



सत्यमेव जयते

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

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

(Monday the 18<sup>th</sup> day of January, 2021)

**APPEAL No.705/2019**

(Old No.48(7)2012)

Appellant : M/s.Leetha Press and Process Ltd  
Muringoor, Chalakudy  
Thrissur – 680316

By Adv.S. Ramesh Babu

Respondents : 1. The Assistant PF Commissioner(Compliance)  
EPFO, Regional Office, Kaloor  
Kochi – 682017  
2. The Assistant PF Commissioner(Enforcement)  
EPFO, Regional Office, Kaloor  
Kochi – 682017

By Adv.Sajeev Kumar K.Gopal

This case coming up for final hearing on 23.12.2020 and this Tribunal-cum-Labour Court on 18.01.2021 passed the following:

**ORDER**

Present appeal is filed from order no.KR/KC/19266/ENF-II(3)/2011/6961 dt.14.07.2011 issued U/s 7A of the EPF & MP Act, 1952 (hereinafter referred to as 'the Act') and order no.KR/KC/19266/ENF-II(3)/2011/12306 dt.11.11.2011

issued U/s 7B of the Act assessing dues on various allowances given to its employees for the period from 04/2008 to 09/2010. The total dues assessed is Rs.11,69,700/-.

2. The appellant is an establishment covered under the provisions of the Act and the appellant is prompt in remittance of provident fund contribution. An Enforcement Officer of the respondent conducted an inspection of the appellant establishment on 02.11.2010 and directed the appellant to remit contribution on various allowances paid to the employees on the basis of a settlement. On the basis of the report of Enforcement Officer, the respondent initiated an enquiry U/s 7A of the Act. The allowances in question includes incentive allowance and TA, which will not form part of basic wages. TA is paid to employees of the company because the company does not provided accommodation to the employees. The employees therefore stay in their houses and travel to the appellant establishment for the purpose of work. A settlement has been reached between union representatives and the company on 14.07.2007 that the company will provide vehicle for transportation of their employees. Since conveyance could not provided, it was decided to give TA to all the employees. Similarly certain incentives are paid on the basis of settlement. The incentives are payable when the company exceeds a turn over of Rs.20 lakhs. The respondent without considering the above representation

issued the impugned order U/s 7A. Since the respondent did not consider the settlement for paying TA and incentive allowance, a review application was filed U/s 7B(1) of the Act. The respondent rejected the review application as well. The respondent was informed during the course of enquiry that the TA and incentive allowances were paid on the basis of a settlement and they will not form part of basic wages. The respondent failed to provide a copy of the report of the Enforcement Officer dt.02.11.2010 which has seriously affected the respondent. It is not relevant whether the appellant specifically request for a copy of the report or not.

3. The respondent filed counter denying the above allegations. The Enforcement Officer who conducted routine inspection of the appellant establishment reported that the compliance position of the appellant establishment is not satisfactory as the appellant was splitting wages paid to its employees and underreporting basic wages for evasion of statutory contribution. The wage structure of the appellant establishment is basic + DA, TA, other allowances and overtime allowance. The amounts paid on account of other allowances are double the amount of basic and DA and the appellant was remitting contribution only on basic + DA. The Enforcement Officer who submitted the report filed a provisional assessment excluding HRA and including other allowances and TA for the purpose of assessment. Since the appellant

failed to remit the contribution as directed by the Enforcement Officer, an enquiry U/s 7A was initiated against the appellant. A notice dt.07.03.2011 was issued fixing the date of enquiry on 04.04.2011 wherein the appellant was directed to produce necessary records for deciding the issue. A representative of the appellant attended the hearing and claimed that overtime allowance and other allowances are not part of basic wages and they are to be excluded from assessment. The appellant failed to produce any documents in the enquiry. However the Enforcement Officer who verified the records of the appellant establishment submitted a report dt.02.06.2011 quantifying the dues for the period from 04/2008 to 09/2010 after excluding HRA and overtime allowance. The review application filed U/s 7B(1) of the Act was also rejected directing the appellant to remit the contribution within 15 days.

4. The case of the appellant is that the TA is paid as part of the settlement and therefore will not come within the definition of basic wages. Similarly the incentive allowances are being paid to the employees as other allowances when the turnover of the appellant company exceeds Rs.20 lakhs. According to the learned Counsel for the respondent, these allowances are universally paid to all employees and therefore will satisfy the requirement of basic wages as the same is not paid for any additional work done by the employees.

5. The two sections which are relevant to decide the question whether the above allowance will form part of basic wages and will attract provident fund deduction are Sec 2(b) and Sec 6 of the Act.

**Sec 2(b)** of the Act reads as follows;

“ **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 allowance 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 : Contribution and matters which may be provided for in Schemes.**

The contribution which shall be paid by the employer to the fund shall be 10% of the basic wages, dearness allowance and retaining allowance (if any) for the time being payable to each of the employees (whether employed by him directly or by or through a contractor) and the employee's 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 establishments which the Central Govt, after making such enquiry as it deems fit, may, by notification in the official gazette specify, this Section shall be subject to the modification that for the words "10%", at both the places where they occur, the words "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 off 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.

Sec 2(b) of the Act excludes certain allowances such as dearness allowance, house rent allowance, overtime allowance etc., from the definition of basic wages. However U/s 6, certain excluded allowances such as dearness allowance are included while determining the quantum of dues to be paid. This anomalous

situation was resolved by the Hon'ble Supreme Court in **Bridge & Roof Company (India) Ltd Vs UOI**, 1963 AIR 1474 (SC) 1474. After a combined reading of Sec 2(b) and Sec 6 of the Act, the Hon'ble Supreme Court held that;

- a. Where the wage is universally, necessarily and ordinarily paid to all across the board, such emoluments are basic wages.
- b. Where the payment is available to be specially paid to those who avail of opportunity is not basic wages.

This dictum was subsequently followed by the Hon'ble Court in **Manipal Academy of Higher Education Vs RPFC**, 2008 (5) SCC 428. In a recent decision in **RPFC, West Bengal Vs Vivekananda Vidyamandir & Others**, 2019 KHC 6257 the Hon'ble Supreme Court considered the appeals from various decisions by High Courts that travelling allowance, canteen allowance, lunch incentive, special allowance, conveyance allowance etc., will form part of basic wages. The Hon'ble Court after examining all its earlier decisions held that;

“ The wage structure and the component of salary have been examined on facts, both by the authority and appellate authority under the Act, who have arrived at a factual conclusion that the allowances in question are essentially a part of the basic wages camouflaged as part of an allowance so as to avoid deduction and contribution accordingly to the provident fund account of the employees. There is no occasion

of us to interfere with the concurrent conclusions of facts. The appeals by the establishments therefore merits no interference”.

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. 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. However this is an issue to be examined in each case considering the facts and circumstances of the case.

6. Considering the facts, circumstances and pleadings in this appeal, I am not inclined to interfere with the impugned order as the respondent rightly excluded HRA and overtime allowance from the assessment.

Hence the appeal is dismissed.

Sd/-

(V. Vijaya Kumar)  
Presiding Officer