



सत्यमेव जयते

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

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

(Monday the 11<sup>th</sup> day of January, 2021)

**APPEAL No.9/2019**  
(Old No.212(7)2011)

Appellant : M/s.Blue Mount Public School  
Thonnakkal  
Trivandrum - 695317

Respondent : The Assistant PF Commissioner  
EPFO, Regional Office, Pattom  
Trivandrum - 695004

By Adv.Nita N. S.

This case coming up for final hearing on 16.12.2020 and this Tribunal-cum-Labour Court on 11.01.2021 passed the following:

**ORDER**

Present appeal is filed from order no.KR/16817/ENF-1(4)/2011/14116 dt.21.01.2011 assessing dues U/s 7A of the EPF & MP Act, 1952 (hereinafter referred to as 'the Act') on various allowances and 20 non enrolled employees for the period from 08/2008 to 10/2010. The total dues assessed is Rs.3,98,125/-

2. The appellant is an educational institution and is covered under the provisions of the act w.e.f. 02.06.2003. The appellant received a summons dt.09.12.2019 alleging that the respondent has reason to believe that the appellant establishment failed to remit PF contribution in respect of all its employees and also on allowances from 08/2008 to 10/2010. The appellant attended the hearing, though the details regarding the enquiry was not supplied to the appellant. The appellant produced the necessary records before the respondent. Without considering the claim of the appellant, the respondent issued the impugned order. The impugned order is issued merely on speculations and not on the actual wages earned by the employees on which the contribution is payable. The assessment of dues on the basis of the wages shown in ESI returns and the report of the inspector is illegal and unfair. The respondent has the authority to enforce the attendance of any person and also examine him on oath, requiring the discovery and production of documents, receiving evidence on affidavit etc. The respondent ought to have exercised the above powers to collect the relevant evidence regarding the actual wages.

3. The respondent filed counter denying the above allegations. The Enforcement Officer who conducted the routine inspection of the appellant establishment found that the appellant failed to enrol 20 employees to PF with effect from 01.05.2010 onwards and evaded provident fund by splitting the

salary against the provisions of the Act. Hence an enquiry was initiated U/s 7A of the Act. The salary register produced by the appellant showed that the salary was split into 3 components i.e., basic, DA and other allowances. The appellant was paying contribution only on basic and DA. In **Group 4 Security Guardings Ltd Vs RPFC**, 2004 (2) LLJ the Hon'ble High Court of Karnataka held that the Provident Fund Commissioner can examine the pay structure to determine whether splitting of wages was only a subterfuge adopted with a view to avoid compliance with the provisions of the Act. In **Hindustan Lever Employees Union Vs RPFC**, 1995 LAB IC 775 the Hon'ble High Court of Bombay held that in the context of the term 'basic wages' as defined U/s 2(b) of the Act, unless the payment falls in any one of the specifically mentioned exempted categories, every emoluments which is earned by the employee while on duty in accordance with the terms of contract of employment and which are paid or payable in cash to him must be included within basic wages. In **Gujarat Cypromet Limited Vs APFC**, 2005 LAB IC 422 the Hon'ble High Court of Gujarat held that the plain intention of the legislature is that the contribution of the funds to be made on basic wages, DA and retaining allowance. The term 'basic wages' U/s 2(b) of the Act does not permit any ambiguity and the plain intention of the legislature appears to be include all emoluments other than those which are specifically excluded. There is no reason why certain allowances such as medical allowance, conveyance

allowance and special allowances shall be excluded from the definition of basic wages. There is nothing in the said definition that the legislature intended that the benefits paid to the employees under the said headings are to be excluded for the purpose of the term 'basic wages'. Where the legislature intended certain benefits to be excluded from the meaning of the term 'basic wages', the same has been specifically provided for. The documents produced by the appellant clearly proved that the 20 employees who were working with the appellant and drawing salary were not extended the benefit of PF. The details such as name, date of joining, monthly salary etc., were obtained from the salary records of the appellant. The salary register will clearly disclose the eligibility of the 20 employees to be enrolled to the fund.

4. The appellant challenged the impugned order basically on two grounds. One is with regard to the non-enrollment of 20 employees. On the basis of the records produced by the appellant before the respondent authority in the enquiry, he concluded that all these 20 employees are required to be enrolled to the fund and their contribution was also assessed. I do not find any serious dispute raised by the appellant regarding the enrollment of these employees. The second issue decided in the impugned order is with regard to the other allowance paid by the appellant to its employees. According to the learned Counsel for the respondent the salary of the employees are split into 3

components such as basic, DA and other allowances. The appellant failed to explain the basis of giving other allowances to its employees. However after examining various authorities the respondent came to the conclusion that the appellant is liable to remit contribution on other allowances as well.

5. The ratio for deciding whether the other allowance will attract provident fund deduction is to be examined in the light of the statutory provisions and also the various decisions of the Hon'ble Supreme Court of India and High Courts.

The two sections which are relevant to decide the question whether the above allowance will form part of basic wages and will attract provident fund deduction are Sec 2(b) and Sec 6 of the Act.

**Sec 2(b)** of the Act reads as follows;

“ **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

allowance 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 : Contribution and matters which may be provided for in Schemes.**

The contribution which shall be paid by the employer to the fund shall be 10% of the basic wages, dearness allowance and retaining allowance (if any) for the time being payable to each of the employees (whether employed by him directly or by or through a contractor) and the employee's 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 establishments which the Central Govt, after making such enquiry as it deems fit, may, by notification in the official gazette specify, this Section shall be subject to the modification that for the words "10%", at both the places where they occur, the words "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 off 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.

Sec 2(b) of the Act excludes certain allowances such as dearness allowance, house rent allowance, overtime allowance etc., from the definition of basic wages. However U/s 6, certain excluded allowances such as dearness allowance are included while determining the quantum of dues to be paid. This anomalous situation was resolved by the Hon'ble Supreme Court in **Bridge & Roof Company (India) Ltd Vs UOI**, 1963 AIR 1474 (SC) 1474. After a combined reading of Sec 2(b) and Sec 6 of the Act, the Hon'ble Supreme Court held that;

- 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 opportunity is not basic wages.

This dictum was subsequently followed by the Hon'ble Court in **Manipal Academy of Higher Education Vs RPFC**, 2008 (5) SCC 428. In a recent decision in **RPFC, West Bengal Vs Vivekananda Vidyamandir & Others**, 2019 KHC 6257 the Hon'ble

Supreme Court considered the appeals from various decisions by High Courts that travelling allowance, canteen allowance, lunch incentive, special allowance, conveyance allowance etc., will form part of basic wages. The Hon'ble Court after examining all its earlier decisions held that;

“ The wage structure and the component of salary have been examined on facts, both by the authority and appellate authority under the Act, who have arrived at a factual conclusion that the allowances in question are essentially a part of the basic wages camouflaged 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 of us to interfere with the concurrent conclusions of facts. The appeals by the establishments therefore merits no interference”.

The Hon'ble High Court of Kerala also examined the above issue in a recent decision dt.15.10.2020, in the case of **Employees Provident Fund Organisation Vs M.S.Raven Beck Solutions (India) Ltd**, W.P.(C) no.17507/2016. The Hon'ble High Court after examining the decisions of the Hon'ble Supreme Court on the subject held that the special allowances will form integral part of basic wages and as such the amount paid by way of these allowances to the employees by the establishment are liable to be included in basic wages for the purpose of deduction of provident fund. Hence the law is now settled that all special



allowances paid to the employees excluding those allowances specifically mentioned in Sec 2(b)(ii) of the Act will form part of basic wages. However this is an issue to be examined in each case considering the facts and circumstances of the case.

6. 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