सत्यमेव जयते

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

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

(Thursday the 29th day of April, 2021)

APPEAL No.27/2019
(Old no.1082(7)2014)

Appellant : M/s.Don Bosco Hospital
North Paravur
Ernakulam – 683513

By Adv.S. Ganesh

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

By Adv.Thomas Mathew Nellimoottil

This case coming up for final hearing on 10.02.2021 and this Tribunal-cum-Labour Court on 29.04.2021 passed the following:

O R D E R

Present appeal is filed from order no.KR/KC/15630/ENF-1(4)/2014/14278 dt.20.02.2014 assessing dues U/s 7A of EPF & MP Act, 1952 (hereinafter referred to as 'the Act') on non enrolled employees and evaded wages for the period from 03/2010 to 10/2011. The total dues assessed is Rs.38,45,911/-.

2. The appellant is a hospital established in the year 1995 to provide medical care to the poor and needy. It is a 300 bedded full-fledged multi specialty hospital and is a centre of excellence offering all kinds of health services. The Don Bosco School of Nursing is established in January 2000. Based on a complaint that the appellant had enrolled only 16 employees and there are more than 100 employees working in the hospital, the respondent deputed a special squad and the squad conducted inspection in the hospital on 22.11.2011. The appellant produced all the records called for by the squad. The squad seized 16 original registers and documents maintained by the appellant hospital for further verification. The appellant have no other document to justify their stand that they are complying with the provisions of the Act. The originals of the documents are still maintained by the respondent. On the request of the appellant, gave copies of said documents only in the year 2013. The most crucial documents to defend the allegation is not provided by the respondent till date. On 23.11.2011 the squad furnished an interim report. The squad found that the compliant regarding non enrollment is not correct. According to the respondent some other serious violations were found during the investigation. According to the squad, the appellant was showing lesser salary in the wage register. According to them another set of registers were maintained to show payment of the remaining amount of salary of the

enrolled employees and also the salary of the non enrolled employees. The said payments were shown as advance against performance allowance and quarterly incentive and booked in the books of account as bulk amount every quarter. A true copy of the report of the squad dt.23.11.2011 is produced and marked as Annexure P1. The respondent issued summons dt.02.12.2011 directing the appellant to appear on 30.12.2011. A true copy of the notice is produced and marked as Annexure P2. A representative of the appellant appeared before the respondent and gave its version of the issue. Since the respondent had already seized the documents, the appellant could not produce any further documents in the enquiry. The appellant also furnished detailed objection. In the objection it was stated that the appellant is not liable to pay provident fund contribution on additional amounts paid to the employees. It was also pointed out that out of the list of non enrolled employees, 21 are nursing students and are not receiving any wages. A true copy of the reply is produced and marked as Annexure P3. The squad which conducted the inspection submitted its final report on 20.01.2012. A true copy of the report submitted by the squad is produced and marked as Annexure P4 (copy of the report is not seen annexed in the file). After a lot of persuasion and remittance of Rs.8000/-, the respondent provided copies of some documents. Some of these documents were not even authenticated by any of the officers.

The appellant again filed another objection dt.14.10.2013, copy of the objection is produced and marked as Annexure P4. The respondent rejected the contention of the appellant and issued the impugned order. On 10.03.2014 the appellant filed a review application U/s 7B of the Act. In the 7B review application, the appellant raised a reasonable doubt regarding the mathematical accuracy of the assessed amount. It was also contended that trainees are appointed in accordance with Certified Standing Orders and as such the appellant is not liable to enroll them to provident fund. The appellant also provided a list of bonded staff who were enrolled to provident fund membership. A true copy of the review petition is produced and marked as Annexure P6. On 13.08.2014 the respondent rejected the review application. A copy of the order dt.13.08.2014 passed by the respondent is produced and marked as Annexure P7. The appellant could not defend the case properly as the documents seized by the respondent were not returned to them which is in violation of the principles of natural justice. The report of the Enforcement Officer given to the appellant are sketchy and no particulars were mentioned in the report. The respondent failed to proof the number of employees not enrolled by the appellant since the name of the employees were not reflected anywhere in the impugned order. The respondent completely wrong in holding that the incentives paid by the appellant comes under the provisions of Sec 2(b)

of the Act. The respondent failed to consider that in the list of employees not enrolled to the fund there were names of 27 students. The respondent failed to furnish the names of 231 employees who were not enrolled to the fund.

3. The respondent filed counter denying the above allegations. A squad of Enforcement Officers reported that the appellant establishment is paying incentives and performance allowance which are wages of non enrolled employees and evaded wages of enrolled employees. These amounts are not taken for the purpose of provident fund contribution. The monthly wages shown in the wage register are much less and the remaining amount of salary paid to the enrolled employees and the salary of the non enrolled employees are recorded in a separate register maintained by the appellant. Accordingly the appellant establishment committed huge default for the period from 03/2010 to 10/2011. An enquiry U/s 7A of the Act was initiated by issuing summons to the appellant. According to the representative who attended the hearing on 30.12.2011, as per the wage register provident fund is being paid to 81 employees and trainees are not covered under the Act. On 14.02.2012 the appellant was represented by Advocate A. P. George and Assistant Director of the appellant establishment. They admitted the non enrollment of employees and also confirmed that all such employees are being enrolled to provident fund now. With regard to evasion of wages the appellant sought time for

clarification. During the course of the enquiry the squad of officers submitted their final report according to which there were 215 regular employees and 16 contract employees to be enrolled to fund. It was noticed that the figures in the balance sheet against the heads of Salary to staff, Stipend allowance to bonded staff etc., were tallying with the figures in Form 6A. The salary shown in the salary register is consolidated wages. On a further scrutiny of the balance sheet revealed that there are huge expenditure under the head performance allowance and quarterly incentive. The method adopted by the appellant to evade the liability is to show the monthly salary at a lesser rate in the wages register and provident fund was deducted on the same. Another set of register is maintained by the appellant which reflected the allowances paid to the employees and also the salary of the non enrolled employees. The payment is shown as advance against performance allowance and quarterly incentive. On 14.10.2013 the appellant filed a detailed objection stating that the establishment enrolled only 16 employees out of the 100 employees is false and baseless. He also submitted that the appellant is not paying minimum wages is not correct. He admitted that the employees are being paid performance allowance and quarterly incentive but stated that it will not come under the definition of basic wages. He further stated that the number of employees listed in the report is wrong as there are 27 students who are neither

apprentices nor trainees who are not paid any wages. The respondent authority came to the conclusion that as per the report of the squad of officers there were 231 employees not enrolled to provident fund. The respondent authority also found that the appellant is not paying provident fund on the basic wages and the allowances are paid through separate registers. The respondent also found that the salary of the non enrolled employees are also paid through separate registers maintained by the appellant. The claim of the appellant that 27 students are not enrolled is not supported by any evidence. The enquiry U/s 7A prolonged for more than 2 years and on the basis of the records available, the respondent came to the conclusion that the appellant establishment consciously evading the provisions of EPF Act. The appellant filed a review petition U/s 7B of the Act. Since the appellant failed to produce any new evidence or documents, the 7B review application was rejected by the respondent. The respondent received a complaint that only 16 employees out of 100 eligible employees are enrolled to provident fund. A squad of Enforcement Officers were deputed to investigate the case and they found that the appellant is committing lot of irregularities and has not enrolled 231 employees to the fund and huge amounts which are paid as allowances and salary to non enrolled employees are recorded in a separate register. On the request of the appellant, photocopies of the seized documents were handed

over to the representative of the appellant. The respondent has no case that minimum wages were not paid by the appellant establishment.

4. The respondent received a complaint alleging that the appellant establishment is employing more than 100 employees whereas provident fund is being paid only to 16 employees. The respondent deputed a squad of Enforcement Officers to investigate the complaint. According to the preliminary report filed by them the appellant establishment had enrolled around 120 employees as per the statutory return in Form 12A during the month of 10/2011 and therefore the allegation that the appellant had enrolled only 16 employees is not correct. However the squad of officers noticed serous anomalies in the maintenance of books of account of the appellant establishment. Accordingly they seized some registers. In the preliminary report they submitted that the appellant is maintaining two sets of registers for the wages paid to the employees. One register contains a very low wage component on which provident fund is being deducted and paid. The squad also noticed that the appellant is maintaining another set of registers wherein huge amounts are being paid as performance allowance and quarterly incentive to the employees of the appellant establishment. They also noticed that the wages paid to the non enrolled employees is also reflected in the second set of registers maintained by the appellant. Hence in the final report submitted by

the squad, it is reported that 231 employees of the appellant establishment were not enrolled to provident fund and huge amounts paid as performance allowance and quarterly incentive will attract provident fund deduction subject to the statutory limit. The appellant was provided copies of the report of the squad of Enforcement Officers and they admitted their liability for non enrolled employees whereas they disputed the contribution payable on allowance paid by them. The respondent issued the impugned order on the basis of the report of the squad of officers and also the registers seized from the appellant establishment. The appellant during the course of enquiry requested for the copies of the documents seized from the appellant establishment to defend the case properly. According to the learned Counsel for the respondent, the copies of the documents were provided to the appellant during the course of the enquiry. According to the learned Counsel for the appellant, the respondent failed to provide them complete set of authenticated documents inspite of the fact that the photocopying chargers were remitted by the appellant establishment. The appellant thereafter filed an application U/s 7B of the Act for reviewing the impugned order U/s 7A of the Act. In the review application the appellant took a stand that there are trainees appointed under certified standing orders approved by the labour authorities and as such they cannot be treated as employees for the purpose of enrollment. The appellant also took a

stand that the bonded staff nurses were already enrolled to provident fund and therefore the assessment, if any, made against the 27 bonded staff shall be excluded from the assessment. The appellant also sought a clarification whether the assessment is limited to the statutory limit of wages of Rs.6500/- as prevailing at that point of time. The appellant further took a stand that cash benefits were given to the employees for their punctuality in attendance and maintenance of neatness. The employees were also being paid traveling expense, washing allowance etc., which will not form part of basic wages. The respondent rejected the 7B application as the appellant failed to produce any documents which could not be produced by him at the time when the orders were made nor could point out any error apparent on the face of the record in the impugned order U/s 7A of the Act. The appellant challenged the above orders in this appeal.

5. On the basis of the above discussion, the issues to be decided are;

    1. Whether the trainees can be treated as employees for the purpose of provident fund deduction.
    2. Whether the allowances paid to the employees of the appellant establishment will attract provident fund deduction.

6. With regard to the 1st issue regarding the eligibility of trainees to be enrolled to provident fund, it is seen that no such stand is taken by the

appellant before the respondent authority at the time of 7A enquiry. However in the review application filed U/s 7B of the Act, the appellant had taken such a stand. According to the learned Counsel for the respondent, the appellant failed to produce any documents to support their claim that the trainees are appointed under the Certified Standing Orders of the appellant establishment. As per Sec 2(f) of the Act, all the trainees will also be employees subject to the exclusion of trainees engaged under the Apprentices Act, 1961 or under the Standing Orders of the appellant establishment.

7. According to the learned Counsel for the respondent, the definition of 'employee' as per Sec 2(f) of the Act treats apprentices also as employee, the specific exclusion being the apprentices engaged under the Apprentices Act, 1961 or under the Standing Orders of the establishment. The Hon'ble High Court of Kerala in **Indo American Hospital Vs APFC**, W.P.(C) no.16329/2012 vide its judgment dt.13.07.2017 in Para 7 held that

> " It is to be noted that an apprentice would come within the meaning of an employee unless he falls within the meaning of apprentice as referred under the Apprentices Act, 1961 or under the standing order of the establishment. If the trainees are apprentices and they can be treated as apprentices under the Apprentices Act or under the standing orders of the establishment, certainly, they could have been

excluded but, nothing was placed before the authority to show that they could be treated as apprentices within the meaning of Apprentices Act or under the standing orders of the establishment. Therefore, I do not find any scope for interfering with the impugned order ".

Going by the observation of the Hon'ble High Court as reproduced above, the appellant herein also failed to substantiate their claim that the trainees are apprentices engaged under the Certified Standing Orders of the appellant establishment. The appellant ought to have produced the training scheme, the duration of training, the scope of training and also the evidence to show that they are appointed as apprentices under the Standing Orders, before the authority U/s 7A of the Act. This is particularly relevant in the facts of the case as the appellant establishment is engaging almost 1/4th of the total employment strength as trainees. As held by the Hon'ble High Court of Delhi in **Saraswathi Construction Co Vs CBT**, 2010 LLR 684 it is the responsibility of the employer being the custodian of records to disprove the claim of the department before the 7A authority. The same view was taken in **C. Engineering Works Vs RPFC**, 1986(1) LLN 242 wherein the Hon'ble High Court held that the documents to prove the employment strength is available with the establishment to discredit the report of the Enforcement Officer and if the

employer fails to produce the documents, the authority U/s 7A can take an adverse inference. A similar view was taken by the Hon'ble Delhi High Court in **H.C Narula Vs RPFC**, 2003 (2) LLJ 1131.

8. The question whether a nurse who had undergone the prescribed course and had undergone the practical training during their course requires any further training in hospitals was considered by the Hon'ble High Court of Kerala in **Kerala Private Hospital Association Vs State of Kerala**, W.P.(C) no.2878/2012. The Hon'ble High Court vide its judgment dt.14.03.2019 held that " the decision taken by the private hospital managements to insist one year experience for appointment of staff nurses in private hospitals is against the provisions of the Nurses and Midwifes Act, 1953 ". In the above case the Hon'ble High Court was examining whether the nurses who completed their course and had undergone training as part of the course are required to be trained as trainee nurses for one year in private hospitals. The order issued by the Govt of Kerala fixing one year training and also fixing the stipend was withdrawn by the Govt and it was held to be valid by the Hon'ble High Court. The learned Counsel for the respondent relying on the decision of the High Court of Kerala in **Cosmopolitan Hospital Pvt Ltd Vs T.S. Anilkumar**, WP(C) 53906/2005 argued that Industrial Employment (Standing Orders) Act is not applicable to hospitals. He also relied on the decision of the Delhi High Court in

Indraprastha Medical Corporation Ltd Vs NCT of Delhi and others, LPA no.311/2011 to argue that industrial standing orders is not applicable to hospitals. However the Hon'ble High Court of Kerala in **Sivagiri Sree Narayana Medical Mission Hospital Vs RPFC**, 2018 4 KLT 352 took a contrary view stating that the Industrial Employment (Standing orders) Act is applicable to hospitals. The learned Counsel for the respondent also pointed out that in **Indo American Hospital** case (Supra) the Hon'ble High Court of Kerala refused to interfere with the orders issued by the respondent holding that the trainees will come within the definition of Sec 2(f) of the Act. According to him, the decision in **Sivagiri Sree Narayana Medical Mission Hospital** (Supra), has not become final as the writ appeal from the above decision is pending before the Division Bench of the Hon'ble High Court of Kerala. While holding that Industrial Employment (Standing Orders) Act is applicable to the hospitals, the Hon'ble High Court of Kerala in **Sivagiri Sree Narayana Medical Mission Hospital** (Supra) also anticipated the risk of allowing establishments and industries to engage apprentices on the basis of standing orders. Considering the possibility of misuse of the provisions the Hon'ble High Court held that

> " of course, there would be many cases, where the employers for the sake of evading the liabilities under various labour welfare legislations, may allege a case which is masquerading as training or apprenticeship,

but were infact it is extraction of work from the skilled or unskilled workers, of course the statutory authorities concerned and Courts will then have to lift the veil and examine the situation and find all whether it is a case of masquerading of training or apprentice or whether it is one in substance one of trainee and apprentice as envisage in the situation mentioned herein above and has dealt within the aforesaid judgment referred to hereinabove " .

Apart from the question whether Industrial Employment (Standing Orders) Act is applicable to hospitals, this is a fit case wherein the test given by the Hon'ble High Court of Kerala in **Sivagiri Sree Narayana Medical Mission Hospital** (Supra) cited above is required to be applied in all fours. Though it is denied by the appellant, there is a clear finding by the respondent authority that the so called trainees are doing the work of regular employees. There is also a clear finding that the so called stipend paid to these trainees are almost same as wages paid to the regular employees. It was also held by the Hon'ble High Court of Kerala that nurses cannot be appointed as nursing trainees after completing their course and prescribed training during their course. As already pointed out it was upto the appellant to produce the documents to discredit the report of the Enforcement Officers that the trainees are not engaged in the regular work and also that they are only paid stipend and not wages as

reported by the squad of Enforcement Officers. The appellant also should have produced the training scheme/schedule and also the duration of training which will clearly indicate whether the trainees are engaged as regular employees. The Hon'ble High Court of Madras in **MRF Ltd Vs Presiding Officer, EPF Appellate Tribunal**, 2012 LLR 126 (Mad.HC) held that " the authority constituted under the 7A of EPF & MP Act has got power to go behind the terms of appointment and find out whether they were really engaged as apprentices. The authority U/s 7A can go behind the term of appointment and come to a conclusion whether the workman are really workmen or apprentices. Merely because the petitioner had labelled them as apprentices and produces the orders of appointment that will not take away the jurisdiction of the authority from piercing the veil and see the true nature of such appointment ". The Hon'ble High Court of Madras in the above case also held that though the apprentices appointed under the Apprentices Act or standing orders are excluded from the purview of the Act they cannot be construed as apprentices, if the major part of the workforce comprised of apprentices. In **Ramnarayan Mills Ltd Vs EPF Appellate Tribunal**, 2013 LLR 849 (Mad.DB) the Division Bench of the Hon'ble High Court of Madras held that if the apprentices are engaged for doing regular work or production, they will come within the definition of employee U/s 2(f) of the Act. In another case, the Division Bench

of the Hon'ble High Court of Madras in **NEPC Textile Ltd Vs APFC**, 2007 LLR 535 (Mad) held that the person though engaged as apprentice but required to do the work of regular employees is to be treated as the employee of the mill. In this particular case the respondent authority has concluded that the so called trainees were actually doing the work of regular employees and hence they cannot claim exclusion U/s 2(f) of the Act.

9. The appellant relied on the decision of the Hon'ble Supreme Court in **Central Arecanut and Coco Marketing and Processing Company Ltd Vs RPFC**, AIR 2006 SCC 971 to argue that the trainees engaged by the hospital are apprentices under the Act. In the above case, the establishment is an industry coming under the Industrial Employment (Standing Orders) Act and they were having a training scheme under which 40 trainees are taken every year after notifying in news papers and after conducting interview regarding suitability of trainees. In the present case as already pointed out the appellant failed to produce any training scheme and also prove that the trainees are actually apprentices and therefore the decision of the Hon'ble Supreme Court in the above case cannot be relied on by the appellant to support its case.

10. The Hon'ble High Court of Kerala in a recent decision dt.04.02.2021 in **Malabar Medical College Hospital & Research Centre Vs RPFC**, O.P. no.2/2021 considered the above issues in detail. In this case also the issue

involved was whether the trainees engaged by a hospital can be treated as employees U/s 2(f) of the Act. After considering all the relevant provisions the Hon'ble High Court held that

> " Para 8. A bare perusal of the above definition makes it clear that apprentice engaged under the Apprentices Act, 1961 or under the standing orders of the establishment cannot be termed as 'employee' under EPF Act. It is also clear that in the absence of certified standing orders, model standing orders framed under the Industrial Employment (Standing Orders) Act, 1946 hold the field and the model standing orders also contain the provision for engagement of probationer or trainee. However, the burden for establishing the fact that the persons stated to be employees by the Provident Fund organisation are infact apprentices, lies on the establishment because that is a fact especially within the knowledge of the establishment which engages such persons ".

11. It is seen that the appellant has enrolled 27 of the non enrolled bonded nurses. But it is not clear from the list produced by the appellant along with the review application whether these bonded nurses are enrolled from their due date of eligibility. According to the learned Counsel for the respondent, the issue involved is non enrollment of 231 employees and not

the 27 bonded nurses as claimed by the appellant. The appellant has also claimed that out of the 231 non enrolled employees as reported by the squad, 27 are students of the nursing school and they cannot be considered as employees under any circumstances. However the appellant failed to produce any documents to substantiate their claim that 27 employees out of 231 are students and hence it is not possible to accept the claim of the appellant establishment. In view of the above discussion and in the absence of any documents produced by the appellant to substantiate their claims, it is clear that the 231 non enrolled persons are employees U/s 2(f) of the Act and they are liable to be enrolled from their due date of eligibility. Contribution if any, paid by the appellant against the bonded nurses shall be considered by the respondent.

12. The second issue is regarding evasion of wages. According to the learned Counsel for the respondent the appellant is maintaining two sets of registers. In one set of registers, very low wages are shown and provident fund is being paid on that wages only. The squad during the inspection and verification of the records and documents maintained by the appellant found that in other set of registers the appellant is showing various allowances paid to the employees which is not accounted for provident fund deduction. According to the learned Counsel for the appellant, the cash benefits are paid to

the employees for punctuality in attendance, maintenance of neatness and attitude and care of patients. According to him the employees are also being paid traveling expense and washing allowance.

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 " .

13. 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 ".

Hence the law is now settled that all special allowances paid to the employees excluding those allowances specifically mentioned in Sec 2(b)(2) of the Act will form part of basic wages.

14. From the above discussion, it is clear that the performance allowance, incentives, traveling allowance and washing allowance also will form part of basic wages and will attract provident fund deduction subject to the statutory limit. However it is not clear from the impugned order which are the allowances that are taken into consideration by the respondent authority while

assessing the dues U/s 7A of the Act. It is true that there was an attempt on the side of the appellant to evade contribution on a part of wages paid to the employees. The appellant failed to explain the reason why the allowances are shown in a separate register and provident fund deduction is made only on the wages reported in the salary register of the appellant establishment. Having said that it is the responsibility of the respondent authority to examine specifically the allowances and give its reasons for treating the same as basic wages. As already indicated the impugned order is not at all clear with regard to the allowances on which the provident fund assessment is made as per the impugned order. Hence it is not possible to accept the assessment on evaded wages as per the impugned order.

15. The learned Counsel for the appellant pointed out that the squad of Enforcement Officers seized all the relevant records during the time of their inspection and none of the records were returned to the appellant. On request and payment of cost the respondent provided photocopies of some of the documents. According to the learned Counsel for the appellant, the photocopies provided are incomplete and they had some difficulty in forming their defence at the time of the enquiry U/s 7A.

16. Considering all the facts, circumstances, pleadings and evidence in this appeal, I am inclined to hold that the assessment against 231 non enrolled

employees is correct. However the assessment against evaded wages cannot be accepted for the reasons stated above.

Hence the appeal is partially allowed, the assessment against 231 non enrolled employees is upheld. The assessment against evaded wages is set aside. The matter is remitted back to the respondent to re-assess the dues on evaded wages on the basis of the above observations within a period of 6 months after issuing notice to the appellant. The respondent shall permit the appellant or his representative to verify the registers and records seized from the appellant by the squad at the time of hearing the matter. On conclusion of the enquiry, the respondent shall return the original documents after retaining authenticated photocopies in the file. The pre-deposit made by the appellant as per order of the EPF Appellate Tribunal shall be adjusted or refunded after completion of the enquiry.

Sd/-

(V. Vijaya Kumar)
Presiding Officer