



सत्यमेव जयते

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

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

((Monday the 08<sup>th</sup> day of March, 2021)

**Appeal No.29/2018**

(Old No.110(7)/2012)

Appellant

M/s. Express Publications (Madurai) Ltd  
Express House,  
Kaloor,  
Cochin - 682017

By Adv. Benny P Thomas

Respondent

The Assistant PF Commissioner  
EPFO, Sub -Regional Office  
Kaloor,  
Cochin - 682017

By Adv. S Prasanth

This case coming up for hearing on 08.02.2021 and this Industrial Tribunal-cum-Labour Court issued the following order on 08/03/ 2021 .

**ORDER**

Present appeal is filed from order No. KR/KC/3220/Enf-3 (1) / 2016/18412 dt. 17/03/2016 assessing the dues on allowances U/s 7A of EPF & MP Act, 1952 (hereinafter

referred to as 'the Act') for the period from 09/2014 to 01/2015. The total dues assessed is Rs.15,661/-.

2. The appellant is a newspaper establishment. The respondent issued a notice dt. 04/2/2016 U/s 7A of the Act. The appellant appeared before the respondent authority and produced all the documents called for by the respondent. According to the respondent the appellant was paying contribution only on Basic pay and DA without limiting to Rs.15000/-. The appellant filed reply dt. 16/02/2016 stating that the "variable pay" which is being paid to the employees as per Majithia Wage Board recommendations will not form part of basic wages as it is only an allowance paid to the employees. The appellant clarified that the concept of variable pay was introduced in the Majithia Wage Board recommendations for newspaper establishments. It was also clarified that the variable pay is not a self designed component included in the salary structure which is actually an allowance paid to the employees. The respondent failed to analyze the intrinsic nature of the variable pay and whether it formed part of basic wages. In ***Surya Roshni Ltd Vs EPFO*** , 2014(15) SCC 391 the Hon'ble Supreme Court examined whether certain

allowance will form part of basic wages for the purpose of payment of contribution. Since the issue is pending before the Supreme Court and clubbed with various other appeals the issue whether variable pay will form part of basic wages is subjudice. The respondent wrongly interpreted the provision of law and came to a conclusion that what is not contemplated in the Act is deemed to be included in the Section and there by determined the contributions.

3. The respondent filed counter denying the above allegations. The appellant establishment is engaged in newspaper industry and therefore the provision of the Act are applicable to the appellant establishment. Government of India vide notification dt.04/12/1956 amended EPF Scheme inserting chapter 10 in the scheme incorporating therein, Para 18, providing special provisions in the case of newspaper establishments and newspaper employees. As per Para 18(2), the appellant and its employees as statutorily liable to contribute to EPF Scheme without restricting to statutory wage limit. The respondent noticed that the appellant establishment was not paying contribution on variable pay introduced in the newspaper establishment on the basis of Majithia Wage Board

recommendations. The concept of variable pay was introduced to as a specified percentage of the basic pay drawn by an employee. It is an emolument analogous to the grade pay sanctioned to the Central Government Employees on the basis of the 6<sup>th</sup> Pay Commission. An enquiry U/s 7A was initiated to decide and also to determine the dues. The appellant was given more than adequate opportunity before the impugned order is issued. A representative of the appellant appeared before the respondent and filed a written statement stating that the variable pay and variable DA are entirely different concepts and therefore variable pay will not attract provident fund deduction. The respondent found that the variable pay is similar to grade pay, paid to the Central Government employees and grade pay is part and parcel of basic pay and is reckoned for calculating gratuity, leave encashment and various allowances. The variable pay now being earned by the employees of the appellant establishment is to be treated as part and parcel of basic pay and the appellant is statutorily liable to remit provident fund contribution on the same. In ***RPFC Vs Administrator Cosmopolitan Hospital***, 2010 (1) LLJ 2014 the Hon'ble High Court of Kerala held that simply because

of the employer and employees by agreement decided that contribution is not payable in respect of some payment, liability under the Act cannot be avoided, if such payments answers the definition of the basic wages and define under the Act.

4. The learned Counsel for the appellant argued that the variable pay cannot be equated to variable DA being paid to the employees. The variable pay can be equated only to an allowance paid to the employees who are covered and specified in the Majithia Wage Board recommendations. The learned Counsel for the respondent on the other hand argued that variable pay is being paid universally to all employees of the appellant establishment and will form part of basic wages. According to the learned Counsel, the Majithia Wage Board recommendations were accepted by Government of India dt. 26/11/2011 and was notified vide SO No. 2532 (E) dt. 11/11/2011 in the gazette of India and along with the notification summary of the recommendations of Majithia Wage Board is also enclosed. The concept of variable pay is explained in Para 9 of the recommendation. Para 9 is reproduced hereunder for clarity of the concept .

a. “ The sixth pay commission had recommended the concept of grade pay and the same was agreed to by the Government for implementation. On similar analogy the concept of variable pay needs to be introduced for all the employees working in newspaper establishments and news agencies. The variable pay will be the specified percentage of the basic pay drawn by an employee in the newspaper industry. **All allowances, such as HRA, Transport Allowance and Leave Travel Allowance etc. will be computed by taking the sum total of the revised basic pay and the variable pay applicable to an employee.**

b. Variable pay recommended by the Wage Boards would be the minimum maintainable for all employees including those working on contract basis and the management would be free to pay more than recommended variable pay subject to performance of the workers as well as profitability and viability of the newspaper establishments.”

5. From the above it is very clear that variable pay will be a specified percentage of basic pay drawn

by an employee in the newspaper industry. Further it is also seen that all allowances such as HRA, Transport allowances, LTA etc. will be computed by taking sum total of the revised basic pay and variable pay applicable to an employee. It is also seen that variable pay is paid to all employees including those working on contract basis. It is clear from the above discussion that the variable pay will form part of basic wages as defined under the Act and therefore will attract provident fund deduction.

6. The learned Counsel for the appellant also attempted to equate the variable pay to an allowance payable to an employee and also to argue that such an allowance will not form part of basic wages and therefore will not attract provident fund deduction.

7. 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 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.

8. 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 Majoor 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”.

9. From the above discussion, it is clear that the appellant is liable to pay contribution on allowances such washing allowance, other allowances etc. 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 allowances paid to the employees will form part of basic wages.

10. In the appeal memorandum the appellant has pointed out the pendency of **Surya Roshni Ltd Vs EPFO** and other similar cases before the Hon'ble Supreme Court of India. The learned Counsel for the appellant did not press the same in view of the fact that the Hon'ble Supreme Court dismissed all the above appeals along with **Vivekanda Vidya Mandir** case (Supra).

11. Looking at from any angle it is very clear that the variable pay paid by the appellant to its employees will form part of basic wages and will attract provident fund deduction.

12. Considering the facts, pleadings, evidence and arguments, I am not inclined to interfere with the impugned order.

Hence the appeal is dismissed.

Sd/-

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