



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

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

( Tuesday the 31st day of August, 2021)

**Appeal No. 487/2019**

(Old No.ATA-256(7)2016)

Appellant

M/s. Southern Engineering Co  
Post Office Building  
Perambra PO  
Thrissur District – 680 689  
Kerala.

By Adv. Saji Varghese

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 30.03.2021 and this Industrial Tribunal-cum-Labour Court issued the following order on 31/08/2021.

**ORDER**

Present appeal is filed from order No. KR / KC / 13213 / ENF-IV(5) / 2015 / 16510 DT. 01/02/2018 assessing dues on various allowances U/s 7A of EPF & MP Act, 1952 (hereinafter referred to as 'the Act'). for the period from

06/2005 to 02/2009. The total dues assessed is Rs. 16,42,814/-.

2. The appellant is a partnership firm of eleven contractors engaged in the business of labour supply contract to M/s. Apollo Tyres, Perambra and also undertaking petty contract works in the same establishment. The appellant is covered under the provisions of the Act. The terms and conditions of service of the employees engaged for the appellant are governed by settlements entered into between the appellant firm and its employees represented by their unions before the Conciliation Officer under the Industrial Disputes Act. The service conditions of the employees of the appellant firm during the period in question were governed by 2003 and 2007 settlements which were in force up to 23/04/2010. The employees were paid basic wages, HRA and other similar allowances. The appellant is not paying any DA to its employees. As per this settlement, basic wages only will be taken for payment of contribution for provident fund. Apart from basic wages the employees were paid HRA, special HRA conveyance allowance, special conveyance allowance, night allowances, Sunday allowance and skilled allowance. These allowances are not paid to all employees of the appellant.

Skilled allowance is paid only to less than 10% of the employees who are skilled workmen like carpenters, fabricators, electricians, welders, insulations etc. Night allowance is paid to only those who worked in the night based on minimum period of service. Sunday allowance is paid to employees who worked on Sundays but based on minimum period of service. Conveyance and special conveyance allowances are paid only to those who had a minimum period of 14 to 17 years standing. Special HRA is paid only to those having minimum experience of 3 years and also having minimum 86% attendance every year. During 2003 settlement the basic wages of the employees were in the range of 58% and other allowance including HRA was about 0% to 42%. In other wards, the other allowances paid were only to the extent of 29%. During the period of 2007 settlement the basic wages paid to employees was about 56% and other allowances amounted to 45%. Hence the other allowances component was about 31%. Based on the report of the Enforcement Officer the respondent authority issued a notice U/s 7A of the Act. A copy of the notice is produced and marked as Annexure A1. A copy of the report of the Enforcement Officer was also enclosed alongwith the notice. Copy of the report of Enforcement Officer

is marked as Annexure A-2. Appellant filed a reply to the notice. True copy of the above reply dt.04/06/2015 is produced and marked as Annexure A3. After hearing the appellant the respondent issued the impugned order, considering all allowances paid by the appellant to its employees except HRA as basic wages and quantifying the dues.

3. Respondent filed counter denying the above allegations. An Enforcement Officer who visited the appellant establishment on 30/04/2014 reported that there is evasion of wages for period from 06/2005 to 02/2009. Hence an enquiry U/s 7A was initiated by issuing notice to the appellant alongwith a copy of the report of the Enforcement Officer. The appellant filed a reply statement dt. 04/06/2015. The contention of the appellant that the respondent authority blindly followed the report of the Enforcement Officer is not correct. The respondent authority as a quasi judicial authority examined the records, took all the documents and submissions into account before issuing the Annexure A4 order. The appellant has a history of evading wages for the period 04/1995 to 03/2001. There was a similar evasion report and an enquiry U/s 7A was conducted and an amount of Rs.15,76,994/- was assessed as EPF contribution. The order

was challenged before the EPF Appellate Tribunal New Delhi in ATA No. 521 (7) 2002 and EPF Appellate Tribunal vide its order dt. 08/09/2010 dismissed the appeal upholding the order issued by the respondent. A copy of the order of the EPF Appellate Tribunal is produced and marked as Exbt.R1. The present proceedings were initiated for assessment of dues on non-payment of contribution on similar allowances. Any contract or part of the contract contrary to statute is null and void to the extent to which it is contrary. Therefore the agreement between the appellant and its employees curtailing the wage for the calculation of PF contribution is null and void and cannot be enforced as it is contrary to the statute legislated by the Parliament.

4. The basic question to be decided in this appeal is whether the special allowances paid by the appellant to its employees will attract PF deduction. As per the impugned order and as per the pleadings of the appellant the appellant establishment is paying basic pay, HRA, special HRA, conveyance, special conveyance, skilled wages, sunday wages and night wages to its employees. Admittedly HRA is excluded from assessment of PF dues.

**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 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 special allowances. 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.

In the present case, it is seen that the appellant establishment is paying various special allowances to its employees. As already stated, HRA is excluded from the assessment since the same is specifically excluded under the provisions of the Act. According to the learned Counsel for the appellant the other allowances are paid as per tripartite settlement between the management employees and the Labour Commissioner and there is a specific clause in the agreement that provident fund contribution need to be paid only on basic wages. As rightly

pointed out by the learned Counsel for the respondent the statutory provisions cannot be excluded by terms of an agreement and if there is any statutory liability to pay contribution on certain allowances, the tripartite agreement excluding contribution will be null and void. Hence the contention of the learned Counsel for the appellant that the appellant is not paying contribution on allowances in view of the tripartite agreement has no legal validity. There is no dispute regarding the fact that the employers can always fix the salary structure of its employees in consultation with the employees or in a conciliation proceedings. Any agreement entered into between the employer and its employees for splitting of the amount payable by the employer to its employees for the service rendered by them cannot take away the power of the respondent authority U/s 7A of the Act to look into the nature of the contract entered into between the employer and its employees and decide that splitting up of the pay, payable to the employees under several heads is only subterfuge to avoid payment of contribution by the employer to the provident fund. It was open to the respondent authority 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 the pay has been made only as a subterfuge to avoid its contribution to the provident fund. Though HRA is specifically excluded under the provisions of the Act, special HRA has got nothing to do with the HRA component of wages paid to the employees. It is also seen that special HRA being paid to its employees is higher than the HRA paid to the employees. Similarly it is seen that conveyance and special conveyance allowances are only a subterfuge to avoid payment of provident fund contribution. Similarly it is seen that Sunday wages are paid uniformly to all employees who worked on Sundays. It is further seen that skilled wages and night wages are being paid only to very few employees who were doing skilled work and who were working in the night. Hence the test of universality cannot be applied to skilled wages and night wages. To sum up, provident fund contribution is liable to be paid on basic wages, special HRA, conveyance allowance and special conveyance allowance. The provident fund contribution will not be attracted on HRA, skilled wages and night wages. In view of the above observations the impugned order is required to be modified.

Hence the matter is remitted back to the respondent authority to reassess the dues on the basis of the above

observation within a period of 6 months after issuing notice to the appellant. If the appellant fails to appear or fails to produce the record called for the respondent is at liberty to assess the dues in accordance with law. The pre-deposit made by the appellant as per the directions of this Tribunal U/s 7(O) of the Act shall be adjusted or refunded after completing the proceedings.

Sd/-

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