



सत्यमेव जयते

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

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

(Monday the 22nd November of, 2021)

Appeal No 51/2018
(Old No. A-KL – 32 / 2016)

Appellant

M/s. Gramox Paper and Boards Ltd
Puthuppady P.O,
Muvattupuzha
Ernakulam – 686 673.

By Adv. Paulson C. Varghese

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 29.07.2021 and this
Tribunal-cum-Labour Court passed the following on 22.11.2021.

ORDER

Present appeal is filed from order No. KR/KC/15575/Enf-3 (2)
2016/18909 dt. 30/03/2016 assessing dues in respect of non-enrolled
employees U/s 7A of EPF & MP Act, 1952 (hereinafter referred to as

‘the Act’) on evaded wages for the period from 04/2012 to 12/2013. The total dues assessed is Rs. 7,11,382/-.

2. Appellant establishment is a factory defined under the factories Act, manufacturing paper and paper boards. The appellant establishment is run in accordance with long term settlements executed between the union and management. As per long term settlement, the employees are being paid basic wages and DA, travelling and washing allowance. Contribution on provident fund is being paid on basic wages and DA. On 30/12/2013 an Enforcement Officer of the respondent conducted an inspection in the appellant establishment, verified the records and reported that the appellant establishment is liable to remit contribution on travelling allowance and washing allowance. A copy of the inspection report dt. 29/01/2014 is produced and marked as Annexure 2. The respondent initiated an enquiry U/s 7A of the Act on the basis of the report. The appellant entered appearance and filed a detailed written statement dt. 08/08/2014. The appellant also submitted all the relevant documents. The appellant contended that the appellant establishment is not liable to pay contribution on the other heads except basic wages and DA. Other allowance including washing allowance, fixed production allowance and limited travelling allowance

are not accounted for provident fund contribution. The law on the issue is settled by the Hon'ble Supreme Court in **Bridge & Roof Company Ltd Vs Union of India**, AIR 1963 SC 1474 and **Manipal Academy case**, 2008 (5) SCC 428. According to the above said judgments all wages which are universally necessary and ordinarily paid to all across the board, basic wages and where the payments is available to be specially paid to those who avail the opportunity is not basic wages. As per the above decision all allowances such as overtime, bonus, Commission or any other similar allowances is excluded from the definition of basic wages. Basic wages by its own definition encompasses all the payments except specific exclusions. Thus basic wages is subject to exclusions expressly referred to in the above definition. The above interpretation of Sec 2 (b) (2) was subjected to judicial review by various High Courts. There were conflict in decisions and the SLP is pending before the Hon'ble Supreme Court. The respondent while passing the impugned order ought to have examined whether the allowance paid by the appellant are uniformly paid across the board. The respondent ought to have found that the appellant had paid allowances subject to certain events. The respondent stated that the allowance paid had passed the test of

universality and the test of contingency and hence the allowances will be included under the head of wages and is liable to pay contribution. Actually the respondent had not applied the test of universal and test of contingency while arriving at the above conclusion.

3. The respondent filed counter denying the above allegations. Appellant is an establishment covered under the provisions of the Act w.e.f 22/09/1997. An Enforcement Officer, who is an Inspector appointed u/s 13 of the Act, inspected the books of the appellant and noticed that the appellant split wages paid to the employees into basic, DA, travelling allowance and washing allowance. However, provident fund is restricted to only Basic and DA and the salary paid to the employees is much less than the statutory limit of Rs. 6500/-. The appellant violated Para 30 and 38 of EPF Scheme and Sec 6 (c) of EPF Act. Therefore an enquiry was initiating vide summons dt.22/02/2014, fixing the enquiry on 05/06/2014. An Advocate attended the hearing and submitted a written statement. A representative of the appellant attended the hearing and claimed that allowances were paid under an agreement. The appellant produced the relevant records. On examination of the relevant documents, the respondent found that the gross wages paid to the employees were split into Basic, DA, TA and

washing allowance. He also found that travelling allowance and washing allowance are paid universally, regularly and ordinarily to all the employees though at different rates. The respondent authority came to the conclusion that various so-called allowances classified by the appellant are nothing but basic wages as defined U/s 2(b) of the Act. Accordingly he proceeded to assess the dues subject to the salary limit of Rs. 6500/-. In **Gujarat Cympromet Ltd Vs Assistant PF Commissioner**, 2004(103) FLR 908 the Hon'ble High Court of Gujarat held that the term basic wages as defined U/s 2(b) of the Act includes all emoluments/benefits received by the employees under the headings of medical allowance, conveyance allowance and lunch allowance and these allowances are to be considered for the purpose of calculating provident fund contribution. The Division Bench of the Hon'ble High Court of Calcutta in **Regional PF Commissioner West Bengal and Another Vs Vivekananda Vidya Mandir and Others**, 2005(2) LLJ 721 held that in order to exclude any allowances from the purview of Sec 6, which provides for liability to pay contribution based on basic wages, such allowance should fall under Clauses 1,2 and 3 Section 2(h) which enumerate allowances which are not included in the definition of basic wages. The Hon'ble Supreme Court of India in

Jay Engineering Works Ltd Vs Union of India, AIR 1963 SCC 1480 held that the expressions ‘any other allowance should be of the same type as the allowances mentioned in the clause such as DA, HRA, OT, bonus and commission as specifically excluded U/s 2(b) of the Act. In **RPFC Vs Administrator, Cosmopolitan Hospital Ltd**, 2010 (1) LLJ 14 the Hon'ble High Court of Kerala held that the special allowance answers the definition of basic wages in which case contribution are payable by the employer on that payment also. The Hon'ble High Court also clarified that simply because the employer and employees by agreement decide that the contribution is not payable in respect of a payment, liability under the Act cannot be avoided, if such payments answers the definition of basic wages.

4. The issue to be considered in the appeal is whether DA and washing allowance paid to its employees’ by the appellant will answer the definition of basic wages and therefore will attract provident fund deduction. The learned Counsel for the appellant tried to interpret these allowance by claiming that they are paid as production incentive and also overtime allowance. The learned Counsel for the appellant argued

that the allowances are paid to its employees on the basis of a bipartite settlement between the unions and the appellant. Hence there can be no ambiguity in the designation of these allowances. The learned Counsel for the appellant also pointed out that the respondent authority failed to consider whether the allowances are paid across the board to all employees. It is seen that the respondent authority examined this aspect in the impugned order itself and held that “ gross wages is split up as basic , DA , travelling allowance and washing allowance. Provident fund has not been deducted on travelling allowance and washing allowance. The allowances, travelling allowance, washing allowance etc are seen universally, regularly and ordinarily, paid to all employees.” The respondent authority came to such a conclusion after verifying the records produced by the appellant establishment .

5. In the above contest it is relevant to examine the statutory and legal provisions concerning the issue.

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.

6. 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”.

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. From the above discussion of the various statutory provisions and also the judgment of the Hon'ble Supreme Court and also High Courts, it is clear that travelling allowance and washing allowance being paid by the appellant establishment to its employees will form part of basic wages. The learned Counsel for the appellant tried to emphasis before this Tribunal that “any another allowance” contained in the exclusion clause U/s 2 (b) (2) shall be given a wider interpretation. The normal canon of interpretation is that remedial statutes received liberal construction where as a penal statute calls for strict construction. In the case of remedial statute, if there is any doubt, the same is resolved in favour of the class of persons for whose benefit the statute is enacted, but in cases of penal statutes, if there is any doubt, the same is normally resolved in favour of the alleged offender. It need not be emphasized that the EPF and MP Act effectuates the

economic message of the Constitution as articulated in Directive Principles of State Policy as mandated under Article 38 and 43 of the Constitution.

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

Hence the appeal is dismissed.

Sd/-

(V. Vijaya Kumar)
Presiding Officer