



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

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

(Monday the 01st day of November, 2021)

Appeal No.345/2019
(Old No.ATA-625(7)2015)

Appellant

M/s. Providence Protection and
Detectives,
Valakottu Tower, 2nd Floor,
Pullikkanakku P.O
Kayamkulam - 690537

By Adv. Sankarankutty Nair

Respondent

The Assistant PF Commissioner
EPFO, Sub Regional Office
Kaloor, Kochi – 682017

By Adv. Sajeev Kumar K. Gopal

This case coming up for hearing on 24/06/2021 and
this Industrial Tribunal-cum-Labour Court issued the
following order on 01/11/2021.

ORDER

Present appeal is filed from order No. KR/KC/24636/Enf-II(5)/2014-15 /14724 dt. 09/03/2015. assessing the dues U/s 7A of EPF & MP Act,1952 (hereinafter referred to as 'the Act') on omitted wages for the period from 03/2010 to 05/2013. The total dues assessed is Rs.5,30,581/-.

2. The appellant is an establishment covered under the provisions of the Act. The appellant was regular in compliance. The respondent authority initiated an enquiry U/s 7A of the Act. It is claimed in the impugned order that the respondent issued a notice on 29/09/2014 by registered post. The appellant never received such notice. Due to non-receipt of the notice, the appellant did not attend the enquiry. The appellant was declared ex-parte and respondent issued ex-parte order in a hurry. The respondent failed to consider the provisions of the Minimum Wages Act and also that of EPF Act while deciding the issue particularly with regard to the house rent allowance being paid to the employees by the appellant. As per the relevant

provisions HRA is not liable for provident fund deduction, washing and other allowance are also not liable for provident fund dues. The retrospective liability imposed by the respondent through impugned order while charging employees as well as employers share is totally illegal.

3. The respondent filed counter denying the above allegations. During the course of an inspection conducted by an Enforcement Officer, it was revealed that there are evasion of wages for the period from 03/2010 to 05/2013. The wages structure of the appellant establishment consisted of basic, DA, HRA, washing allowance and holiday allowance. However provident fund contribution as being paid only on basic and DA and excluding other components of wages paid to the employees. Hence an enquiry U/s 7A of the Act was initiated by the respondent authority. The enquiry was posted on 20/11/2014 and there was no representation on the part of the appellant. Hence the enquiry was adjourned on 31/01/2015 there was no

representation on the part of the appellant on the said date also. Since the appellant did not attend the hearing and did not file any writ statement, the respondent authority issued the impugned order. The Enforcement Officer had already served part II inspection report on the appellant. The Enforcement Officer who verified the books of accounts of the appellant found that the wage structure of the appellant consisted of basic, DA, HRA, washing allowance and holiday allowance. The appellant remitted contribution only on basic and DA. Therefore the respondent authority came to the conclusion that all the allowances except HRA will attract provident fund deduction.

4. The learned Counsel for the appellant pointed out two grounds on which the appeal is filed.

5. The first issue is with regard to the non-service of notice of enquiry on the appellant establishment. According to the learned Counsel for the appellant the notice was served on the appellant establishment but nobody attended the hearing

though two opportunities were given. The learned Counsel for the appellant submitted that the appellant never received any notice from the respondent authority. In view of the contradictory stand taken by the Counsels the respondent authority was directed to produce acknowledgement, if any, for having served the notice of 7A enquiry on the appellant establishment. The respondent failed to produce any acknowledgement in this proceedings . Hence it is safely concluded that the notice of 7A enquiry was not served on the appellant establishment on both the occasions when the enquiry was posted. Hence it is appropriate that the matter will have to be remitted back to the respondent to provide an opportunity to the appellant before assessing the dues on various allowances.

6. The second issue raised by the learned Counsel for the appellant is with regard to the nature of allowances being paid to the employees. According to the Counsel, the employees are being paid HRA, washing allowance and holiday wages and

none of these allowances will attract provident fund deduction. The learned Counsel for the respondent argued that HRA is not included in the assessment of dues. He pointed out to Para 4 of the counter filed by the respondent which specifically states that “ the dues have been determined by taking all allowances except HRA for the period from 03/2010 to 05/2013. The total emoluments earned by the employees were subject to the statutory wage limit of Rs. 6500/- “ However on a perusal of the impugned order it gives an impression that all the allowances are taken into account for assessing the dues. The impugned order states that “the allowance” is merely a balancing component after allocating the total wages into various nomenclatures like HRA, washing allowance, holiday allowance etc and the same possess all the characteristic of ‘Basic Wages’ as per the definition”. Hence it is not clear from the impugned order whether HRA is taken into account for the purpose of assessing provident fund contribution.

7. In the light of the above facts, it is required to be examine the provisions of the Act and Schemes and also various decisions by the Hon'ble High Courts and Supreme Court .

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 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”.

9. 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.

In view of the above discussions and also the facts of the case, it is very clear that HRA paid to its employees by the appellant will not attract provident fund deduction. The washing allowance and holiday wages paid to the employees will form part of basic wages and therefore will attract provident fund deduction.

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

Hence the appeal is allowed, the impugned order is set aside and the matter remitted back to the respondent authority to reassess the dues after issuing notice to the appellant. The assessment shall be close within a period of 6 months from the date of receipt of this order. If the appellant fails to attend the enquiry or fails to produce the documents called for by the respondent, the respondent authority is at liberty to decide

the matter on the basis of the available information, according to law. The Sec 7(O) pre-deposit made by the appellant as per the direction of this Tribunal shall be adjusted or refunded after finalization of the enquiry.

Sd/-

(V. Vijaya Kumar)
Presiding Officer