



सत्यमेव जयते

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

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

(Monday the 15<sup>th</sup> day of February, 2021)

**APPEAL No.148/2018  
(Old no.A/KL-88/2016)**

Appellant : M/s.G4S Secure Solutions  
(India) Pvt Ltd  
Tower A, Fifth Floor  
Unitech World(Cyber Park)  
Sector-39,  
Gurgoan, Haryana – 122001

Branch office at :

Anupama, TC 16/18000  
Kukkiliyar Lane, DPI Junction  
Trivandrum - 695014

By Adv.C. B. Mukundan

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

By Adv.Nita N.S.

This case coming up for final hearing on 20.01.2021 and this Tribunal-cum-Labour Court on 15.02.2021 passed the following:

**ORDER**

Present appeal is filed from order no.KR/16539/ENF-2(3)/2016/5082 dt.07.09.2016 assessing dues U/s 7A of EPF & MP Act, 1952 (hereinafter referred to as 'the Act') on evaded wages for the period from 07/2010 to 01/2011. The total dues assessed is Rs.69,34,418/-.

2. The appellant is a company registered under the Companies Act, 1956. Since the coverage under the Act, the appellant establishment has been remitting provident fund contribution in respect of their eligible employees regularly as per Sec 2(b) and Sec 6 of the Act read with Para 2(f) and Para 29 of EPF Scheme. The appellant is not liable to deduct provident fund contribution from those excluded employees defined under Para 2(f) of the Scheme. The appellant is also not liable to contribute for those allowances which come under Sec 2(b)(2) of the Act. The appellant being a service provider works for other companies and establishments and has been providing security facility services through its own employees. The employees are paid monthly basic wages. Apart from basic wages, they are also paid HRA and conveyance allowance in order to enable them to defray the actual expenses incurred by them. If any employee works more than prescribed working hours such employees are also entitled for overtime allowance. There is no separate DA and retaining allowance being paid to the employees. The appellant appeared before the respondent and filed a detailed reply on 22.11.2013 and also stated that there was no default in

payment of provident fund dues. The appellant also produced the monthly challans evidencing deposit of provident fund dues. After hearing the appellant the then Provident Fund Commissioner dropped the enquiry. Later the enquiry was re-opened and a notice dt.26.02.2016 was issued. The representative of the appellant reiterated its stand that the issue of splitting up of minimum wages is already decided by the Hon'ble Punjab and Haryana High Court vide judgment dt.01.02.2011. The Head Office of the respondent issued a circular regarding splitting up of minimum wages which was later withdrawn by the Head Office of the respondent. A copy of the report of the Enforcement Officer was supplied to the appellant during the course of hearing on 09.04.2015. A true copy of the 7A proceedings along with the report of the Enforcement Officer is produced as Annexure A7. A representative of the appellant submitted a detailed written representation dt.02.12.2015 by rebutting the allegations in respect of dispute of splitting minimum wages. A copy of the same is produced and marked as Annexure A8. The representative pointed out to the respondent that no contribution is payable on conveyance allowance and HRA. HRA and overtime allowance and other similar allowances are specifically excluded from the definition of basic wages U/s 2(b)(2) of the Act. The appellant requested for cross examination of the concerned Enforcement Officer for seeking some clarification on the report of the Enforcement Officer. No

independent enquiry was conducted by the respondent as the respondent upheld the report of the Enforcement Officer. The Enforcement Officer was not examined for identification of the report of the Enforcement Officer. No opportunities for cross examine the Enforcement Officer was given in the 7A enquiry. No affected employees filed any complaint before the respondent. The appellant also relied on various authorities to argue that the enquiry U/s 7A being quasi judicial, the respondent shall issue a speaking order giving reasons for his decision. Further it is also pointed out that the respondent is not competent to legislate and he can only interpret the provisions of law.

3. The respondent filed counter denying the above allegations. The appellant is an establishment covered under the provisions of the Act. The Enforcement Officer of the respondent after inspecting the establishment reported that there was evasion of provident fund dues by splitting the salary to various components for the period from 07/2010 to 01/2011. Hence a notice was issued by the respondent fixing the enquiry on 12.09.2013. The appellant was directed to produce the records for adjudicating the issue. A copy of the Enforcement Officer's report was also served on the appellant. On the request of the appellant, several adjournments were given. Finally the representative of the appellant submitted a reply along with orders and judgments passed by various Courts. The appellant submitted that the basic wages for the purpose

of EPF contribution is fixed at 50% of gross salary paid to the employees. Sec 12 of the Act seeks to protect the wages of the employees to whom the Act and Scheme applies as well as total quantum of specified benefits to which he is entitled under the terms of employment. Sec 12 also prohibits the employer from reducing the wages of an employee either directly or indirectly or the total benefits in the nature of old age pension, provident fund or insurance to which the employee is entitled to. By reducing wages by splitting up of wages and reducing the contribution the quantum of benefits admissible to an employee is also getting reduced. Taking into account the above facts the respondent issued the impugned order assessing dues on all components of wages other than HRA. The main contention of the appellant is on the definition of basic wages as defined U/s 2(b) of the Act. The Hon'ble Supreme Court in **RPFC Vs Vivekananda Vidyamandir and other**, 2019 LLR 339 clarified that basic wages includes all emoluments paid to the employees universally, ordinarily and necessarily and will attract provident fund deduction. No materials has been placed by the appellant before the 7A authority in this appeal to demonstrate that the allowances in question paid to its employees are linked to any incentive for production resulting in greater output by an employee and that the allowance in question were not paid across the board to all employees in a particular category or were being paid especially to those who avail the

opportunity. In order to prove that the allowances are different from basic wages, it has not be shown that the employee concerned had become eligible to get the said allowance due to work or fulfilling certain parameters beyond the normal work which he was otherwise required to put in. The appellant failed to produce any data before the authority to show the norms of work prescribed to those employees during the relevant period and that allowances are paid on the basis of any work norms. The whole enquiry was conducted over a period spanning more than 2 years and more than 20 opportunities were given to the appellant to produce records to substantiate their claim.

4. The learned Counsel for the appellant pointed out that the issue decided as per the impugned order is with regard to splitting up of wages into various allowances. The appellant is paying HRA, conveyance allowance and overtime allowance to its employees. According to the learned Counsel conveyance allowance and HRA are paid as a reimbursement for the actual expenses incurred by the employees and overtime allowance is paid for the overtime work done by the employees. The learned Counsel for the respondent pointed out that the appellant is treating 33% of the gross salary as basic wages and provident fund is paid only on the same. 66% of the salary is bifurcated as HRA, conveyance and other allowances and no provident fund contribution is paid on the same. The impugned order narrates the example of

the wage structure with regard to few employees of the appellant establishment. It is seen that a small component of the wages is shown as basic and the rest of the wages are shown as HRA, conveyance allowance and overtime allowance. Surprisingly the overtime allowance is almost double that of basic. It was upto the appellant to prove before the 7A authority the work norms to establish that the overtime allowance paid to the employees are indeed allowance paid for extra time spend on duty. In spite of the fact that adequate opportunity was given to the appellant to prove and explain the wage structure, the appellant failed to avail the opportunity and explain the norms of work. As rightly pointed out by the learned Counsel for the respondent, HRA is excluded from the definition of basic wages and the respondent also excluded the same from the assessment of provident fund dues. The appellant also raised some technical issues like not allowing cross examination of the Enforcement Officer in the enquiry etc. It is pointed out that the issue regarding splitting of wages is to be decided only on the basis of records and by cross examining the Enforcement Officer the documentary proof cannot be discredited. It was also pointed out by the learned Counsel for the appellant that the enquiry was dropped earlier because of some clarification issued by the Head Quarters of the respondent. It was denied by the respondent that the enquiry was closed by the previous officer and it was pointed out that it was

only a continuation of proceedings even after change of the incumbent. A lot of emphasis is given in the impugned order regarding the minimum wages and also Sec 12 of EPF & MP Act. For the sake of clarity it is pointed out that the respondent is not the competent authority to decide the quantum of minimum wages and it is not upto him to decide whether minimum wages is paid to the employees of an establishment or not.

5. 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. In this case the law is now settled that conveyance allowance will form part of basic wages. The other allowance that was considered by the respondent in the impugned order was overtime allowance. The respondent examined the wage structure of few employees to conclude that only 33% of the gross wages is paid as basic and provident fund is deducted and paid only on the basic. 66% of the gross salary is bifurcated as various allowances. The respondent also found that the OTA in almost all cases are double that of the basic wages. In the case of Sri.Chandrakumar V., with PF no.27, the basic is Rs.1885/-, HRA is Rs.942.5, conveyance allowance is Rs.942.5 and OTA is Rs.3380/-. The PF contribution paid is only Rs.226/-. Similarly in the case of Sri.Kuttappan T. with PF no.44, the basic is Rs.1650.75, HRA is Rs.825.40, conveyance allowance is Rs.825.40 and OTA is Rs.3620/-. The PF remitted is only Rs.198/-. In the case of Sri.Sasidhan Nair G., with PF no.209 the basic salary is Rs.1725/-, HRA is Rs.862.50, conveyance is Rs.862.50 and OTA is Rs.3300/-. PF remitted is only Rs.207/-. The above narration will explain the way the salary of the employees are bifurcated to deny the actual amount of social security benefits payable to the employees. No explanation is forthcoming from the appellant as to why the employees are paid such huge amounts as OTA. The respondent provided more than 19 adjournments to the appellant to produce

the records and prove on what basis, the OTA is calculated. If the OTA is indeed, the allowance paid for extra work done by the employees beyond normal duty hours, it was upto the appellant to produce the duty norms and the basis of calculation of OTA before the respondent. Having failed to do so, the respondent cannot be faulted for his finding that the appellant is resorting to clear subterfuge by splitting wages, to the detriment of employees. However, the respondent has rightly excluded HRA from basic wages and also assessment of provident fund dues.

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