



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

सत्यमेव जयते

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

(Friday the 15th day of January, 2021)

Appeal No. 646/2019

(Old No.ATA-259(7)2013)

Appellant

M/s. Coconut Lagoon Heritage Resort
Kumarakom
Kottayam-686583

By Adv. P.A.Saleem

Respondent

The Assistant PF Commissioner
EPFO, Sub Regional Office
Kottayam – 686001

By Adv. Joy Thattil Ittoop

This case coming up for hearing on 06.01.2021 and this Industrial Tribunal-cum-Labour Court issued the following order on 15/01/2021.

ORDER

Present appeal is filed from order No.KR/KTM/1748 A/Enf 1(2) 2013/ 15101 A dt. 08/3/2013. U/s 7A of EPF & MP Act, 1952 (hereinafter referred to as 'the Act') on evaded wages for the period from 01/2010 to 12/2012. Total dues assessed is Rs. 6,93,255/-.

2. The appellant is running a resort at Kumarakom in Kottayam District. All the employees of the appellant are covered under the provision of the Act. The appellant paid salary under three different heads as Basic Wages, HRA and Conveyance allowance. For computation of contribution for provident fund only basic wages is taken into account. House rent allowance is specifically excluded U/s 2(b)(ii) of the Act. Conveyance allowance also will not form part of basic wages. The head office of the respondent issued a circular regarding splitting up of minimum wages. According to the circular the concerned authorities can decide the matter in accordance with law, in each case. In the meanwhile Group Four Security Services filed a Writ Petition before the Hon'ble High Court of Punjab and Hariyana, regarding whether conveyance allowance can be taken into consideration for computation of PF contribution. The Hon'ble High Court of Panjab and Hariyana passed an order stating that conveyance allowance will not come under the purview of basic wages. In view of the above the earlier circular dt.23/5/2011

issued by the headquarters of the respondent was kept in abeyance. The appellant is limiting the contribution, on the statutory wages of Rs. 6500/-. The request of the appellant that HRA is excluded from computation of provident fund dues is not so considered by the respondent. The total conveyance allowance paid by the appellant to its employees for the period from 1/2010 to 12/2012 comes to Rs.19,43,940/- and the HRA for the same period comes to Rs. 19,49,470/-. Hence the appellant is not liable to remit contribution on Rs. 38,93,410/- paid to the employees. The month wise details of conveyance and HRA are produced and marked as Annexure A3.

3. The respondent filed counter denying the above allegations. An Enforcement Officer of the respondent while conducting inspection of the appellant establishment noticed that the appellant is splitting wages into various allowances to the detriment of the employees. Hence an enquiry U/s 7A of the Act was initiated. During the course of the enquiry the employers' representative informed that from January 2010, the allowance are merged to basic pay. Therefore the enquiry was concluded assessing the dues for the period from 3/2008 to 12/2009. A separate enquiry was

initiated for assessment of dues, if any, from 1/2010 onwards. A representative of the appellant attended the hearing and produced the records called for. On verification of the records, it is seen that the appellant was paying HRA, conveyance allowance, NFH and leave salary apart from the basic wages to its employees. It is seen that the appellant was paying contribution only on 60% of the gross salary paid to the employees. It was seen that there was huge difference between the wages shown in the profit and loss account and wage register. The difference was explained by the representative of the appellant. From the records produced it is seen that the appellant is splitting wages into HRA, conveyance allowance and NFH only to evade provident fund contribution and therefore the impugned order was issued assessing dues on all allowances but restricting the assessment to the statutory wage limit of Rs. 6500/-.

4. The learned Counsel for the appellant raised the issue of including HRA and conveyance allowance within the definition of the basic wages for the purpose of assessment of dues. The question whether HRA will form part of basic wages was considered by the Hon'ble High

Court of Kerala in a recent decision. ***In EPF Organization Vs MS Raven Beck Solutions India Ltd***, WPC No.17507 of 2016 in its order dt. 15/10 2020 the Hon'ble High Court held that HRA will not form part of basic wages in view of the specific exclusion U/s 2(b)(ii) of the Act.

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 Conveyance allowance. 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.

7. In view of the above finding it is clear that the conveyance allowance paid by the appellant will attract provident fund deduction.

It is very clear from the impugned order that the contribution is restricted to the statutory limit of Rs. 6500/- and therefore no interference is called for in the assessment on that ground .

8. Considering the facts, circumstances and evidence and pleading in this case I am inclined to interfere with the impugned order to the extent that the HRA will not form part of basic wages and it is required to be excluded from the assessment of provident contribution. Conveyance allowance will form part of basic wages and the assessment shall include contribution on conveyance allowance.

Hence the appeal is partially allowed the assessment of dues against conveyance allowance is upheld and the assessment of dues against HRA is dismissed. The impugned order is set aside and the matter is remitted back to the respond to reassess the dues within a period of 3 months after issuing notice to the appellant.

Sd/-

(V. Vijaya Kumar)
Presiding Officer