



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

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

(Tuesday the 26<sup>th</sup> day of October, 2021)

**Appeal No. 654/2019**  
(Old No.ATA-145(7)2013)

Appellant

M/s. Dynamic Techno Medicals Pvt Ltd.,  
Titus Towers, Padivattom  
NH Bye pass, Kochi – 683 101.

By Adv. M/s. Menon & Pai

Respondent

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

By Adv. Sajeev Kumar K.Gopal

This appeal came up for hearing on 28/06/2021 and this Industrial Tribunal cum Labour Court issued the following order on 26/10/2021.

**ORDER**

Present appeal is filed from order No. KR / KC / 13018-A / Enf-1(2) / 2013 / 13611 dt. 14.02.2013. assessing dues U/s 7A of EPF and MP Act 1952 (hereinafter referred to as 'the Act') on allowances for the period from 03/2011 to 05/2012. The total dues assessed is Rs. 15,63,270/-.

2. The appellant is a company engaged in manufacture and sale of medical devices and orthopedic products. The appellant establishment is covered under the provisions of the Act. An Enforcement Officer of the respondent's Office conducted an inspection. On the basis of the inspection report of the Enforcement Officer, the respondent initiated an enquiry U/s 7A of the Act. The enquiry was scheduled on 26/02/2012. The appellant appeared before the respondent and explained that the appellant had not received any inspection report. Thereafter another Enforcement Officer conducted inspection on

19/11/2012. No inspection report was given to the appellant. The appellant during the course of hearing requested for a copy of the report. However the respondent authority proceeded with the enquiry without furnishing a copy of the report. The respondent informed the appellant that the appellant establishment is required to pay contribution on allowances such as HRA, conveyance allowance and production incentive. The appellant informed the respondent that none of the allowances and incentive will form part of the basic wages and therefore will not attract provident fund deduction. Ignoring the contentions of the appellant the respondent issued impugned order holding that the appellant is liable to pay contribution on allowances such as HRA, conveyance allowance and production incentive. The order passed by the respondent on the concept of wages goes against the settled legal principles. A reading of Sec 6 of the Act would clearly show that the appellant is liable

to pay contribution on basic wage, dearness allowance and retaining allowance. Sec 2 (b) which defines basic wages also excludes certain allowances such as HRA and “similar allowances” from the purview of the basic wages. Para 29 of the EPF Scheme also specifies that the appellant is liable to pay contribution only on basic, DA and retaining allowance. The legal position relating to the issue had been considered by the Hon'ble Supreme Court and the judgments on the subject are clear.

3. The respondent filed counter denying the above allegations. The appellant is an establishment covered under the provisions of the Act w.e.f 01/12/2004. An Enforcement Officer who conducted the inspection of the appellant establishment reported vide his report dt. 05/06/2012 that :

- 1) The appellant is complying on lesser wages and thus there is a default for the period from 03/2011 to 11/2011.
- 2) The wages is split up the wages into Basic pay, DA Incentive, conveyance allowance and HRA.
- 3) Provident fund is remitted only for Basic and DA which is fixed as Rs.1500/- for all employees.
- 4) It was also noticed that there is huge variation as per wages register and profit and loss account and also Form 12A/6A filed by the appellant.

Based on the report of Enforcement Officer an enquiry U/s 7A was initiated on 16/08/2012. The enquiry was continued thereafter on various dates. The respondent authority found that

- 1) On 21/01/2012 the representative of the appellant admitted that provident fund is deducted on low basic wages.

- 2) He also submitted that the employees are not complaining as they received good salary inclusive of incentives.
- 3) It was also found that as on March 2011 there were 155 employees in the appellant establishment.
- 4) The salary components are basic, dearness allowance, incentive and conveyance allowance.
- 5) The salary component of one of the employee Smt.Srilatha.T is basic wages Rs.1,500/-, HRA Rs.500/- and incentive Rs.6689/-. Hence the gross salary was Rs.8689/-.
- 6) In the case of all employees the basic and HRA are fixed Rs. 1500/- and Rs. 500/- respectively.
- 7) From 06/2011 onwards allowances are been paid to 123 employees and HRA was not seen paid to 40 employees.

The Enforcement Officer submitted another report dt. 20/11/2012–04/01/2013 wherein compliance w.e.f 03/2011 to 05/2012 was reported. According to that report there is huge evasion of wages. The average wage considered for provident fund deduction is Rs.2000/-. The production incentive is more than basic + DA and it is actually piece rate wages paid to the employees. Conveyance is seen paid uniformly. HRA was introduced in June 2011 and the Enforcement Officer suggested that this shall also be taken into account for reckoning provident fund wages. The respondent authority considered both the reports and found that the basic and conveyance allowance are fixed and common to all employees. HRA is varying from employee to employee. Incentive is considered as part of basic wages as the same is seen paid on the basis of piece rated wages. The respondent authority relying on the decision of **M/s. Poompuhar Shipping Corporation Ltd. Vs RPFC, 2004 (1)**

LLJ 663 held that the incentive forms part of basic wages and therefore provident fund contribution shall be paid on the same. The Enforcement Officer reported that production incentive is actually piece rate wages and not real production incentive. The respondent authority on verification of records came to the conclusion that the production incentive is nothing but piece rate wages paid to the employees. Though the appellant attended the hearing he failed to produce any terms of contract of wages. On the basis of the documents produced the respondent authority found that the appellant paid basic, DA and incentive upto 2011 and from June 2011 onwards they introduced the element of HRA. It was also found that HRA was being paid to 123 employees and 40 employees are denied the benefit. During the course of enquiry, the appellant never requested for a copy of the report of the Enforcement Officer. However copy of the report dt. 05/06/2012 and 20/11/2012 are produced and marked



as Exbt R1 & R2. It is very clear from the records that the appellant establishment manipulated the salary structure and devised it in such a way to exclude the maximum portion of wages from provident fund liability. The appellant resorted to glaring subterfuge of wage in order to reduce the provident fund contribution. The respondent authority therefore held that all allowances shown in the salary statement have to be considered as basic wages.

4. From the facts discussed above, it can be seen that the appellant establishment was paying contribution on a meager amount of Rs. 2000/-. when the salary paid to the employees in general was above Rs. 8500/-. The Enforcement Officer who conducted the inspection of the appellant establishment found that the salary of the employees is split into basic, DA, incentive and conveyance allowance. It is also found that from June 2011 the appellant introduced one more component of HRA. However

HRA is not paid to all the employees. The respondent authority therefore initiated an enquiry U/s 7A of the Act to decide whether various allowances and incentive paid by the appellant to its employees will attract provident fund deduction. The respondent authority is empowered to look into the wage structure in view of the decision of Hon'ble Supreme Court in **Rajasthan Prem Kishan Goods Transport Co. Vs RPFC and Other**, 1996 (9) SCC 454 wherein the Hon'ble Supreme Court 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 the splitting up of pay has been, made only as a subterfuge to avoid its contribution to provident fund .

The law regarding the definition of basic wages is discussed hereunder.

**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 Government, 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 there 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.

5. It can be seen that some of the allowances such as DA, excluded U/s 2b (ii) of the Act are included in Sec 6 of the Act. The confusion created by the above two Sections was a subject matter of litigation before various High Courts in the country. The Hon'ble Supreme Court of India in **Bridge & Roof Company Ltd Vs Union of India** ,

1963 (3) SCR 978 considered the conflicting provisions in detail and finally evolved the tests to decide which are the components of wages which will form part of basic wages. According to the Hon'ble Supreme Court of India,

- (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 the opportunity is not basic wages.

The Hon'ble Supreme Court of India ratified the above position in **Manipal Academy of Higher Education Vs PF Commission**, 2008(5)SCC 428. The above tests was again reiterated by the Hon'ble Supreme Court in **Kichha Sugar Company Limited Vs. Tarai Chini Mill Majzoor Union** 2014 (4) SCC 37. The Hon'ble Supreme Court of India examined all the above cases in **RPFC Vs**

**Vivekananda Vidya Mandir and Others, 2019 KHC 6257.** In this case the Hon'ble Supreme Court considered whether travel allowance, canteen allowance, lunch incentive, special allowance, washing allowance, management allowance etc will form part of basic wages attracting PF deduction. After examining all the earlier decisions and also the facts of these cases, the Hon'ble Supreme Court held that “ the wage structure and the 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 the basic wages camouflaged as part of an allowance, so as to avoid deduction of contribution according to the provident fund account of the employees. There is no occasion for us to interfere with the concurrent conclusion of the facts. The

appeals by the establishments therefore merit no interference.” The Hon’ble High Court of Kerala in a recent decision rendered on 15/10/2020 in the case of **EPF Organization Vs MS Raven Beck Solutions (India) Ltd**, WPC No. 1750/2016, examined Sec 2(b) and 6 of the Act and also the decisions of the Hon’ble Supreme Court to conclude that

*“ this makes it clear that uniform allowance, washing allowance, food allowance and travelling allowance, forms an integral part of basic wages and as such the amount paid by way of these allowance 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”.*

6. From the above discussion, it is clear that the appellant is liable to pay contribution on Conveyance allowance. In **Montage Enterprises Pvt Ltd Vs EPFO**, 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 Hon’ble High Court of Calcutta held that special allowance paid to the employees will form part of basic wages. This decision of the Hon’ble High Court of Calcutta 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 (Kart.HC) the Hon'ble High Court of Karnataka held that 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 **Damodar Valley Corporation Bokaro Vs. Union of India**, 2015 LIC 3524 (Jharkhand HC) the Hon'ble High Court of Jharkhand held that special allowance paid to the employees will form part of basic wages.

In this case the allowances involved are HRA & Conveyance and the third component is production incentive. It is seen that the production incentive is more than three times the basic and DA and therefore it naturally leads to a doubt. Hence the respondent authority verified the books of the

appellant establishment and came to the conclusion that the so called production incentive is nothing but piece rate wages paid to the employees. It is settled legal position that if incentives are paid for extra production beyond the regular duty hours that will not attract provident fund deduction. However in this case the respondent found that the so called production incentive is an attempt by the appellant establishment to evade their provident fund contribution by classify it as an incentive. In view of the clear finding by the respondent authority that production incentive is only a piece rate wage paid to the employees, I don't have any hesitation to hold that the so called production incentive will form part of basic wages and therefore will attract provident fund deduction.

7. As already pointed out in earlier Paras, the Hon'ble High Court of Kerala in **EPFO Vs Raven Beck Solution India Ltd** (supra) held that conveyance allowance will form part of

basic wages. However in the above decision, the Hon'ble High Court has clarified that being an excluded allowance, HRA will not form part of basic wages and therefore will not attract provident fund deduction.

8. The learned Counsel for the appellant made a submission that the reports of the Enforcement Officer were not provided to him inspite of specific request during the course of Sec 7A enquiry. It is always advisable that when an enquiry is initiated on the basis of the report of the Enforcement Officer , a copy of the report also is forwarded along with the summons to the establishment. It will not only satisfy the legal requirement of natural justice but also disclosed the basis of the enquiry to the employers.

9. The learned Counsel for the appellant pointed out that this Tribunal considered Appeal No. 56/2018 in respect of one of the sister concerns of the appellant . Appeal No

56/2018 was allowed and the matter was remitted back to the respondent authority. The learned Counsel for the appellant also produced a copy of the order issued by the respondent authority after remand by this Tribunal. Therefore learned Counsel pleaded that this matter may also be remitted back to the respondent authority to re-decide the matter on the above lines. On a perusal of the order issued in Appeal No.56/2018 by this Tribunal, it is seen that the impugned order was an absolute non-speaking order and the same could not be sustained. However in the present case the impugned order issued by the respondent is a speaking order, but with the infirmities as pointed out above.

10. Considering the facts, circumstances and pleadings in this appeal I am inclined to interfere with the impugned order

Hence the appeal is partially allowed, the impugned order is set aside and the respondent authority is directed to reassess the dues excluding HRA from basic wages. Copies of the reports of the Enforcement Officer shall also be sent alongwith the summons issued to the appellant for the enquiry U/s 7A. The enquiry shall be completed within a period of 6 months from the date of receipt of this order. If the appellant fails to appear or fails to produce the records called for, the respondent is at liberty to decide the matter according to law. The pre-deposit made by the appellant as per the direction of the EPF Appellate Tribunal shall be adjusted or refunded after conclusion of the enquiry.

Sd/-

**(V. Vijaya Kumar)**  
Presiding Officer