



सत्यमेव जयते

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

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

(Monday the 14<sup>th</sup> day of December, 2020)

**APPEAL Nos.254/2019, 316/2019**  
(Old Nos.301(7)2015, 978(7)2015)

Appellant : M/s.T.G.Polymers & Co  
Muhamma P.O.  
Alappuzha – 688525

By Adv.K.K.Premalal

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

By Adv.Sajeev Kumar K. Gopal

This case coming up for final hearing on 03.12.2020 and this Tribunal-cum-Labour Court on 14.12.2020 passed the following:

**ORDER**

**Appeal no.254/2019** is filed from order no.KR/KC/24689//ENF-2(1)/2015/12386 dt.22.01.2015 assessing dues U/s 7A of EPF & MP Act (hereinafter referred to as 'the Act') on allowances for the period from 04/2007 to 12/2012 (excluding period from 04/2009 to 12/2009). The total dues assessed is Rs.6,45,003/-.

2. **Appeal no.316/2019** is filed from order no.KR/KCH/24689/ENF-II(1)/2015-16/5946 dt. 23.07.2015 assessing dues U/s 7A and 7C of the Act on allowances for the period from 04/2009 to 12/2009. The total dues assessed is Rs.1,18,697/-.

3. Both the above appeals raised common issues and therefore were heard together and disposed of by a common order.

4. The appellant is a factory engaged in the manufacture of polymer bags. Initially the employees were paid a consolidated amount of basic wages and respective contributions were paid. Certain workers were paid overtime allowance and the same was booked under a different column. This pattern was continued upto 2009. From 2010 onwards it was decided to introduce house rent allowance, washing allowance and canteen subsidy. Overtime allowance is also paid to employees doing overtime work. Salary revision orders were issued to every employee specifying the amount of each allowance. The appellant is not liable to deduct or pay contribution in respect of house rent allowance, which is specifically included. The other allowances will fall in the category of "any other allowances" paid to the employee referred to the Sec 2(b)(II) of EPF Act. The appellant filed a detailed written statement before the respondent authority which is produced and marked as Annexure 1. The respondent issued the impugned order without considering the representation submitted by the

appellant. The term “ in accordance with the terms of contract of employment” used in the definition of wages U/s 2(b) of the Act will indicate that the wage structure as per the contract of employment between the employer and employee has to be reckoned for the purpose of contribution. The legislature has intentionally excluded overtime allowance, bonus and commission etc., from the scope of basic wages. Hence the respondent authority cannot fix the terms of employment of the employees.

5. The respondent filed counter denying the allegations. A squad of Enforcement Officers conducted inspection of the appellant and submitted a detailed report. In the report it was indicated that the compliance position of the establishment is not satisfactory as there was underreporting of wages and evasion of statutory contribution towards provident fund. According to the report, provident fund contribution is being paid only on basic wages and the allowance was excluded from provident fund contribution. Hence the appellant was summoned U/s 7A of the Act. A copy of the inspection report was also provided to the appellant. The wages structure of the establishment consisted of basic and allowance only. The appellant was represented in the enquiry and the representative produced the wage register for 04/2007 to 12/2012. The respondent noticed that, against the total salary provident fund is paid only for a meager amount which is shown as basic. The remaining amount is shown under

the head allowance which is large compared to basic. The appellant failed to furnish the reasons for such high allowance and under what norms they are excluding provident fund benefits. The salary component consists of only basic and allowance and there is no other allowances such as house rent allowance or any other allowance as pleading by the appellant. The respondent relied on the report of the Enforcement Officers and also the records produced by the appellant establishment. The appellant never requested for cross examining the Enforcement Officer during the course of 7A enquiry.

6. The issue involved in the appeal is whether the allowance paid by the appellant to its employees will attract provident fund deduction. According to the respondent, the appellant is paying basic and allowance to its employees. The appellant also produced a copy of the wages register for 06/2009 to substantiate their claim and the same is marked as Exbt.R1. Exbt.R1 clearly shows that the appellant is paying basic and allowance to its employees and nothing else. However according to the appellant, till 2009 consolidated wages were paid and from 2010 onwards it was decided to introduce house rent allowance, washing allowance and canteen subsidy. According to the appellant, salary revision order in the new pattern was also issued to the employees which forms the terms of contract of wages to be paid to the employees. Unfortunately these documents were not produced before the respondent at the time of the

enquiry. Even in Annexure A1 representation submitted at the time of 7A enquiry, there was no such claim that the appellant changed the wage structure from 2010. Even the documents produced before the respondent at the time of hearing did not disclose any such change as the same is not reflected in the impugned order. In the absence of any evidence to that effect or any reference in the impugned order, it is not possible to take up the issue in this appeal. Even in the counter filed before the respondent, the appellant has taken a stand that the appellant is paying only basic and allowance and in some cases the allowance paid are much more than the basic paid to the employees.

7. 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.

8. In these appeals the appellant and respondent has taken conflicting views and there is no evidence available to finally decide the matter. Hence it is better that the whole matter is revisited and examined by the respondent after verifying the records maintained by the appellant and also in view of the guidelines issued above.

9. Considering the facts, circumstances and pleadings in these appeals, it is not possible to sustain the orders.

Hence the appeals are allowed, the impugned orders are set aside and the matter is remitted back to the respondent to re-decide the matter within a period of 3 months after issuing notice to the appellant. The pre-deposit made by the appellant as per the direction of the Hon'ble High Court as well as this Tribunal U/s 7(O) of the Act shall be adjusted/refunded after conclusion of the enquiry.

Sd/-  
(V. Vijaya Kumar)  
Presiding Officer