

**BEFORE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR
COURT, No. 2 DELHI**

D-2/03/2023

M/s Umang Appliances & Equipments Pvt. Ltd. vs. APFC/RPFC, Noida.

Present: Sh. Mahendra Singh Sharma, Ld. Counsel for the Appellant.
Sh. S.N. Mahanta, Ld. Counsel for the Respondent.

Order dated-15.10.2025

1. A very short question arises in this appeal, whether the amount mentioned under the column "Leave with Pay" in the register maintained by the appellant establishment actually amount to "Overtime", which has been specifically excluded under the **EPF & MP Act, 1952** (hereinafter referred to as "the Act").
2. Appellant case is that, appellant, a covered establishment under the provision of the Act, has filed the present appeal assailing the impugned order on various grounds interalia, that the amount mentioned under the head "Leave with Pay" is actually the amount of overtime, because no column was provided on the head of over time in the wage register. Hence, the amount for overtime has been mentioned under that column, and due to a clerical mistake, it was not corrected; amount was not fixed amount, it was variable amount which had not been paid to all the employees, but this amount of "Leave with Pay" is paid to each and every employee; amount shown was not linked to any incentive for production and this amount was not bifurcated from the salary of the employees. It was paid only to those employees who availed the opportunity for overtime; since the period of claim is more than 5 years which cannot be entertained as the same is time barred; impugned order is unconstitutional and bad in law, as the appellant was not given reasonable opportunity to represent their case. He prays that order be set aside and recalled.

3. Per contra, respondent filed the counter reply, taken several preliminary objections. Firstly, he had denied all the allegations, claims, demand contained in the instant appeal filed by the appellant except to the extent, specifically admitted. Thereafter, he has narrated the objective of the Act, which is a legislation for providing social security to employees working in any scheduled industry or a class of establishments engaging 20 or more persons on any day. Appellant had not approached before this Hon'ble Tribunal with clean hands and had suppressed material facts while. Appellant has distorted facts to gain sympathy from this Hon'ble Tribunal. On merits, he has stated that objections raised by the appellant were duly considered but were not accepted due to lack of jurisdiction behind the submission. No document was submitted by the appellant to show that those payments in question were made against overtime. He submits that appeal is liable to be dismissed.

4. Appellant has filed the rejoinder and denied the submissions of the respondent and reiterated that appeal be allowed.

5. I have heard the argument at bar and gone through the record of this case, and perused the impugned order challenged by the appellant. At the outset, it is important to mention here that while allowing the application under section 7-O of the Act, this Tribunal had directed the appellant to deposit the 25% of the assessed amount, over and above the amount of Rs. 3,00,000/- which has already been deposited after the assessment, towards compliance.

6. Before proceeding further, definition of basic wages under section 2(b) and 6 are required to reproduced herein:

Section 2(b) of the Act:

"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;

Section 6 of the Act:

Contributions and matters which may be provided for in Schemes.— The contribution which shall be paid by the employer to the Fund shall be [ten per cent.] 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 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 [ten per cent.] 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 this section];

[Provided that in its application to any establishment or class of establishments which the Central Government, after making such inquiry as it deems fit, may, by notification in the Official Gazette specify, this section shall be subject to the modification that for the words [ten per cent.], at both the places where they occur, the words [twelve per cent.] 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 the rounding off of such fraction to the nearest rupee, half of a rupee or quarter of a rupee.

[Explanation 1].—For the purposes of this [section], dearness allowance shall be deemed to include also the cash value of any food concession allowed to the employee.

[Explanation 2.—For the purposes of this [section], “retaining allowance” means an allowance payable for the time being to an employee of any factory or other establishment during any period in which the establishment is not working, for retaining his services.]

6. There is no dispute over the fact that section 2(b) specifically excludes the overtime allowance from the purview of the basic wages for which the contribution has to be paid in the fund. Further, there is no dispute that “Leave with Pay” is included in the definition of basic wages. If this Tribunal concludes that the amount mentioned in the column “Leave with Pay” is actually the amount given to the employee for “Leave with Pay” then, actually, it has come within the definition of basic wages. However, if the contention of the appellant is accepted, that, it was actually an amount paid in lieu of overtime, then it would be excluded from basic wages, and the appellant would succeed in his appeal.

7. During the course of proceedings, several registers have been produced by the appellant from the month of April, 2014 onwards. In April, 2014, where in the column mentioned against “Leave with Pay”, the amount have been given to the employees from Rs. 2343/- to Rs. 4810/-, while the basic wages varied from Rs. 6,400/- to Rs. 7,500/-. The same has been happened in the month of May, 2014, where in the column mentioned against “Leave with Pay”, the amount have been given from Rs.165/- to Rs. 6,424/- against the basic wages from Rs. 6,400/- to Rs. 14,000/-. In September, 2014, again “Leave with Pay” have been increased to the level of Rs. 7,464/- against the basic salary of Rs. 6,400/- at one place and at another place it was Rs. 7,750/- against the basic salary of Rs.

16,500/-. Even, the salary of one employee at Sr. No. 03 in the month of September, 2014, it was up to Rs. 5,355/- against the basic salary of Rs. 6,700/-.

8. During the course of hearing, an overtime sheets for the year 2014-15 has been placed on record by the appellant to buttress the fact that actually it was the amount of "overtime" not for "Leave with Pay". In March, 2015, basic salary to one employee Sh. Shyam Sunder was given Rs. 7,000/- and overtime was given Rs. 2,962/- for 102 hours of work. Similarly, Sh. Ashish at Sr. No. 8 received Rs. 5,301/- for 197 hours hours, against the basic salary of Rs. 6,450/-. At some place, overtime hours varied from 178, even, sometime, it was 333 hours. Even, in the month of October, 2016 at Sr. No. 02, an employee Sh. Ghanshyam Kumar was given overtime amount for 333 hours, which is not humanly possible. A person used to work around 48 hours in a week, totalling approximately 200 hours in a month, Continuous work of more than 18 hours per day is not humanly possible. Therefore, the appellant's contention that the amounts under "Leave with Pay" were actually overtime is not acceptable. Respondent has rightly taken into consideration the fact that the appellant has not given any reason for not including the amounts shown as "Leave with Pay" for the purpose of contribution in the provident fund.

9. In view of the above facts, I find no merit in this appeal. Hence, the appeal stands dismissed. Appellant had filed an FDR amount to Rs. 1,75,146/- (SBI, Sector 11, Noida) in compliance of the order dated 09.05.2023. The bank manager is directed to release the amount of the said FDR along with accrued interest in favour of Regional PF Commissioner, Noida. Appellant is directed to deposit the balance amount due for the period 04/2014 to 08/2019, within a month from today, after reducing the amount which has already been deposited by him. Registers produced by the appellant, during the course of proceedings, is returned forthwith after taking his signatures.

