



सत्यमेव जयते

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

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

(Wednesday the 7th day of April, 2021)

APPEAL No.604/2019
(Old No.406(7)2013)

Appellant : M/s.Sterling Holiday Resorts (I) Ltd
Registered office at :
No.7, 3rd Cross Street, Citi Towers
Kasturbai Nagar, Adayar
Chennai – 600020

Resort at :
M/s.Sterling Holiday Resorts (I) Ltd
Chinnakkanal
Munnar
Idukki - 685618

By Adv.P. B. Sahsrnaman

Respondent : The Assistant PF Commissioner
EPFO, Sub Regional Office
Kottayam – 686001

By Adv.Joy Thattil Ittoop

This case coming up for final hearing on 19.02.2021 and this Tribunal-
cum-Labour Court on 07.04.2021 passed the following:

ORDER

Present appeal is filed from order no.KR/KTM/ENF-1(3(/2013/1540 dt.07.05.2013 assessing dues U/s 7A of the EPF & MP Act, 1952 (hereinafter referred to as 'the Act') on non enrolled employees for the period from 02/2010 to 04/2010 and evaded wages for the period from 03/2007 to 03/2013. The total dues assessed is Rs.24,07,375/-.

2. Appellant is an establishment engaged in the hospitality business and is running a resort at Munnar, Idukki district, Kerala. The appellant appoints persons with basic salary and other allowances depending on the nature of work done by them. The appellant used to contribute on basic pay and special basic pay paid to the employees. In addition to the basic pay the workers are paid special allowance as an incentive for specialised services. No contribution is paid on special allowance as the same is excluded U/s 2(b)(2) of the Act. The appellant is also paying HRA to its employees who are constrained to stay in rented premises. Some of the workers are also paid conveyance allowance. There is no agreement or settlement regarding the payment of wages to the employees. Security guards are engaged on contract and their wages were being paid by their respective contractors. The respondent initiated an enquiry to assess dues on casual employees employed by the appellant and also the special allowance paid to the

employees. The appellant appeared before the respondent and pleaded that special allowance will not form part of basic wages and therefore no contribution is payable on special allowances as per the provisions of the Act. In **Bridge Roof** case, 1963 AIR (SC) 1474 the Hon'ble Supreme Court held that where the payment is available to be specially paid to those who avail the opportunity is not basic wages. It is earned in accordance with terms of contract of employment but because it may not be earned by all employees of a concern and it is excluded from basic wages. The Hon'ble Supreme Court has come out with the test of universality in the above said case. The appellant is not universally paying special allowance to all its employees.

3. The respondent filed counter denying the above allegations. The appellant is an establishment covered under the provisions of the Act. The appellant establishment defaulted in payment of contribution and therefore an Enforcement Officer was directed to inspect the establishment and report the compliance position from 05/2007. The Enforcement Officer reported that the appellant establishment is not complying for 36 casual employees from 02/2010 and also reported evasion of wages from 03/2007. It was reported that the casual employees joined the establishment on 02/2010 but they were enrolled to the fund only from 01.05.2010. On the

basis of the report of the Enforcement Officer an enquiry U/s 7A was initiated by the respondent. A representative of the appellant attended the hearing and submitted monthly statement of wages with details of wages from 03/2007 to 08/2012. It is also seen that the casual employees were not admitted from 02/2010 to 04/2010. The Enforcement Officer also reported that the security guards are deployed through contractors and he could not confirm the compliance position of the security guards. On verification of the records produced by the appellant it is confirmed that the dues in respect of casual employees are required to be assessed for the period from 02.04.2010. It is also seen that the special allowance is being paid to all the employees irrespective of the grade of the work and it is not based on any specialised service as claimed by the appellant. Incentive payments are made to the workers for extra work done or extra turnout or over and above the targets fixed in order to achieve maximum output. In this case it is seen that workers are paid incentive not for the turnout over and above the target fixed by the appellant establishment but certain percentage of basic pay is being paid to all employees irrespective of any distinction whether the job they are doing is skilled or unskilled without any criteria. Hence the claim of the appellant that special allowance is being paid as an incentive for specialised service is not correct. The respondent

authority has taken into account the plea of the appellant and excluded HRA and conveyance allowance from the assessment. The special allowances are being paid to all employees whether skilled or unskilled including the bell boys working in the appellant establishment. Hence the same cannot be excluded for the purpose of assessment of contribution.

4. In this appeal two issues are raised by the appellant. One is with regard to non enrollment of 36 casual employees for the period from 02/2010 to 04/2010. The other issue is with regard to evaded wages on which provident fund contribution is required to be paid.

5. With regard to the non enrollment of 36 casual employees it is fairly conceded by the appellant that they are liable to be enrolled w.e.f. 02/2010 whereas they were enrolled only w.e.f. 01.05.2010. Hence the quantification of dues in respect of 36 casual employees for the period 02/2010 to 04/2010 is not disputed by the appellant.

6. The second issue regarding provident fund contribution on evaded wages, the appellant pleaded that those allowances being paid to the employees will come within the excluded category of wages U/s 2(b)(2) and therefore will not attract any provident fund deduction. The respondent authority agreed to the contention of the appellant that HRA and conveyance allowance can be excluded from the assessment of provident

fund dues. However coming to the question of special allowance being paid to its employees by the appellant the respondent took a view that the same will form part of basic wages and will therefore attract provident fund deduction.

7. The relevant provisions of the Act to decide the issue whether the conveyance 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 “ .

8. 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.

9. The learned Counsel for the respondent argued that the special allowance is universally being paid to all the employees irrespective of the fact whether they are skilled or unskilled. He specifically pointed out that the case of a bell boy to argue that the special allowance is not an incentive for any special service rendered by them. Though the appellant pleaded that the special allowance is not being paid to all the employees the wage register produced by the appellant clearly indicated that special allowance is being paid to all the employees irrespective of their grade or the nature of job that they are doing. Hence going by the above discussion of cases by the Hon'ble Supreme Court as well as various High Courts, it is very clear that special allowance paid to the employees by the appellant will come within the definition of basic wages and therefore will attract provident fund deduction.

10. Considering the facts, circumstances, pleading and evidence in this appeal, I am not inclined into interfere with the impugned order.

Hence the appeal is dismissed.

Sd/-

(V. Vijaya Kumar)
Presiding Officer