



सत्यमेव जयते

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

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

(Tuesday the 6th day of April, 2021)

APPEAL No.328/2019

(Old no.1061(7)2015)

Appellant : M/s.Raja Rajeswary Bottle Suppliers
Door No.297, Near Devi Temple
Varanad P.O., Cherthala
Alappuzha – 688543

By Adv.C. B. Mukundan

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

By Adv.Sajeev Kumar K. Gopal

This case coming up for admission on 25.02.2021 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/KC/21633/ENF-2(2)/2015/5128 dt.12.02.2015 assessing dues U/s 7A of EPF & MP Act, 1952 (hereinafter referred to as 'the Act') on evaded wages for the period from 03/2010 to 05/2014. The total dues assessed is Rs.2,10,573/-.

2. The appellant is a registered partnership firm and is covered under the provisions of the Act. The appellant is engaged in the business of glass bottle cleaning. The appellant was regular in compliance. An Enforcement Officer of the respondent visited the appellant and pointed out that contribution is required to be paid on the washing allowance paid to the employees. On the basis of the report of the Enforcement Officer the respondent initiated an enquiry U/s 7A of the Act. The appellant was also given an opportunity for personal hearing. The appellant informed the respondent during the course of hearing that washing allowance was paid to the employees towards the expenses incurred by them for washing their uniform. The nature of work in which these employees are engaged demands cleaning and washing of the soiled clothes of the employees. The written submission filed by the appellant before the respondent is produced and marked as Annexure A2. As per Sec 6 there is no mandate that contribution is required to be paid on gross salary. The respondent ignored the written submission of the appellant and issued the impugned order. Sec 2(b)(2) has specifically excluded similar allowances from the definition of basic wages and hence the order issued by the respondent is not legally correct. The respondent organisation has issued a circular dt.06.08.2014 stating that employers who are paying EPF dues only on less than 50% of the wages have to be subject to inspection. Further as per the 1st part

of the definition of basic wages emoluments earned by an employee in accordance with the terms of contract of employment will alone come under the purview of the basic wages. In the instant case washing allowance is not paid as per terms of any contract. As per the memorandum of settlement signed between the employees' union and the management in the presence of District Labour Officer, the washing allowance is increased to 28 paise per 1000 ml bottle. The appellant has paid EPF dues on daily wages of Rs.146/- as well as piece rate wages of 28 paise per bottle. It is clear that the respondent has mistakenly taken washing allowance as washing charge. Washing allowance is paid towards the reimbursement of washing and ironing of uniforms and washing charges are given as wages.

3. The respondent filed counter denying the above allegations. The appellant establishment is covered under the provisions of the Act U/s 1(3)(b) under the schedule head 'Trading & Commercial'. An Enforcement Officer of the respondent inspected the appellant establishment on 04.09.2014 and reported that the appellant establishment is paying contribution only on a portion of the actual wages paid to its employees. As per the report of the Enforcement Officer, the appellant establishment was remitting contribution only on basic pay and the employees of the appellant establishment was being

paid washing allowance which is not subject to provident fund deduction. The Enforcement Officer therefore gave a report to the appellant that contribution shall be paid on washing allowance for the period from 03/2010 to 05/2014. Since the appellant failed to comply with the direction, an enquiry U/s 7A of the Act was initiated by issuing summons dt.27.10.2014. A representative of the appellant attended the hearing. A copy of the report of the Enforcement Officer was given to the representative. The authorised representative produced wage register for the period from 03/2010 to 07/2014 and also copies of balance sheet for the years 2010-11, 2011-12 and 2012-13. The authorised representative also filed Annexure A2 letter along with Annexure A4 memorandum of settlement. The respondent came to the conclusion that washing allowance was paid to the employees as part of basic wages defined U/s 2(b) of the Act and is liable for provident fund deduction subject to the statutory limit of Rs.6500/-. The records produced by the appellant in the enquiry revealed that the wage structure for 03/2010 was consolidated pay, washing allow and travelling allowance. Thereafter the wage structure was modified as consolidated wages and washing allowance. As per Annexure A2 statement what is termed as washing charges in the report is actually washing allowance. No separate DA is paid to the employees. Further it is seen from the Trading and Profit & Loss account for the year ended 31.03.2013 the appellant

establishment had incurred an expense of Rs.10,97,865/- towards wages and washing charges. These expenses are shown in the trading account and not in Profit & Loss account and therefore it is clear that washing allowance is part and parcel of basic wages as defined U/s 2(b) of the Act.

4. According to the learned Counsel for the appellant, as per Annexure A4 memorandum of settlement signed before the District Labour Officer, the appellant establishment is liable to pay a daily wages of Rs.146/- and 28 paise as washing charges for washing 1000ml bottle. According to him provident fund contribution is being paid on the daily wages + washing charges. On a perusal of the impugned order, it is seen that the assessment is made on the washing charges being paid to the employees at Rs.0.28/bottle. According to Annexure A2 representation dt.20.01.2015 filed by the appellant before the respondent during the course of the 7A enquiry, it is clearly stated that the appellant has remitted contribution on washing charges. According to the learned Counsel for the appellant what is assessed as basic wages in the impugned order is actually the washing allowance paid to its employees as a reimbursement for the actual expenses incurred by them for washing their uniforms. It is felt that there is some confusion with regard to the washing charges per bottle paid to the employees as wages and the washing allowance being paid to the employees as

an allowance. The impugned order is not at all clear on this aspect. On a plain reading of the impugned order it is felt that the respondent has assessed the dues on washing charges and not on washing allowance being paid to the employees. The learned Counsel for the respondent could not clarify the above issue while hearing the appeal. The respondent will have to examine whether any washing allowance as claimed by the appellant is being paid to the employees in addition to the daily wages and washing charges at the rate of Rs.0.28/bottle. There cannot be any dispute regarding the washing charges being part of basic wages. Washing charges will definitely come within the definition of basic wages U/s 2(b) of the Act. However it is not clear whether any separate washing allowance is being paid to the employees and if so whether it will come within the definition of basic wages. This is an issue to be examined on facts by the respondent.

5. Considering the facts, circumstances, pleadings and evidence in this appeal, it is not possible to accept the finding of the respondent for the above reasons.

Hence the appeal is allowed, the impugned order is set aside and the matter is remitted back to the respondent to re-decide the matter and re-assess the dues, if required, after issuing notice to the appellant within a period of 6 months from the receipt of this order. The pre-deposit amount remitted by the appellant U/s 7(O) of the Act as per the direction of this Tribunal shall be adjusted/refunded after finalisation of the enquiry.

Sd/-

(V. Vijaya Kumar)
Presiding Officer