



सत्यमेव जयते

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

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

(Wednesday the 15<sup>th</sup> day of September, 2021)

**APPEAL No.594/2019**

(Old no.757(7)2013)

Appellant : M/s.Jonarin Pigments Pvt Ltd  
Vettikkat Tower, 1<sup>st</sup> Floor  
Palarivattom  
Kochi - 682025

By Adv.C. Anil Kumar

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 15.09.21 and on the same day this Tribunal-cum-Labour Court passed the following:

**ORDER**

Present appeal is filed against order no.KR/KC/19635/ENF-3(4)/2013/9076 dt.03.09.2013 assessing provident fund dues U/s 7A of EPF & MP Act, 1952 (hereinafter referred to as 'the Act') on the evaded wages for the period from 04/2008 to 01/2013. The total dues assessed is Rs.10,15,810/-.

2. The appellant is a private limited company incorporated under the Companies Act. The company is engaged in manufacture and marketing of cleaning chemicals, industrial chemicals, gel fuel etc. The appellant establishment is covered under the provisions of the Act and is employing 42 employees in the establishment. The service conditions including payment of wages to the employees are governed by separate long term settlements between the appellant establishment and the trade unions. One of such settlement dt.18.03.2011 is produced as Annexure A1. The appellant establishment is regular in compliance. While so an Enforcement Officer of the respondent organisation conducted an inspection and pointed out that the HRA and the conveyance allowance being paid to its employees will attract provident fund deduction. The wage structure of the appellant establishment is as per the settlement between the management and the unions. A copy of the wage register maintained by the appellant for the month of 07/2008 is produced and marked as Annexure A2. On the basis of the report of the Enforcement Officer, the respondent authority initiated an enquiry U/s 7A and issued an order stating that the HRA and conveyance allowance paid to the appellant will form part of basic wages and therefore will attract provident fund deduction. The impugned order is illegal and is in violation of Sec 2(b) of the Act. The observation of the

respondent in the impugned order that basic wages is split up for the purpose of avoiding employer's contribution is totally unjustifiable. In 2008 an Enforcement Officer of the respondent inspected the books of the appellant establishment and reported that the compliance of the appellant establishment under the Act is satisfactory. A true copy of the EPF account maintained by the appellant for the months of 11/2008 and 12/2008 are produced and marked as Annexure A4, A5 respectively. The respondent did not raise any objection regarding Annexure A4 and A5. The respondent's conclusion that HRA and conveyance allowance paid to its employees would form part of basic wages is not legally sustainable.

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 organisation who is the Inspector appointed U/s 13 of the Act reported that the compliance position of the appellant establishment is not satisfactory and prima facie, there is a case of underreporting of basic wages and evasion of statutory contribution to provident fund. The respondent authority therefore initiated an enquiry U/s 7A of the Act. The respondent observed that the salary taken for provident fund was very low in comparison to the gross salary. The salary was split up into basic, DA, HRA and conveyance allowance. In most cases HRA + conveyance

allowance was more than basic + DA on which provident fund is payable. The appellant was given adequate opportunity and the enquiry was concluded on 05.08.2003 holding that the allowances paid to the employees shall form part of basic wages subject to the statutory limit of Rs.6500/-. In most cases the respondent found that the basic + DA comes to 45-47% and the rest of the wages are shown as allowances and no contribution is being paid on the same. From the above, it is clear that the appellant establishment manipulated the salary structure in such a way to exclude the maximum portion of provident fund deductible salary. The appellant resorted to glaring subterfuge of wages in order to evade provident fund contribution. The subterfuge adopted by the appellant establishment is detrimental to the interest of its employees as the consequential benefits under Pension Scheme will be substantially reduced if the appellant is allowed to continue with the splitting up of wages as discussed above. The Hon'ble Supreme Court of India in **Rajasthan Prem Kishan Goods Transport Co. Vs RPF and others**, 1996 (9) SCC 454 held that it is upto the Commissioner to lift the veil and read between the lines to find out the pay structure fixed by the employer to its employees and to decide the question whether splitting up of pay has been made only as a subterfuge to avoid its contribution to provident fund. In **Maharashtra State Co-operative Bank Ltd Vs Provident Fund Commissioner**, 2009 10 SCC 123 the Hon'ble Supreme

Court came out with the philosophy of the Act stating that since the Act is a social welfare legislation intended to protect the interest of a weaker section of the society i.e., the workers employed in factories and other establishments, it is imperative for Courts to give a purpose interpretation to the provisions.

4. The basic issue involved in this appeal is whether the HRA and the conveyance allowance being paid to the employees by the appellant establishment will form part of basic wages and therefore whether it will attract provident fund deduction. According to the learned Counsel for the appellant, the wage structure of the appellant establishment is decided between the management and union and therefore the respondent authority cannot interfere in the wage structure of the appellant establishment. The learned Counsel for the respondent submitted that he is not disputing the wage structure of the appellant establishment, however the issue is whether certain allowances being paid by the appellant establishment to its employees will form part of basic wages and therefore will attract provident fund deduction.

5. The relevant provisions of the Act to decide the issue whether certain allowances 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

especially 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 " .

6. 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.

7. From the above discussion it is clear that as the law stands now conveyance allowance being paid by the appellant uniformly to all its employees will form part of basic wages and therefore will attract provident fund deduction. According to the learned Counsel for the respondent, the HRA being paid to the employees are exorbitantly high and it is a clear case of subterfuge

to avoid payment of provident fund contribution. On a perusal of Annexure A2, the wage register of the appellant establishment for the period 01.07.2008 to 31.07.2008, the HRA component being paid to the employees by the appellant establishment is almost equal to the basic + DA being paid to its employees. In some cases HRA is much more than the basic + DA. The appellant has no explanation for such a wage structure except to say that these allowances are being paid as per the wage settlement between the management and the unions. The HRA component is indeed so high that it gives an impression that there is an attempt by the appellant establishment to evade its provident fund contribution which will directly impact the pensionary benefits of its employees. However being an excluded allowance U/s 2(b)(2) of the Act, it is not correct on the part of the respondent to include the same in the assessment.

8. Considering the facts, circumstances, pleadings and evidence in this appeal, I am inclined to hold that conveyance allowance will form part of basic wages and therefore will attract provident fund deduction. HRA being an excluded allowance will not form part of basic wages and therefore no provident fund contribution can be claimed on the same.

Hence the appeal is partially allowed, the impugned order is modified and the appellant is directed to remit contribution on conveyance allowance paid to its employees and the respondent is directed to exclude the HRA component from the assessment. The impugned order is partly set aside and the matter is remitted back to the respondent to re-assess the dues on the basis of the above directions within a period of 6 months after issuing notice to the appellant. The pre-deposit made by the appellant U/s 7(O) of the Act as per the directions of the Hon'ble High Court of Kerala shall be adjusted/refunded after completing the assessment.

Sd/-

(V. Vijaya Kumar)  
Presiding Officer