



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

सत्यमेव जयते

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

(Friday the 12th day of February, 2021)

Appeal No.710/2019

(Old No.110(7)/2012)

Appellant

M/s. The Great India Tour Company
Private Limited,
New Corporation Building , Palayam,
Thiruvananthapuram-695033

By Adv. Ajith S. Nair

Respondent

: The Assistant PF Commissioner
EPFO, Regional Office
Thiruvananthapuram – 695004.

By Adv. Nitha N.S

This case coming up for hearing on 20.01.2021 and this Industrial Tribunal-cum-Labour Court issued the following order on 12/02/2021 .

ORDER

Present appeal is filed from order No. KR/12623/Enf 1(1) /2012/12887 dt. 24/1/2012 assessing the dues on allowances U/s 7A of EPF & MP Act, 1952 (hereinafter referred to as 'the Act') for the period from 10/2009 to 09/2011. The total dues assessed is Rs. 2,05,201/-.

2. The appellant is engaged in the field of tourism and is incorporated under the provision of Company's Act 1956. The Enforcement Officers of the respondent used to inspect the books of the appellant establishment and they never raised any objection regarding the remittance of PF contribution. However the Enforcement Officer who conducted the inspection on 4/11/2011 reported that the appellant is required to remit contribution on special allowances paid to its employees from 1/10/2009. The appellant filed an objection to the report of the Enforcement Officer stating that the employees are being paid food allowance, conveyance allowance, uniform allowance, washing allowance and HRA. And it was also informed that the allowance do not form part of wages attracting contribution. Ignoring the above contentions of the appellant, the respondent initiated an enquiry U/s 7A of the Act. The respondent accepted the observation of the Enforcement Officer that the allowance will attract PF deduction. The impugned order is bad in law as the respondent failed to consider the representation submitted by the appellant. The finding of the respondent that special

allowances form part of basic wages as defined U/s 2(b) of the Act is not correct as there are specific exclusion U/s 2(b) of the Act itself. The respondent also failed to take note that there was no complaint from any quarters regarding the salary structure and also the contribution paid to the respondent. The respondent has not answered the question whether the bifurcation of wages made by the appellant is a subterfuge adopted to avoid payment of provident fund contribution.

3. The respondent filed counter denying the above allegations. An Enforcement Officer of the appellant establishment during routine inspection on 4/11/2011 reported that the compliance position of the appellant is not satisfactory as the appellant had split up the wages of its employees into various allowances which is clear subterfuge to avoid payment of provident fund contribution. On the basis of the report, the respondent initiated an enquiry U/s 7A of the Act. The main issue taken up during the enquiry was whether the splitting up of salary adopted by the appellant is a subterfuge with a view to avoid PF contribution. The salary records produced by the appellant showed that the appellant has bifurcated salary into Basic,

Dearness allowance , HRA, City compensatory allowance, Washing allowance, Clothing allowance, Special allowance, Meals allowance, Uniform allowance and other allowance etc., out of which basic and DA alone is taken for the purpose of remittance of contribution. The Enforcement Officer was of the view that out of the aforesaid components, HRA alone comes under excluded category and all other allowances attract provident fund contribution U/s 2(b) of the Act. The appellant is liable to pay contribution on basic wages subject to the statutory wage limit of Rs.6500/-. It was also noticed that for some of the employees the appellant has remitted the provident fund contribution up to the upper wage limit of Rs. 6500/-. In such cases the splitting of salary has no implication. However in other cases the employees are denied the benefit of social security by splitting of salary into various allowances. The respondent authority considered the representation of the appellant produced before the authority to examine all the legal authorities and came to the conclusion that the appellant is liable to pay contribution on various allowances paid to its employees excluding HRA and City compensatory allowance. The

records produced by the appellant clearly showed that the provident fund contribution in respect of 23 employees were remitted for a salary exceeding the statutory limit of Rs. 6500/- during the period under question. With regard to the remaining employees the splitting up of wages has adversely affected their social security benefits. After considering all the facts and evidence the 7A authority concluded that there is a clear subterfuge and deliberate attempt made by the appellant establishment to reduce its provident fund liabilities by bifurcating the wages of employees into various allowances.

4. The main issue in this appeal is whether the splitting up of the wages of the employees of the appellant establishment is a subterfuge to deny the legally entitled social security benefits to the employees of the appellant. It is seen from Annexure A4 statement filed by the appellant that the appellant is splitting wages into Basic, DA, HRA,CCA,WA,CA, and Special pay. The appellant is paying provident fund contribution in respect of Basic + DA. In the case of Sreelekha.K it is seen that the gross salary is Rs. 11,977/- where as provident fund contribution is paid only on Rs.6030/-. Similarly in the case of Kishore Kumar the

gross pay is Rs. 6416/- whereas provident fund contribution is paid on Rs. 3275/-. On an analysis of the wage structure of the appellant it is clear the contribution is paid only on 50% of the gross wages paid. The rest of the pay is divided into various allowances. According to the learned Counsel for the respondent, even though no uniform is prescribed for the employees, the appellant is paying uniform allowance and also washing allowance to its employees. According to the learned Counsel for the respondent it is a clear subterfuge to avoid payment of employers' share of contribution on the higher wages which is detrimental to the interest of the employees.

5. 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.

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”.

7. 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.

8. The appellant has no case that the above allowances were not paid uniformly to all the employees. Hence all the above allowances will form part of basic wages and will attract provident fund deduction. The respondent rightly excluded HRA and CCA from the assessment.

8. Considering the facts, pleading evidence and arguments, I am not inclined to interfere with the impugned orders.

Hence the appeal is dismissed.

Sd/-

(V. Vijaya Kumar)
Presiding Officer