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

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

(Wednesday the 22nd day of December, 2021)

Appeal No. 483/2019
(Old No.ATA-537(7)2016)

Appellant	M/s. Lourdes Hospital, Pachalam, Kochi, Kerala Pin – 682 012.
	By Bechu Kurien & Co.
Respondent	The Regional PF Commissioner EPFO, Sub Regional Office Kaloor, Kochi– 682017.
	By Adv. Sajeev Kumar K. Gopal

This case coming up for hearing on 20/09/2021 and this Industrial Tribunal-cum-Labour Court issued the following order on 22/12/2021.

O R D E R

Present appeal is filed from order No KR/KCH 3274/Enf 1 (3)/ BB no. 300 -124/ RB No. 313-147/ 2016/16617 dt. 04/03/2016 assessing dues U/s 7A of EPF & MP Act (hereinafter referred to as ' the Act'.) on trainees and also on evaded wages for

the period from 11/2008 to 10/2012. Total dues assessed is Rs. 3,01,42,346/-.

2. The appellant is charitable hospital managed by the registered charitable society, Lourdes Society for Health Care and Research. The true copy of the Registration Certificate of the society is produced and marked as Annexure A1. The appellant is covered under the provisions of the Act and has been paying contributions to all eligible employees as per Sec 6 of the Act. The Enforcement Officer from respondent organization inspected the appellant hospital on 16/02/2012 and 04/01/2013 and verified the records of the appellant hospital. They found that 7 out of 1187 employees on the payroll were drawing salary ranging from Rs. 6501/- to 6510/- and their salary was deliberately fixed to avoid provident fund contribution. They also found that the trainees/interns engaged for the purpose on the job training as part of their studies are not enrolled to the fund. The true copy of the guidelines of MG University dt. 30/08/2008 is produced and marked as Annexure A2. The true copies of internship certificate issued to the trainees/interns are produced and marked as Annexure A3 & Annexure A4. The appellant is also engaging trainees/apprentices/interns as per the standing orders of the institution which followed the terms and conditions of the Model

Standing Orders in Schedule-1 of the Industrial Employment (Standing Orders) Rules 1958. The true copy of the Standing Order is produced and marked as Annexure A5. As per sec 12A of Industrial employment (Standing Orders) Act 1946, the Model Standing Orders are applicable to the appellant hospital. The state government included the hospitals under the Industrial Employment Standing Orders Act 1946 vide notification GO (P) No. 74/2013/LBR/ dt. 07/06/2013. A copy of the said notification is produced and marked as Annexure A6. The respondent authority failed to consider the circular dt. 02/12/2011 issued by the Head Office of the respondent organization. The true copy of the said circular dt. 02/12/2012 is produced and marked as Annexure A7. The respondent also failed to consider the order of the Division Bench of the High Court of Punjab & Haryana in **APFC Vs M/s G4S Security Services (India) Ltd & another** dt. 20/07/2011. The true copy of the said order is produced and marked as Annexure A8. The appellant hospital is paying contribution as per Sec 2 (b) and 6 of the Act for its employees. But the respondent determined the dues on the other allowances paid to the employees which are not ordinarily, necessarily and uniformly paid to the employees. The true copy of the statement for various allowances paid is produced and marked as Annexure A10. The respondent authority has no power to fix the

allowances as contribution. The respondent authority failed to consider the stay order of the Hon'ble Supreme Court in the matter of **Surya Roshni Ltd Vs PF Commissioner and another.** Sec 6 of the Act provides for payment of contribution on basic wages, dearness allowance and retaining allowance only. The respondent authority U/s 7A can only look into the definition of provident fund contribution due from an employer on the emoluments earned by an employee falling within the definition of basic wages as well as dearness allowance and retaining allowance.

3. The respondent filed counter denying the above allegations. The appellant establishment is covered under the provisions of the Act w.e.f 31/08/1973. The appellant hospital is running a nursing college and nursing school and the students successfully completing the nursing course are bound to undergo bond service for one year for which they are paid stipend. In addition to the above the appellant engages the so called trainees who have undergone general nursing course in other institutions. The respondent initiated an enquiry U/s 7A of the Act on the basis of a report of the Enforcement Officer that all the trainees are required to be enrolled to the provident fund membership. The respondent considered all the submissions made by the appellant as well as the respondent and issued the impugned order.

The appellant claimed that they have 779 excluded employees. The respondent authority found that 45 employees are drawing salary upto statutory limit and therefore they are required to be enrolled to the fund. The appellant claimed that they are Apprentices but no standing order or training scheme were produced by the appellant. These employees were later absorbed for regular employment. The respondent authority therefore found these 45 employees will have be enrolled to the fund as they are only engaged on the job training prior to regular appointment. The term employee as defined U/s 2(f) of the Act covers in its definition any individual or persons engaged in or in connection with the establishment and who gets its wages directly or indirectly from the employer and includes apprentices or trainees except those engaged under the Apprentice Act 1961 or the certified standing orders of the establishment. Hence it is clear that the so called "interns" and "trainees" who have successfully completed the nursing course and got registration from Kerala Nurses and Midwives Council enabling them to work as Nurses, are qualified nurses employed for wages in connection with the work of the establishment. The Hon'ble High Court of Kerala in **Shri Rajesh Krishnan, Secretary Vs Assistant PF Commissioner,** O.P.No.38287/2002 held that for excluding an apprentice from the purview of the term employee as defined U/s 2(f) of the Act,

they should have been engaged under Apprentice Act 1951 or under the Standing Orders of the establishment . The Hon'ble High Court also clarified that the term standing orders has a definite connotation under the Industrial law and Sec 2(g) of the Industrial Employment (Standing Orders) Act defines standing orders to mean rules relating to a matter set in the Schedule to the Act. The Hon'ble High Court also held that the by laws can buy no structure of imagination be termed the standing orders which permits the appellant to engage apprentices in their establishment and the apprentices engaged will definitely come within the definition of employee U/s 2 (f) of the Act . The Industrial Employment (Standing Orders) Act 1946 is not applicable to the hospitals. The claim of the appellant that Model Standing Orders will be applicable as per Sec12A is also not correct. Hence it is clear that all the non-enrolled employees, who are classified as trainees will have to be enrolled to the fund and contribution is liable to be paid by the appellant. The appellant establishment is paying very law average wages and that two is split up into various allowances there by denying the actual contribution to Social Security of its Employees. The Hon'ble Supreme Court of India in **RPFC Vs Vivekananda Vidya Mandir and others,** 2019 KHC 6257 held that all allowances paid uniformly, universally necessarily and regularly to all employees would form

part of basic wages. The appellant establishment is splitting up wages into various allowances such as co-ordination allowance, extra allowance, holiday allowance, interim hike, in charge allowance, long distance allowance, on call allowance, special allowance, washing allowance and X'mas allowance to its employees. However provident fund is remitted only on very law wages. No dearness allowance is paid by the appellant establishment. Travelling allowance is paid to almost all employees. PF contribution is seen made only on 'Minimum Rate of Wages payable/Basic/Stipend/Consolidated'. HRA is paid under two heads. Majority of the employees are paid HRA above 50% of wages considered for wages and for many employees it is more than 110%. Though the genuineness the HRA payment is doubtful, the respondent authority excluded HRA from the assessment being a specifically excluded allowance. The appellant establishment manipulated salary structure and devised it in such a way to exclude the maximum portion of provident fund deductible salary. The appellant resorted to glaring subterfuge of wages in order to reduce provident fund contribution. Therefore the respondent held that all allowances excluding HRA subject to the statutory limit shown in the salary statement have to be considered as basic wages. The Hon'ble Supreme Court of India in **Rajasthan Prem Kishan Goods**

Transport Company Vs RPFC and others, 1996 (9) 454 held that it is up to the Commissioner to lift the veil and read between the lines to find out the pay structure fixed by the employer to its employees and to decide the question whether the splitting up of pay has been made only as subterfuge to avoid its contribution to provident fund. The respondent authority relied on the documents produced by the appellant to arrive at the conclusions and the assessment of dues.

4. The respondent authority considered various issues in the impugned order. However he did not take final decisions in many of the issues flagged by him as there was no adequate evidence to finally decide the matter. However he decided two issues: which is the subject matter of this appeal. It is also relevant to pointed out that the report of the Enforcement Officer on the basis of which the enquiry U/s 7A was initiated was also ignored in view of the fact that the said report was not tallying with the records produced by the appellant establishment.

5. The respondent authority flagged 2 issues in the impugned order. The 1st issue is regarding the enrollment of trainees/interns/apprentices engaged by the appellant establishment and second issue is with regard to the evasion in wages in respect of provident fund contribution .

6. According to the learned Counsel for the respondent the appellant establishment is having 1187 employees as per the pay roll, out of which 779 employees are treated as excluded employees for various reasons. According to the learned Counsel for the appellant there are 2 categories of trainees engaged by the appellant establishment. The 1st category of trainees are interns who are taken as per the directions of Mahathma Gandhi university vide Exbt A2 order. According to Annexure A2 order the candidates who undergo basic BSc nursing degree course shall undergo 1 year compulsory internship after successful completion of BSc nursing course. Internship is a planned organized educational program aimed at equipping graduate nurses to the rolls of staff nurses at various health care settings and clinical instructors in teaching and supervising nursing students. According to the guidelines issued by the university the degree will be awarded by the university only after successful completion of one year internship. It also says that the internees shall be paid an amount of stipend as stipulated by the government. On going through the above scheme of internship by MG University it is difficult to accept the finding that such internees can be treated as an employee as per the definition of an employee under the Act . The learned Counsel for the appellant pointed out that the Act and the definition of 'employee' U/s 2(f) of

the Act recognizes only the apprentices under Apprentice Act 1951 and the trainees under Standing Orders, for exclusion. The stipulation in the internship program of the university specifies that degree will be awarded by the university only after successful completion of one year internship and therefore the internship of such kind of nursing students cannot be treated on par with the regular trainees engaged by the hospital. Hence if the appellant succeeds in establishing through documentary evidence that few of these trainees are engaged as per the internship program of the university they shall be excluded from enrollment and assessment of provident fund dues.

7. Another category of trainees is those trainees engaged as per the standing orders of the appellant establishment. According to the learned Counsel for the respondent Annexure A6 cannot be treated as a Standing Order of the appellant establishment and therefore the trainees engaged by the appellant establishment will have to be enrolled to the fund. The question regarding the engagement of trainee nurses after completion of their course was considered in various judgments of Courts. The question whether Industrial Establishment (Standing Orders) Act is applicable to hospitals was also subject matter of dispute in various cases.

8. According to the learned Counsel for the respondent, the definition of 'employee' as per Sec 2(f) of the Act treats apprentices also as employee, the specific exclusion being the apprentices engaged under the Apprentices Act, 1961 or under the standing orders of the establishment. The Hon'ble High Court of Kerala in **Indo American Hospital Vs APFC**, W.P.(C) no.16329/2012vide its judgment dt.13.07.2017 in Para 7 held that

> " It is to be noted that an apprentice would come within the meaning of an employee unless he falls within the meaning of apprentice as referred under the Apprentices Act, 1961 or under the standing order of the establishment. If the trainees are apprentices and they can be treated as apprentices under the Apprentices Act or under the standing orders of the establishment, certainly, they could have been excluded but, nothing was placed before the authority to show that they could be treated as apprentices within the meaning of Apprentices Act or under the standing orders of the establishment. Therefore, I do not find any scope for interfering with the impugned order ".

9. Going by the observation of the Hon'ble High Court as reproduced above, the appellant herein also failed to substantiate their claim that the trainees are apprentices engaged under the

certified standing orders of the appellant establishment. The appellant ought to have produced the training scheme, the duration of training, the scope of training and also the evidence to show that they are appointed as apprentices under the standing orders, before the authority U/s 7A of the Act. This is particularly relevant in the facts of the case as the appellant establishment is engaging large number of trainees. As held by the Hon'ble High Court of Delhi in **Saraswathi Construction Co Vs CBT**, 2010 LLR 684 it is the responsibility of the employer being the custodian of records to disprove the claim of the department before the 7A authority.

10. The question whether a nurse who had undergone the prescribed course and had undergone the practical training during their course requires any further training in hospitals was considered by the Hon'ble High Court of Kerala in **Kerala Private Hospital Association Vs State of Kerala**, W.P.(C) no.2878/2012. The Hon'ble High Court vide its judgment dt.14.03.2019 held that " the decision taken by the private hospital managements to insist one year experience for appointment of staff nurses in private hospitals is against the provisions of the Nurses and Midwifes Act, 1953." In the above case the Hon'ble High Court was examining whether the nurses who completed their course and had undergone training as part of the course are required to be trained as trainee

nurses for one year in private hospitals. The order issued by the Government of Kerala fixing one year training and also fixing the stipend was withdrawn by the Government and it was held to be valid by the Hon'ble High Court. The learned Counsel for the respondent relying on the decision of the High Court of Kerala in **Cosmopolitan Hospital Pvt Ltd Vs T.S.Anilkumar**, WP(C) 53906/2005 argued that Industrial Employment (Standing Orders) Act is not applicable to hospitals. He also relied on the decision of the Delhi High Court in **Indraprastha Medical Corporation Ltd Vs NCT of Delhi and others**, LPA no.311/2011 to argue that industrial standing orders is not applicable to hospitals. However the Hon'ble High Court of Kerala in **Sivagiri Sree Narayana Medical Mission Hospital Vs RPFC**, 2018 4 KLT 352 took a contrary view stating that the Industrial Employment (Standing orders) Act is applicable to hospitals. The learned Counsel for the respondent also pointed out that in **Indo American Hospital** case (Supra) the Hon'ble High Court of Kerala refused to interfere with the orders issued by the respondent holding that the trainees will come within the definition of Sec 2(f) of the Act. According to him, the decision in **Sivagiri Sree Narayana Medical Mission Hospital** (Supra), has not become final as the writ appeal from the above decision is pending before the Division Bench of the Hon'ble High Court of Kerala.

While holding that Industrial Employment (Standing Orders) Act is applicable to the hospitals, the Hon'ble High Court of Kerala in **Sivagiri Sree Narayana Medical Mission Hospital** (Supra) also anticipated the risk of allowing establishments and industries to engage apprentices on the basis of standing orders. Considering the possibility of misuse of the provisions, the Hon'ble High Court held that

> " Of course, there would be many cases, where the employers for the sake of evading the liabilities under various labour welfare legislations, may allege a case which is masquerading as training or apprenticeship, but were infact it is extraction of work from the skilled or unskilled workers, of course the statutory authorities concerned and Courts will then have to lift the veil and examine the situation and find all whether it is a case of masquerading of training or apprentice or whether it is one in substance one of trainee and apprentice as envisage in the situation mentioned herein above and has dealt within the aforesaid judgment referred to hereinabove " .

11. Apart from the question whether Industrial Employment (Standing Orders) Act is applicable to hospitals, this is a fit case wherein the test given by the Hon'ble High Court of Kerala in **Sivagiri Sree Narayana Medical Mission Hospital** (Supra) cited

above is required to be applied in all fours. Though it is denied by the appellant, there is a clear finding by the respondent authority that the so called trainees are doing the work of regular employees. There is also a clear finding that the so called stipend paid to these trainees are almost same as wages paid to the regular employees. It was also held by the Hon'ble High Court of Kerala that nurses cannot be appointed as nursing trainees after completing their course and prescribed training during their course. As already pointed out, it was upto the appellant to produce the documents to discredit the report of the Enforcement Officers that the trainees are not engaged in the regular work and also that they are only paid stipend and not wages as reported by the squad of Enforcement Officers. The appellant also should have produced the training scheme/schedule and also the duration of training which will clearly indicate whether the trainees are engaged as regular employees. The Hon'ble High Court of Madras in **MRF Ltd Vs Presiding Officer, EPF Appellate Tribunal**, 2012 LLR 126 (Mad.HC) held that " the authority constituted under the 7A of EPF & MP Act has got power to go behind the terms of appointment and find out whether they were really engaged as apprentices. The authority U/s 7A can go behind the term of appointment and come to a conclusion whether the workman are really workmen or

apprentices. Merely because the petitioner had labelled them as apprentices and produces the orders of appointment that will not take away the jurisdiction of the authority from piercing the veil and see the true nature of such appointment ". The Hon'ble High Court of Madras in the above case also held that though the apprentices appointed under the Apprentices Act or standing orders are excluded from the purview of the Act they cannot be construed as apprentices, if the major part of the workforce comprised of apprentices. In **Ramnarayan Mills Ltd Vs EPF Appellate Tribunal**, 2013 LLR 849 (Mad.DB) the Division Bench of the Hon'ble High Court of Madras held that if the apprentices are engaged for doing regular work or production, they will come within the definition of employee U/s 2(f) of the Act. In another case, the Division Bench of the Hon'ble High Court of Madras in **NEPC Textile Ltd Vs APFC**, 2007 LLR 535 (Mad) held that the person though engaged as apprentice but required to do the work of regular employees is to be treated as the employee of the mill. In this particular case the respondent authority has concluded that the so called trainees were actually doing the work of regular employees and hence they cannot claim exclusion U/s 2(f) of the Act.

12. The appellant relied on the decision of the Hon'ble Supreme Court in **Central Arecanut and Coco Marketing and**

Processing Company Ltd Vs RPFC, AIR 2006 SCC 971to argue that the trainees engaged by the hospital are apprentices under the Act. In the above case, the establishment is an industry coming under the Industrial Employment (Standing Orders) Act and they were having a training scheme under which 40 trainees are taken every year after notifying in news papers and after conducting interview regarding suitability of trainees. In the present case as already pointed out the appellant failed to produce any training scheme and also prove that the trainees are actually apprentices and therefore the decision of the Hon'ble Supreme Court in the above case cannot be relied on by the appellant to support its case.

13. The Hon'ble High Court of Kerala in a recent decision dt.04.02.2021 in **Malabar Medical College Hospital & Research Centre Vs RPFC**, O.P. no.2/2021 considered the above issues in detail. In this case also the issue involved was whether the trainees engaged by a hospital can be treated as employees U/s 2(f) of the Act. After considering all the relevant provisions the Hon'ble High Court held that

> " Para 8. A bare perusal of the above definition makes it clear that apprentice engaged under the Apprentices Act, 1961 or under the standing orders of the establishment cannot be termed as 'employee' under EPF Act. It is also clear that in

the absence of certified standing orders, model standing orders framed under the Industrial Employment (Standing Orders) Act, 1946 hold the field and the model standing orders also contain the provision for engagement of probationer or trainee. However, the burden for establishing the fact that the persons stated to be employees by the Provident Fund organisation are in fact apprentices, lies on the establishment because that is a fact especially within the knowledge of the establishment which engages such persons ".

14. Applying the test laid down in the above case it is very clear that the so called trainee nurses engaged by the appellant establishment will come within the definition of employee U/s 2(f) of the Act and therefore they are required to be enrolled to provident fund membership.

15. The 2nd issue decided in the impugned order is with regard to evasion of wages. The respondent authority found that the wages on which contribution is paid by the appellant establishment is very low. In most of the cases, he found that provident fund contribution is paid only on the head ' Minimum Rate of wages payable'. He also found that generally no DA is paid to the employees. The allowances paid by the appellant as per the wage register include co-ordination allowance, extra allowance,

holiday allowance, interim hike, in-charge allowance, long distance allowance, conveyance allowance, special allowance, washing allowance, X'mas allowance etc. It is seen that all the allowances are excluded from basic wages by the appellant establishment and no contribution is paid. He also found that HRA is paid in two heads one is HRA and another is House rent allowance. Though the amount included in this category are very high, the respondent authority excluded both these allowances in view of the specific exclusion available in Sec 2b(2) of the Act. However he found that in many of the cases, House Rent Allowance and HRA comes to more than 110 % of their provident fund contributing wages. The impugned order also analyzed few cases of splitting up of wages to get a clear picture of the attempt by the appellant establishment to evade payment of provident fund contribution.

16. The law on the subject is clarified by the Hon'ble Supreme Court as well as High Courts.

17. 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.

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".

18. 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".

19. In view of the above findings it is very clear that universality is the test to be apply while considering whether an

allowance will form part of basic wages. The learned Counsel for the appellant pointed out that the test of universality is not followed by the respondent authority. The appellant produced Annexure A10 to substantiate their contention. As per Annexure A10 the total number of staff working in the appellant establishment from August 2006 and number of employees who are entitled for various allowances are indicated monthwise. According to the learned Counsel for the appellant, going by this table in Annexure A10, it is clear that all allowances are not universally paid to all employees and certain allowances are paid only to very few employees. The respondent authority will have to consider whether a particular allowance is paid uniformly and universally paid to a particular class of employees even though it is not paid uniformly to all the employees of the appellant establishment. It is felt that the respondent authority fail to do this exercise before deciding whether a particular allowance will form part of basic wages attracting provident fund deduction. While doing the above exercise the respondent authority will have to consider certain allowances such as HRA, which he has already excluded and overtime allowance which are specifically excluded as per Sec 2b(2) of the Act .

20. In view of the above the quantification of the dues on evaded wages will require modification.

21. Considering the facts, circumstances, pleadings and evidence in this appeal, I am not inclined to uphold he impugned order.

Hence the appeal is allowed and the impugned order is set aside. The following directions are issued (1) The nursing interns engaged by the appellant as part of their curriculum cannot be treated as an employee for the purpose of provident fund deduction. (2) The bond nurses trainees and other trainees who are engaged by the appellant will come within the definition of employees and they are liable to be enrolled to provident fund membership. (3) The allowances universally and uniformly paid to particular class of employees also will form part of basic wages on which the appellant is liable to pay provident fund contribution. The respondent authority shall be guided by the above directions while re-deciding the matter. Hence the matter remitted back to the respondent authority to re-decide the same within a period of 6 month after issuing notice to the appellant. If the appellant fails to appear or fails to produce records called for, the respondent

authority is at liberty to decide the matter according to law. The pre deposit U/s 7Q made by the appellant as per the direction of this Tribunal shall be adjusted or refunded after conclusion of the enquiry

Sd/-
(V. Vijaya Kumar)
Presiding Officer