



**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.706/2019

(Old No. 67 (7)/ 2012)

Appellant

M/s. Coconut Lagoon
Kumarakom
Kottayam – 686 563

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 (1) / 2011 / 9618 dt. 23.11.2011 assessing the dues U/s 7A of EPF & MP Act, 1952 (hereinafter referred to as 'the Act') for the period from

3/2008 to 12/2009. The total dues assessed is Rs. 7,96,238/-.

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 is paid salary under three different heads as Basic Wages, HRA and Conveyance allowance. For computation of contribution for provident fund only basic wages is taking 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 authority 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 Haryana, whether conveyance allowance can be taken into consideration for computation of PF contribution. The Hon'ble High Court of Punjab and Haryana 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 respondent authority in the present case however held that conveyance allowance will form part of basic wages. The salary details of the employees for the month of March 2008 and December 2009 is produced and marked as Annexure A2. As per the provision of the Act the liability of paying contribution is limited to Rs. 6500/-per month. Hence the appellant is restricting the contribution, to the salary limit of Rs. 6500/. There are 13 employees drawing basic wages more than 6500/- during the month March 2008 and 15 employees during December 2009. The conveyance allowance of 13 employees during March 2008 comes to the tune of Rs.52,100/- and conveyance allowance of 16 employees for the month of December 2009 whose basic wages are Rs.6500/- comes to the tune of 1,18,986/-. The appellant is producing the break up details and marked as Annexure A3. The respondent calculated the conveyance allow for the period from March 2008 to December 2009. The total conveyance allowance paid in the month of March 2008 is Rs. 1,22,060/- out of which 52,100/- pertains to employees who were drawing salary beyond Rs.6500/-. In view of the above the PF contribution on conveyance allowance will be

substantially reduce which was not considered by the respondent authority. In ***Marathwada Gramin Bank Karmachari Sankhatan Vs. Management of Marathwada Gramin Bank***, 2011 LLR 1130 (SC) the Hon'ble Supreme Court held that any contribution paid beyond the statutory limit of wages is the discretion of the management and the management can decide the wages on which contribution shall be remitted beyond the statutory limit, at any time. Hence the appellant is entitled to limit the PF contribution at Rs. 6500/-. For the period from March 2008 to December 2009 the total conveyance allowance is paid Rs. 31,09,079/- and the respondent computed contribution towards PF on the whole amount. The total conveyance allowance paid to the employees drawing salary beyond Rs.6500/- during the relevant period was Rs. 16,14,383/-. Even if conveyance allowance is taken into account for computation of contribution, the appellant is liable to pay contribution only Rs.14,94,696/-. The true copies of the computation statement for the period from March 2008 to December 2009 is produced and marked as Annexure A4.

3. The respondent filed counter denying the above allegations. It was reported that the appellant is splitting the wages of its employees into various allowances and contribution was being paid only on basic wages. Hence an enquiry U/s 7A was initiated. The appellant was given adequate opportunity. A representative of the appellant attended the hearing and produce salary list from 4/2009 and 8/2011. The allowances paid by the appellant includes HRA and conveyance allowance and the total allowance paid is Rs.38,49,925/-. Out of this an amount of Rs.19,32,011/- is shown as conveyance allowance. Further it was also revealed that NFH wages is considered for PF deduction whereas leave salary was not considered for PF deduction. The representative who attended the hearing relying on the decision of the Hon'ble Supreme Court in **Manipal Academy of Higher Education Vs PF Commissioner** argued that leave salary will not attract provident fund deduction. The appellant also produce soft copy of the salary register for the period from 4/2008 to 9/2011. It is seen that the conveyance allowance paid to employees are not considered for provident fund deduction and the representative of the appellant who attended the

hearing submitted that the conveyance allowance is merged with basic wages and provident fund is being deducted from the total amount w.e.f 1/2010. Accordingly the appellant was directed to remit the arrears of the contribution on conveyance allowance from 04/2008 to 12/2009. The appellant never raised the issue regarding restricting the contribution to the statutory wage limit during the hearing before the 7A authority. The employer is not supposed to reduce wages etc as per Sec 12 of the Act on introduction of the provident fund benefits to the appellant establishment. The averment of the appellant that he has no liability for remitting contribution towards provident fund beyond the statutory limit is not correct.

4. The only issue that came up for consideration in this appeal is whether the conveyance allowance paid by the appellant to its employees will attract provident fund deduction.

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.

4. 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”.

5. From the above discussion, it is clear that the appellant is liable to pay contribution on allowances such as 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 allowance paid to the employees will form part of basic wages. In view of the above finding it is clear that the conveyance allowance paid by the appellant will attract provident fund deduction.

6. The learned Counsel for the appellant raised a contention that appellant has no liability to pay contribution on wages beyond the statutory limit. The learned Counsel for the respondent argued that there is a provision under which the employer and employee can opt to contribute on higher wages and therefore an employer cannot claim that he is not liable to pay contribution on higher wages. It is now settled by the Hon'ble Supreme Court as well as the Hon'ble High Court of Kerala that an employer has an option to restrict his contribution to the statutory limit. The employer can also withdraw the option once exercised by him to pay contribution on higher wages and restrict it to the statutory limit. The appellant in their counter try to establish that the quantum of contribution

assessed by the respondent on the conveyance allowance is on higher side as the respondent failed to restrict the contribution to the statutory limit. According to the learned Counsel for the respondent this issue was never raised before the respondent authority at the time of hearing and therefore it was not decided in the impugned order.

7. Considering the facts, circumstances and pleadings in this case, I am inclined interfere the impugned order to the limited extend of the assessment of the dues within the statutory wage limit.

Hence the appeal is partially allowed holding that conveyance allowance will form part of basic wages. However the assessment of dues is set aside with a direction to re-assess the dues within a period of 3 months after issuing notice to the appellant restricting the assessment to the statutory wage limit. The pre-deposit made by the appellant U/s 70 of the Act as per the direction of this Tribunal shall be adjusted or refunded after finalizing the matter.

Sd/-

(V. Vijaya Kumar)
Presiding Officer