



सत्यमेव जयते

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

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

(Friday the 19th day of November, 2021)

APPEAL No.574/2019

(Old no.503(7)2012)

Appellant : M/s.Travancore Gold India Pvt Ltd
TC 28/2222(6), Fort P.O.
Opp Big Bazar, M.G.Road
Pazhavangadi
Trivandrum - 695025

By Adv.Menon & Pai

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

By Adv.Ajoy P.B.

This case coming up for final hearing on 25.08.2021 and this Industrial Tribunal-cum-Labour Court on 19.11.2021 passed the following:

ORDER

Present appeal is filed from order no.KR/26246/ENF-1(2)/2012/2649 dt.21.03.2012 assessing dues U/s 7A of EPF & MP Act, 1952 (hereinafter referred to as 'the Act') on non enrolled employees and also evaded wages for the period from 01/2010 to 10/2011. The total dues assessed is Rs.2,93,473/-.

2. Appellant is a private limited company registered under Companies Act, 1956. The appellant is engaged in, among other things, in the sale of jewellery and allied products. The appellant is covered under the provisions of the Act. The appellant soon after the commencement of business, drafted the Standing Orders and forwarded the same for certification. Accordingly the Standing Orders is certified by the Certifying Officer. An Enforcement Officer inspected the records of the appellant establishment. On the basis of the report of the Enforcement Officer, respondent initiated an enquiry U/s 7A of the Act on the question whether trainees are to be covered under the Act and whether contribution is payable on allowances such as medical allowance and special allowance. The representative of the appellant explained that trainees are governed by Certified Standing Orders and they are not employees. The allowances such as medical allowance and special allowance will not come within the definition of basic wages and no contribution was paid on these allowances. After examining the whole issue, the respondent authority vide impugned order held that the trainees employed under Certified Standing Orders are not employees however the respondent authority held that allowances such as medical allowance and special allowance will attract provident fund deduction. The order passed by the respondent on the concept of minimum wages goes against the judgment of the Hon'ble Supreme

Court in **Air Freight Ltd Vs State of Karnataka**, 1999 2 LLJ 705. A plain reading of Sec 2(b) and Sec (6) of the Act and Para 29 of the EPF Scheme would clearly show that the appellant is liable to remit contribution only on basic, DA and retaining allowance, if any. Various decisions would clearly establish that provident fund contribution is payable only on basic wages and DA.

3. The respondent filed counter denying the above allegations. The appellant establishment is covered under the provisions of the Act. An Enforcement Officer of the respondent on routine inspection of the appellant establishment noticed that 33 employees are not enrolled to provident fund. He further noticed that the salary of the employees are split into various allowances to evade provident fund deduction. On the basis of the report, an enquiry U/s 7A of the Act was initiated and the appellant was directed to appear before the respondent on 19.01.2012. Representatives of the appellant attended the hearing and produced registers of wages from 04/2010 onwards. On verification of the salary register for the month of 04/2010, it is seen that the salary structure of the employees consisted of basic, city allowance and other allowance. City allowance and other allowance is shown against DA. The representative of the appellant submitted that no DA is paid to the employees and city allowance and other allowance are not considered as wages for calculating EPF dues. From 04/2011 onwards the allowances are re-

christened as medical allowance and special allowance and a fixed amount of Rs.250/- and Rs.500/- are paid as medical and special allowance respectively. Only the basic component is taken for calculating EPF dues. The Enforcement Officer also reported that 33 employees are not enrolled to the fund. The respondent authority found that 31 of the non enrolled employees are trainees covered under the Certified Standing Orders of the appellant establishment. The remaining two employees have to be enrolled to the fund from the date of joining. The Hon'ble High Court of Gujarat in **Gujarat Cypromet Limited Vs APFC**, 2005 LAB IC 422 held that the plain intention of the Legislature is that the contribution to the fund should be made on basic wages, DA and retaining allowance. The term 'basic wages' U/s 2(b) of EPF & MP Act, 1952 does not permit any ambiguity and the plain intention of the Legislature appears to include all emoluments other than those which are specifically excluded. In **Ponni Sugars and Chemicals Ltd Vs Cauvery Sugar and Chemicals Ltd and others**, 2002 LLR 25 the Hon'ble High Court held that the expression 'basic wages' has to receive an interpretation which would achieve the object of the enactment. The Act has to be considered in its proper perspective and context so as to fructify the legislative intentions underlying the enactment.

4. The respondent authority initiated an enquiry U/s 7A on the basis of the report submitted by the Area Enforcement Officer that the appellant

establishment has not enrolled 33 employees to the fund and also that the wages are split into various allowances to evade provident fund deduction. A representative of the appellant attended the hearing, produced the records called for and submitted that out of 33 employees 31 persons are engaged as per the Certified Standing Orders of the appellant establishment and therefore excluded from the provisions of the Act. The respondent authority after perusing the Certified Standing Orders came to the conclusion that the 31 employees are indeed trainees and therefore excluded them from the provisions of the Act. With regard to other two employees the representative of the appellant submitted that they are enrolled to the fund w.e.f. 01.04.2011 and 01.09.2011. The respondent authority found that they are eligible to be enrolled from 01.10.2010 and 01.08.2010 respectively and accordingly the dues were assessed. There is no dispute regarding the assessment.

5. The respondent authority found that the wages paid to the employees are split into various allowances and no DA is paid to these employees. From the salary registers produced, the respondent authority found that upto 04/2010 the salary paid to the employees consisted of 3 components namely basic, city allowance and other allowance. He also found that the city allowance and other allowance are shown in the wages register in the DA column. City allowance is paid to all the employees at the rate of Rs.500/- and Rs.250/- is

paid as other allowance to all the employees. From 04/2011 onwards the allowances are named as medical allowance and special allowance. A fixed amount of Rs.250/- is paid as medical allowance to all employees and a fixed amount of Rs.500/- is paid as special allowance to all employees. The appellant is taking only the basic for provident fund deduction. As already pointed out the allowances whether it is city allowance and other allowance or medical allowance and special allowance the same is uniformly paid to all the employees depending on their attendance. According to the learned Counsel for the appellant these allowances will not form part of basic wages and therefore will not attract any provident fund deduction. According to the learned Counsel for the respondent, the allowances will form part of basic wages and therefore the respondent authority assessed the contribution on the same.

6. It is relevant to examine the statutory and legal position regarding basic wages and contribution to be paid for deciding the issue finally. The relevant provisions of the Act to decide the issue whether the city allowance, other allowance, medical allowance and special allowance paid to the employees by the appellant will attract provident fund deduction are Sec 2(b) and Sec 6 of EPF & MP Act.

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 “.

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, depending on facts and circumstances of each case.

8. It is clear from the above discussion that all the allowances paid uniformly and universally to all employees will come within the definition of basic wages and therefore will attract provident fund deduction. I don't find any infirmity in the impugned order issued by the respondent.

9. 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