



सत्यमेव जयते

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

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

(Monday the 9th day of November, 2020)

APPEAL No.129/2019
(Old No.1373(7)2014)

Appellant : M/s.Gobins (India) Engineering (P) Ltd
IInd Floor, P. J. Towers
Government Engineering College P.O.
Thrissur - 680009

By Adv.C.B.Mukundan

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

By Adv.Thomas Mathew Nellimoottil

This case coming up for final hearing on 9.10.2020 and this Tribunal-cum-Labour Court on 09.11.2020 passed the following:

ORDER

Present appeal is filed from order no.KR/KC/21556/ENF-2(6)/2013/15994 dt.31.01.2014 assessing dues on evaded wages U/s 7A of EPF & MP Act, 1952 (hereinafter referred to as 'the Act') for the period from 09/2010 to 09/2012 and order no.KR/KC/21556/ENF-2(6)/2014/7606 dt.21.10.2014 U/s 7B of the Act

confirming the order issued U/s 7A of the Act. The total dues assessed is Rs.3,99,802/-.

2. The appellant is engaged in civil construction activities in the State of Karnataka. It is covered under the provisions of the Act. An Enforcement Officer of the respondent conducted an inspection of the appellant establishment on 20.11.2012. The appellant thereafter received a notice dt.28.02.2013 directing the appellant to appear before the respondent for an enquiry U/s 7A of the Act on 21.03.2013. The appellant produced the relevant records and pointed out that the basic wages paid includes the dearness allowance as well. The appellant also pointed out that the allowances paid to the employees are to be excluded while assessing provident fund liabilities. It was also pointed out to the respondent that allowances were paid only to certain employees for doing specific jobs. Ignoring all the contentions, the respondent issued impugned order assessing dues on various allowances such as conveyance allowance, washing allowance, site allowance etc., paid to its employees. As per Sec 6 of the EPF Act, dues are required to be paid only on the basic, dearness allowance and retaining allowance. The basic shown by the appellant includes dearness allowance also. If the allowances are also taken into account, the emoluments paid by the appellant would be higher than the wage limit fixed under the Act. The respondent has taken a view that the

definition of basic wages U/s 2(b) of the Act includes all emoluments except those that are specifically excluded. The respondent therefore took all allowances such as dearness allowance, house rent allowance, special allowance and conveyance allowance for computing EPF dues. The respondent has included even house rent allowance which is specifically excluded U/s 2(b) of the Act. The site allowance was not paid to all the employees. Such allowances are paid to employees working at construction site. In various decisions of the EPF Appellate Tribunal, it was held that such allowances will not attract provident fund deduction.

3. The respondent filed counter denying the above allegations. During a regular inspection the Enforcement Officer noticed that there was a case of under-reporting of wages while calculating the provident fund liability. According to the Enforcement Officer, the wages were splitted into basic, house rent allowance, medical allowance, travelling allowance, conveyance and site allowance, but only the basic is taken for the purpose of assessing the provident fund contribution. No dearness allowance is paid to the employees. The Enforcement Officer reported dues payable on medical allowance, travelling allowance, conveyance allowance and site allowance. The respondent felt that there existed a prima facie case of underreporting wages and therefore an enquiry U/s 7A of the Act was initiated. The appellant was also directed to

produce balance sheet and Profit & Loss account, cash book and ledgers, payment registers and pay bills, vouchers relating to the payment of wages. The appellant was represented in the enquiry and produced computerised statements of wages from 09/2010 to 09/2012. The representative submitted a soft copy of the wages paid to its employees. The representative of the appellant contented that the allowances paid are confined to the dates on which the employees attended duty and it was not paid universally to all employees. The Sec 7B review application filed by the appellant was also rejected. In **Gujarat Cypromet Limited Vs APFC, 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 received by the employees under the heading of medical allowance, conveyance allowance and lunch allowance and these allowances are required to be consider for the purpose of calculating provident fund contribution. The overtime allowance, travelling allowance, washing allowance, medical allowance and conveyance allowance are paid to only certain employees and therefore these allowances are excluded from the assessment. House rent allowance is specifically excluded U/s 2(b) of the Act and hence the same was also not subjected to assessment of provident fund calculation.

4. The present appeal is filed assuming that all allowances such as house rent allowance, overtime allowance, travelling allowance, washing allowance, medical and conveyance allowance are included in the assessment of contribution. However in Para 13 of the counter, the respondent has clarified that none of the above allowances are taken into account for the purpose of assessing dues on evaded wages. The only allowance, according to the respondent that is taken into account for assessment of dues is, the site allowance. According to the appellant the site allowance also is not being universally paid to all employees and hence the same also cannot be included under the definition of basic wages. Sec 2(b) of the Act defines basic wages as all emoluments which are earned by an employee while on duty in accordance with terms of contract of employment which are paid or payable in cash but does not include the cash value of food concession, dearness allowance, house rent allowance, overtime allowance, bonus, commission or any other similar allowances payable to the employee in respect of his employment or work done in such employment. Sec 6 of the Act elaborates the contribution to be paid by an employer which includes basic wages, dearness allowance, and retaining allowance. This conflict in Sec 2(b) and Sec 6 of the Act created some confusion while deciding the wages on which contribution is required to be paid. The issue was resolved by the Hon'ble Supreme Court in **Bridge & Roof**

Company India Ltd Vs UOI, 1963 (3) SCR 978. In **Manipal Academy of Higher Education Vs RPFC**, 2008 (5) SCC 428 the Hon'ble Supreme Court again examined and approved the dictum laid down by the Court in **Bridge & Roof Company (India) Ltd Vs UOI** (Supra) wherein the Hon'ble Supreme Court on a combined reading of Sec 2b and Sec 6 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 the opportunity is not basic wages.

The Hon'ble Supreme Court in a recent decision in **Vivekananda Vidyamandir & Others Vs RPFC, West Bengal**, 2019 KHC 6257 examined all the earlier decisions and held that various allowances such as travelling allowance, canteen allowance, lunch allowance, special allowance, management allowance, conveyance allowance etc., were essentially a part of basic wages camouflaged as part of an allowance so as to avoid deduction and contribution of provident fund of its employees. In a recent decision dt.15.10.2020, in **Employees Provident Fund Organisation Vs M.S.Raven Beck Solutions (India) Ltd**, W.P.(C) no.17507/2016 the Hon'ble High Court of Kerala also examined all the above aspects and held that uniform allowance, washing allowance, travelling allowance and food allowance are liable to be included in basic wages for

assessment and deduction towards provident fund contribution. The Hon'ble Court held that;

“ This makes it clear that uniform allowance, washing allowance, food allowance and travelling allowance forms the integral part of basic wages and as such, the amount paid by way of these allowances 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 up 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 the latest scheme of payment of wages to its employees, many industries avoided paying dearness allowance to its employees. The dearness allowance component of the wages are split into various allowances so that they can claim exclusion of contribution to various social security legislations. In the present case, the respondent has only included the site allowance for the purpose of assessment of dues. According to the learned Counsel for the appellant, site allowance is also not paid uniformly to all employees. It is seen

that the appellant produced certain records and statements of wages before the respondent authority and the respondent authority came to the conclusion on the basis of those records that the site allowance will come within the definition of basic wages and therefore will attract provident fund deduction. It is to be appreciated that on the basis of the documents and information produced by the appellant the respondent came to the conclusion that house rent allowance, over time allowance, travelling allowance, washing allowance, medical allowance and conveyance allowance will not attract provident fund deduction. On the basis of the same information the respondent arrived at the conclusion that the site allowance will form part of basic wages and therefore will attract provident fund deduction.

5. 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