over to the representative of the appellant in the hearing. In **Gujarat Cipromet Ltd Vs APFC** , 2004(103) FLR 908 the Hon'ble High Court of Gujarat held that the basic as defined U/s 2(f) the Act included all emoluments received by the employees such as

medical allowance, conveyance allowance and lunch allowance. The appellant is paying the allowance universally, regularly and ordinarily to all its employees. The Hon'ble High Court of Madhya Pradesh in **Montage Enterprises Pvt. Ltd Vs EPFO** , WP 1857/2011 held that all such allowance which are paid universally and regularly to all employees will form part of basic wages. In **RPFC Vs Administrator Cosomopolitan Hospital**, 2010 (1) LLJ 14 the Hon'ble High Court of Kerala held that the special allowances answers the definition of basic wages and contribution is payable on such allowances.

4. The dispute evolved in this appeal is whether the special allowance component of wages paid to its employees by the appellant will attract PF deduction. The learned Counsel for the appellant raised two technical issues, The first one is that the copy of inspection report of the Enforcement Officer on the basis of which the enquiry U/s 7A was initiated was not disclosed to them. The 2<sup>nd</sup> technical issue raised by the learned Counsel for the appellant is that the finding of the respondent that special allowance was being paid universally and ordinarily to all

employees by the appellant establishment is not supported by any evidence.

5. The first issue raised by the learned Counsel for the appellant is that a copy of the report of the Enforcement Officer which is the basis of the enquiry is not provided to them. This issue is specifically answered by the respondent in the impugned order itself. In Para 3 of the order the respondent states that the appellant representative requested for a copy of the Enforcement Officer dt. 18/3/2013 and the relevant portion of the report was handed over to the employer. Further he states that on 12/12/2013 the representative who was attending the hearing specially commented on the report of Enforcement Officer. The impugned order also quotes the comment of the representative of the appellant. Hence the appellant cannot come up and say that a copy of the report of the Enforcement Officer is not provided to them. The another issue raised by the learned Counsel from the appellant is with regard to the finding of Sec.7A authority that the special allowance is not universally and ordinarily paid to all employees. Though there is a finding to that effect in the impugned order, it is not clear on what basis the

respondent arrived such a conclusion. The impugned order also states that the representative of the appellant who attended the 7A hearing also provided a statement of wages for 13 months. However, the respondent is required to examine whether the special allowance is being paid generally to all employees regularly to satisfy the requirement of the tests laid down by the Hon'ble Supreme Court of India.

6. The sections of the Act relevant for deciding the issue involved in the appeal are Sec 2(b) and Sec.6.

**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.

Sec 2(b) of the Act excludes certain allowances such as dearness allowance, house rent allowance, overtime allowance etc., from the definition of basic wages. However U/s 6, certain excluded allowances such as dearness allowance are included while determining the quantum of dues to be paid. This anomalous situation was resolved by the Hon'ble Supreme Court in **Bridge & Roof Company (India) Ltd Vs UOI**, 1963 AIR 1474 (SC) 1474. After a combined reading of Sec 2(b) and Sec 6 of the Act, the Hon'ble Supreme Court held that;

- 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 opportunity is not basic wages.

This dictum was subsequently followed by the Hon'ble Court in **Manipal Academy of Higher Education Vs RPFC**, 2008 (5)SCC 428. In a recent decision in **RPFC, West Bengal Vs Vivekananda Vidyamandir & Others**, 2019 KHC 6257 the Hon'ble Supreme Court considered the appeals from various decisions by High Courts that travelling allowance, canteen allowance, lunch incentive, special allowance, conveyance allowance etc., will form part of basic wages. The Hon'ble Court after examining all its earlier decisions held that;

“ The wage structure and the component of salary have been examined on facts, both by the authority and appellate authority under the Act, who have arrived at a factual conclusion that the allowances in question are essentially a part of the basic wages camouflaged 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 of us to interfere with the

concurrent conclusions of facts. The appeals by the establishments therefore merits no interference”.

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. 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. However this is an issue to be examined in each case considering the facts and circumstances of the case. In this case the only issue that is required to be considered is whether the special allowance is being universally being paid to all employees.

Considering the facts, pleadings, and evidence in this case, I am inclined to interfere with 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-examine whether the special allowance is being paid to universally, regularly and ordinarily to all employees of the appellant establishment, within a period of 3 months after issuing notice to the appellant. The Sec 7(O) pre-deposit made by the appellant shall be adjusted or refunded after finalization of the enquiry.

Sd/-

**(V. Vijaya Kumar)**  
Presiding Officer