

**BEFORE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
CUM LABOUR COURT, DELHI**

Appeal no. 11(4) 2011

M/s. Mahle Filter Systems (Ind.) Ltd.Appellant

Through:- Sh. S.K. Gupta, Ld. Counsel for the appellant.

Vs.

APFC, Delhi.Respondent

Through:- Sh. Satpal Singh, Ld. Counsel for the respondent.

Order Dated:- 09.10.2025

The appellant has preferred the present appeal assailing the order dated 30.11.2010 passed by the APFC, Delhi whereby the dues were assessed to the tune of Rs. 2,13,111/- for the period from March 2006 to July 2009, on the ground that the establishment had failed to pay the contributions on HRA, conveyance allowance, special allowance and other similar allowances.

The appellant has submitted that it is a registered company incorporated under the Companies Act, 1952, having its registered office at 01, Sri Aurobindo Marg, New Delhi-110016, and is covered under the **Employees' Provident Funds & Misc. Provisions Act, 1952 (Hereinafter referred as 'the Act')**. It is further submitted that the appellant has been regularly remitting the PF contributions for its eligible employees regularly as per Section 2(b), Sec 6 of the Act, 1952 read along with Para 2(f) and Para 29 of the scheme, 1952. The appellant contends that it is not liable to deduct PF contributions on HRA, conveyance allowance, special allowance or other similar allowances, as these allowances does not fall within the scope of 'basic wages'.

It is further submitted that Mr. Ajitesh Kumar, APFC, Delhi (North), issued a show cause notice dated 31.08.2009 under

section 7A of the Act, 1952 for determination of PF dues for the period from March 2006 to July 2009.

The Enforcement Officer visited the appellant's establishment on 16.11.2009, where the appellant produced all the relevant records. The EO made his report, in which, he showed a short payment of Rs.1,88,942/- for the said period i.e. March 2006 to July 2009. The appellant's representative appeared personally on 26.03.2010 and submitted that the PF dues had already been remitted for the said period. He pointed out to the APFC, Delhi (North) that a clerical error had occurred and certain figures of remitted PF dues were not taken into consideration by the Enforcement Officer, Delhi (North) at the time of inspection.

Subsequently, Mr. Ajitesh Kumar, APFC was transferred, and new officer Mr. G.C. Arora, APFC, joined in his place and passed the order under challenge.

The appellant has assailed the said order on the grounds that the impugned order is prima facie contrary to the law and facts of the case. It is submitted that the appellant was not given reasonable opportunity of representing its case before the respondent, which is mandatory under section 7A of the Act. The appellant further submitted that the respondent was functioning in a 'Dual-Capacity', both as prosecutor and adjudicator, which is against the principles of natural justice. It was further argued that the respondent determined the PF contribution on the basis of EO report dated 22.11.2010, as well as on the judgement in **Regional Provident Fund Commissioner, West Bengal and Ors. vs. Vivekananda Vidya Mandir and Ors [2005(2)LLN.214]** where it was held that the establishment is liable to pay P.F. contribution on special allowance as per the order of Hon'ble division Bench of the High Court that the special allowance cannot be treated to be one of the similar allowances. He submitted that the order being illegal be set aside and recalled.

In response, the respondent filed a reply submitting that as per report, the appellant has split up salary/wages into various heads like Basic Pay, HRA, Special Allowance, Special Pay and other allowances as subterfuge to avoid provident fund contributions. So, the Enforcement Officer worked out the P.F. dues on the difference of wages amount i.e. Rs. 8,48,875/- maximum of the ceiling amount i.e. Rs. 6500/- per month. Accordingly, the total PF dues were determined to be Rs. 2,13,111/-. It was prayed that the appeal be dismissed with heavy cost.

I have heard the arguments presented by both parties. Before proceeding further in the appeal, the definition of 'basic wages' as provided in section 2b and 'contributions payable by the employer' as provided in section 6 of the Act is required to be reproduced herein:

2(b). Basic wages" means all emoluments which are earned by an employee while on duty or on leave or on holidays with wages in either case in accordance with the terms of the contract of employment and which are paid or payable in cash to him, but does not include—

(i) The cash value of any food concession;

(ii) 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), house-rent allowance, 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;

(iii) Any presents made by the employer.

6. The contributions which shall be paid by the employer to the fund shall be ten (or twelve) percent 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). The employee's contribution shall be equal to the contribution payable by the employer in respect of him.

Here, the counsel for the appellant submitted that no calculation sheet was provided by the respondent, nor was any justification given to support the conclusion that HRA, special allowance, special pay etc. falls within the ambit of 'basic wages'. The appellant relied upon the judgement in **M/s Gerson Engineering Works vs. Asst. Provident Fund Commissioner (W.P. no. 679 of 2011)** wherein it was held that:

The impugned order passed by the respondent does not show what is the basic wages considered in respect of an individual employee for ascertaining the provident fund contribution.

The appellant further relied upon the division bench judgment of the High Court of Madras in **Pudiya Jananayaga Vagana vs. Sathyabama University and Anr. (Writ Appeal No. 3828 of 2019)** where it was observed that external aids cannot be invoked to interpret a welfare legislation and if we may add in particular an exemption provision in a welfare legislation. The said judgement also made a reference to the Hon'ble Supreme Court's decision in **Lalappa Lingappa vs. Laxmi Vishnu Textile Mills, 1981(2) SCC238**, where the Hon'ble Supreme Court held that in construing a welfare legislation, the Court should adopt a beneficial Rule of construction if a section is capable of two constructions. The Hon'ble Supreme Court held that when the

language is plain and unambiguous, it should be given effect to, whatever may be the consequence.

A plain reading of section 2(b) of the Act makes it evident that House Rent Allowance, overtime allowance, bonus, commission or any other similar allowance is specifically excluded from the definition of 'basic wages'. Section 6 clarifies that contributions has to be paid by the employer only upon the basic wages, dearness allowances and retaining allowances, if any. Once a particular component is excluded from 'basic wages', the assessing officer has no jurisdiction to include that component into consideration, no matter how big that amount is.

During course of the proceedings, the respondent produced the Trial Court Record, on the basis of which the dues under section 7A of the Act had been determined. The same had been supplied to the appellant, who didn't give any reply to the fact of submission of the said Record. The record contained documents that had been submitted by the appellant's establishment itself before the respondent authority. From the perusal of the record, it appears that the respondent had bifurcated salaries into different heads, i.e., Basic Pay, HRA, Special Pay, Conveyance Allowance and other heads. It is observed that the 'Special Pay' used to be paid uniformly to all employees, varying from employee to employee according to their respective pay-scales. It is reflected from the Trial Court Record at page no. 212, 229 and 238. Although, the record is in a fragile condition, it has been examined with much attention to avoid damaging it any further.

The respondent has rightly taken into account the 'special allowance' in respect of the employees mentioned whose salaries had been bifurcated in a manner to reduce the Provident Fund liability. The employees' names are Ms. Rekha Verma, Sh. Dharmendra Dwidevi, Sh. Pradeep Sharma, Arvind Kumar etc. The salaries of these employees varied from Rs. 6,000/- to Rs. 4,500/- while PF shall be deducted if we include the special pay upon Rs.

6,500/-, which the respondent has taken into consideration. The appellant has nothing to say about the purpose of this bifurcation.

In these circumstances, when the record produced by the respondent has not been challenged, it is held that the respondent has rightly assessed the dues after applying the maximum ceiling limit prescribed under the Act, on which the appellant was liable to remit the Provident Fund contributions.

Therefore, the appellant's contention that it is not liable to pay the PF dues on the 'special pay' is not tenable.

The Act is a welfare legislation and must be interpreted in a manner which furthers the interest of the employees who earn less wages, with the objective of accumulating funds for their retirement. Any fake bifurcation of salaries into different heads suggests that it has only been done solely to remit less Provident Fund amount for the employees, which amounts to unfair practice and cannot be justified in any way.

In view of the above, I find no merit in the appeal. Hence, the same stands dismissed. The order passed by the respondent authority is confirmed, and the appellant is directed to deposit the dues assessed under section 7A of the Act as per the impugned order within one month from the date of this order. A copy of this order be sent to both the parties. Consign the record to the record room.

Sd/-

(Atul Kumar Garg)

Presiding Officer