



सत्यमेव जयते

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

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

(Tuesday the 6<sup>th</sup> day of April, 2021)

**APPEAL No.221/2018**  
(Old No.A/KL-09/2017)

Appellant : G4S Facility Services (India) Pvt Ltd  
TC 9/2041(1), Opp. Alakapuri Auditorium  
Kochar Road, Sasthamangalam P.O.  
Trivandrum - 695010

By Adv.C.B. Mukundan

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

By Adv.Nita N. S.

This case coming up for final hearing on 12.02.2021 and the same day this Tribunal-cum-Labour Court on 06.04.2021 passed the following:

**ORDER**

Present appeal is filed from order no.KR/22096/ENF-2(2)/2016/8706 dt.29.12.2016 assessing dues U/s 7A of EPF & MP Act, 1952 (hereinafter referred to as 'the Act') on evaded wages for the period from 03/2011-07/2015. The total dues assessed is Rs.17,77,111/-.

2. Appellant is a company registered under Companies Act, 1956. The present dispute is related to its establishment/branch located in the district of Trivandrum, Kerala. Since its coverage under the provisions of the Act the appellant was paying contribution as per Sec 2(b) and Sec 6 of the Act. The appellant is not liable to pay contributions on those allowances which are excluded U/s 2(b)(2) of the Act. The wage structure of the appellant establishment had been upheld by the Hon'ble Punjab & Haryana High Court vide judgment dt.15.06.2009 in **G4S Security Services (I) Ltd Vs RPFC**, 2011 LLR 316 (P&H). This decision was later upheld by the Division Bench in L.P.A. no.1139/2011(O&M). The S.L.P. filed by the respondent organisation is pending before the Hon'ble Supreme Court. In spite of the above decision and the circular instructions issued by the Head Quarters of EPFO dt.02.12.2011 the respondent proceeded against the appellant in assessing dues against evaded wages. The appellant is paying basic wages, HRA and conveyance allowance to its employees. Some of the employees are also paid site allowance and washing allowance depending on their place of posting. The Enforcement Officer conducted an inspection of the appellant establishment on 07.10.2013 but the report is given after 70 days on 17.12.2013. The report of the Enforcement Officer is produced and marked as Annexure A2. As per the prevailing instructions the Enforcement Officer should have submitted his report within 3

working days. The Assistant Commissioner issued a show cause notice dt.28.03.2014 directing the appellant to remit contribution on actual wages from 03/2011 onwards. A true copy of the above notice is produced and marked as Annexure A3. The appellant submitted a detailed reply dt.14.04.2014 which is produced and marked as Annexure A4. There was no response from the respondent for 17 months. The respondent again issued a show cause notice dt.05.08.2015 which was replied by the appellant on 25.08.2015. The show cause notice dt.14.04.2014 and the reply dt.25.08.2015 are produced and marked as Annexure A5 series. The Enforcement Officer again conducted an inspection of the appellant establishment on 14.08.2015 and sent his report of inspection by registered post on 17.08.2015. In the report it was alleged that the total wages are split into basic, VDA(from 05/2014), ERNI, conveyance allowance and site allowance for different periods and the appellant was directed to remit the contribution on the total wages. Subsequently the respondent issued a notice dt.13.04.2016. The notice is produced and marked as Annexure A7. In the notice the appellant was directed to comply with the inspection observations of the Enforcement Officer on 07.10.2013 and 14.08.2015. The appellant submitted detailed replies dt.05.05.2016 and 16.08.2016 rebutting the claims of the Enforcement Officer. The replies are produced and marked as Annexure A8 series. The respondent ought to have

issued a speaking order which is very much lacking in the impugned order. Certain allowances paid by the appellant to the employees such as HRA, washing allowance, conveyance allowance for defraying the expenses incurred by the employees cannot be treated as wages for the purpose of provident fund deduction. The respondent authority has not identified the beneficiaries as required by the Hon'ble Supreme Court in **Food Corporation of India Vs Provident Fund Commissioner**, 1990 1 SCC 68. Since the wage structure of the appellant establishment is approved by the Hon'ble High Court of Punjab & Haryana in **APFC Vs M/s.G4S Security Services (I) Ltd** (Supra) any subsequent decision on the subject is barred by the principle of resjudicata.

3. The respondent filed counter denying the above allegations. The appellant is covered under the provisions of the Act under EPF code no.KR/TVM/22096 w.e.f. 01.04.2005. The Enforcement Officer of the respondent during regular inspection found that the compliance position of the appellant establishment was not satisfactory as there is evasion of wages while computing statutory dues under the provisions of the Act for the period from 03/2011 to 07/2015. The appellant has bifurcated total emoluments into basic, VDA, ERNI, conveyance allowance and site allowance. Upto the period 04/2014 provident fund contribution was deduced and remitted only for basic component. From 05/2014 onwards the appellant started remitting

contribution on basic and VDA. The Enforcement Officer after inspection submitted a report to the appellant for compliance. The appellant was remitting contribution only on 40% of the wages paid to the employees and the rest of the payments are split into various allowances and no contribution was being remitted on the same. After elaborate consideration of the pleadings and evidence produced by the appellant it was decided that the ERNI, conveyance and site allowance for different period will attract provident fund deduction. The claim of the appellant that there was undue delay in submitting the report is not correct and there is no deliberate delay on the part of the Enforcement Officer in submitting the report. Since the appellant failed to comply with two inspection reports given by the Enforcement Officer and the show cause notices issued by the respondent an enquiry U/s 7A of the Act was initiated. Since the appellant failed to reply the show cause notice dt.28.03.2014 another show cause notice dt.05.08.2015 was issued to the appellant establishment. The show cause notices are issued to seek compliance and not to harass the appellant. Letter dt.05.05.2016 issued by the appellant to the respondent is only to seek more time to reply the notice issued U/s 7A of the Act. The respondent finally received a reply from the appellant on 16.08.2016. Though a representative of the appellant attended the hearing, he did not make any statement or submission beyond what was stated in their letter dt.16.08.2016. The

contentions of the appellant that he sought for a cross examination of the Enforcement Officer is absolutely wrong and the allegations is made with malicious intentions to delay the remittance of statutory dues. The issue regarding basic wages is well clarified by the Hon'ble High Court of Gujarat in **Gujarat Cypromet Limited Vs APFC**, 2004 (3) CLR 485. The report of the Enforcement Officer is based on the records and registers of the appellant establishment and therefore the report is only a factual reproduction of the information available in the records of the appellant establishment. The respondent authority has not made any attempt to define basic wages but only adopted the definition and interpretation given in the statute as well as by the Hon'ble Supreme Court and various High Courts. The recovery of the employees' share of contribution is elaborated under Para 32(1) of EPF Scheme. Further the remittance of provident fund dues is mandated by Para 30 of EPF Scheme. Another branch unit under the management of the appellant, M/s.G4S Secure Solutions (India) Pvt Ltd, KR/16539 which is separately covered is remitting provident fund contribution on full wages from 04/2011 onwards duly taking into account all the allowances as per the provisions of the Act. The appellant is therefore estopped from pleading that the judgment of the Hon'ble Punjab & Haryana High Court would be applicable in the instant case. The principle of resjudicata is also not applicable in the facts of the present

case. Since the appellant is the employer for both the units he cannot interpret the provisions of the Act and Scheme to suit his convenience.

4. Present appeal was filed before the EPF Appellate Tribunal, Bangalore and the Tribunal vide order dt.06.02.2017 took the appeal into file and issued notice to the respondent on the question of pre-deposit U/s 7(O) of the Act. After the transfer of the files from EPF Appellate Tribunal to this Tribunal, notice was issued to the appellant to appear on 25.01.2019. Though the notice was acknowledged by the appellant, there was no representation for the appellant. However the matter was adjourned to 11.04.2019 and again notice was issued to the appellant. Even on 11.04.2019 there was no representation on the side of the appellant and it was felt that the appellant is trying to delay the finalisation of the appeal. Hence the appellant was called absent and the appeal was dismissed for default. On 09.07.2019 the appellant appeared and filed a restoration application. The restoration application was strongly objected to by the learned Counsel for the respondent on the ground that the application is badly delayed. Thereafter the matter was posted on 26.08.2019 and 31.10.2019 for hearing the restoration application. Finally the matter was heard on 10.01.2020 and the IA for restoration was allowed. The application for waiver of pre-deposit U/s 7(O) was also heard and after taking into account all the submissions made by the appellant as well as the respondent, the pre-

deposit was reduced from 75% to 40% and the appellant was directed to deposit the amount with the respondent within 4 weeks. The appellant was also directed to produce proof of remittance on or before 12.03.2020. On 12.03.2020 the learned Counsel for the appellant submitted that the pre-deposit as ordered on 10.01.2020 has already been deposited. However no proof of remittance or memo to that effect was filed by the appellant. The learned Counsel for the respondent also could not confirm the remittance. However the respondent may examine whether the order dt.10.01.2020 directing the appellant to remit 40% of the assessed dues is complied with. If the appellant failed to comply with the 7(O) direction, the appeal is not maintainable on that ground itself.

5. According to the learned Counsel for the appellant, the appellant establishment is paying basic pay and various allowances to its employees. According to him the appellant establishment is remitting contribution on basic pay as defined U/s 2(b) and Sec 6 of the Act. The learned Counsel also pointed out that the allowance will not attract provident fund deduction. The learned Counsel also argued that the pay structure given by the appellant establishment has already been accepted by the Single Bench as well as the Division Bench of the Hon'ble High Court of Punjab & Haryana and the S.L.P. filed from those orders are pending before the Hon'ble Supreme Court. In view



of the above position the appellant pleaded that it is not correct on the part of the respondent to assess the dues on those allowances which will not come within the definition of basic wages. The learned Counsel for the respondent on the other side argued that each branch unit of the appellant establishment is following their own pay structure and there is no uniformity in the same. Hence the decision rendered by Punjab & Haryana in an entirely different contest cannot be binding on the respondent in the present case. Hence he has taken into account the subsequent decisions of the Hon'ble Supreme Court and High Courts and arrived at a conclusion that some of these allowances will form part of basic wages and therefore will attract provident fund deduction. According to the learned Counsel for the respondent the pay structure of the appellant upto 05/2014 was basic, HRA and ERNI. From 05/2014 onwards the total emoluments are bifurcated into basic, VDA, ERNI, conveyance and site allowance. From 05/2014 onwards the appellant is paying contribution on basic and VDA. Hence specifically the question here is whether the allowances such as conveyance, site allowance and ERNI will form part of basic wages and therefore will attract provident fund deduction. From the pay slips produced by the appellant for few employees employed at Trivandrum branch, it is seen that for the period 05/2013 the appellant was paying basic and HRA to its employees and the contribution is confined to the basic wages. However in respect of few

employees no HRA is seen paid by the appellant. The learned Counsel for the appellant could not explain the reason for different pay structure for different employees. In the payslips produced for few employees for the month of 03/2014, it is seen that the total salary is divided into basic and HRA and contribution was being paid on the basic wages. In the 12/2015 payslips the pay structure shown is basic wages and VDA. Hence the documents produced by the appellant itself shows that there is no consistency in the pay structure of the appellant establishment. It was also pointed out by the learned Counsel for the respondent that another unit covered within the State of Kerala under code no.KR/16539 the appellant establishment is remitting contribution on all the allowances from 04/2011. Hence it is very clear that the appellant has got different pay structure and different allowances for each branch unit. Hence the findings and dictum laid down in one case cannot be extended to another case without examining the factual situations of each branch unit. For the same reason the decisions of Punjab & Haryana High Court relied on by the appellant cannot be accepted in totality while deciding this appeal. However it is required to examine the matter in the facts and circumstances and also on the basis of the decisions of the Hon'ble Supreme Court as well as various High Courts in India.

6. As already pointed out the main issue to be considered in this appeal is whether conveyance, site allowance and ERNI paid by the appellant to its employees will form part of basic wages and therefore attract provident fund deduction. According to the learned Counsel for the respondent, HRA being an allowance specifically excluded U/s 2(b)(2) of the Act is not included in the assessment of dues. The appellant has no case that the above said allowances are not universally paid to all the employees. It may be relevant in this context to examine Sec 2(b) and Sec 6 of the Act which are relevant for deciding the issue.

**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 Govt, 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.

The confusion regarding the exclusion of certain allowances from the definition of basic wages and inclusion of some of those allowances in Sec 6 of the Act was considered by the Hon'ble Supreme Court in **Bridge & Roof Company Ltd Vs UOI**, (1963) 3 SCR 978. After elaborately considering all the issues involved, the Hon'ble Supreme Court held that on a combined reading of Sec 2(b) and Sec 6 where the wage is universally, necessarily and ordinarily paid to all across the board such emoluments are basic wages. Where the payment is available to be specially paid to those who avail the opportunity is not basic wages. The above dictum laid down by the Hon'ble Supreme Court was followed in **Manipal Academy of Higher Education Vs RPFC**, 2008 (5) SCC 428. In a recent decision in **RPFC, West Bengal Vs Vivekananda Vidya Mandir & Others**, AIR 2019 SC 1240 the Hon'ble Supreme Court reiterated the dictum laid down by the Hon'ble Supreme Court in **Bridge & Roof Company Ltd** case (Supra). In this case the Hon'ble Supreme Court was considering various appeals challenging the orders whether special allowance, travelling allowance, canteen allowance, lunch incentive and special allowance will form part of basic wages. The Hon'ble Supreme Court dismissed the challenge holding that the "wage structure and

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 basic wages camouflaged as part of an allowances so as to avoid deduction and contribution accordingly to the provident fund accounts of the employees. There is no occasion for us to interfere with the concurrent conclusion of facts. The appeal by the establishments are therefore merit no interference “ .

7. In **Montage Enterprises Pvt Ltd Vs EPFO, Indoor**, 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 Calcutta High Court held that the special allowance paid to the employees will form part of basic wages particularly because no dearness allowance is paid to its employees. This decision 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 (Karnat.HC) the Hon’ble High Court of Karnataka held that the 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 **Damodarvalley Corporation, Bokaro Vs UOI**, 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. 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. The Hon'ble High 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 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 view of the above findings it is very clear that the allowances explained above will form part of basic wages and therefore will attract provident fund deduction.

8. It is a consistent view of this Tribunal that the respondent is not the competent authority for deciding the issues regarding Minimum Wages Act and the respondent has not gone into the question whether the appellant is paying minimum wages as per the provisions of the Minimum Wages Act. The appellant also pointed out that the appellant was not allowed to cross examine the Enforcement Officer who conducted the inspection and submitted the report on the basis of which the 7A proceedings were initiated. This contention of the appellant was specifically denied by the respondent stating that the appellant never raised a request regarding cross examination of the Enforcement Officer during the course of the enquiry. Even otherwise the question regarding the definition of basic wages and whether certain allowances will come within the definition of basic wages is a legal issue which is to be decided by the respondent authority in a quasi judicial process. The appellant also raised the issue of resjudicata in this appeal which is not relevant in view of the findings given above in this appeal.



9. Considering the facts, circumstances, pleadings and evidence in this appeal, I am not inclined to interfere with the impugned order.

Hence the appeal is dismissed.

Sd/-  
(V. Vijaya Kumar)  
Presiding Officer