IN THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, GUWAHATI, ASSAM.

Present: - Smt. Indira Barman, M.A., LL.B.,
Presiding Officer,
CGIT-Cum-Labour Court, Guwahati.

E.P.F. A No. 03/2024

Appeal U/S 7-I of the Employees' Provident Fund & Miscellaneous Provisions Act,1952.

South Coast Restaurant, G.S. Road, Christian Basti, Guwahati. .....**Appellant.**

-Vrs-

The Assistant Provident Fund Commissioner, Regional Office, G.S. Road, Bhangagarh, Guwahati. .....**Respondent.**

REPRESENTATIVES:

For the Appellant .....Mr. Souvik Sengupta, Learned Advocate.

For the Respondent.....Mr. P.K. Roy, Learned Senior Advocate.
Mr. Sanjay Kumar Chakrabarty, learned Advocate.

O R D E R
DATED 15-05-2026

1. This Appeal Under Section 7-I of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 has been preferred by the appellant against the impugned order bearing No. NE/GHY/0009357/ENF/178 dated 15-06-2023 passed by the Assistant Provident Fund Commissioner, Guwahati in proceeding under section 7-A of the Employees Provident Fund and Miscellaneous Provisions Act,1952 (herein after called as 'the Act'), directing the appellant to pay the EPF dues in five statutory account to be ₹ 24,73,560/- for the period from 04/2019 to 03/2022. Along with the appeal, the appellant also filed an application under section 7-I of the Act praying for condoning delay of 54 days in filing the Appeal and after considering the grounds, the application was allowed vide order dated 19-09-2024 by condoning delay in filing the appeal. Accordingly, the appeal was admitted and directed the appellant to deposit 50% of the assessed amount within 15 days from the date of order which the appellant complied within time.

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2. The factual matrix in the case as narrated by the Appellant in the memo of Appeal are briefly stated as under:

An inquiry under section 7A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 bearing No. NE/GHY/0009357/ENF/178 dated 15-06-2023 was initiated on 04-05-2022 against the appellant the South Coast Restaurant, the establishment covered by the Act by the Respondent Assistant Provident Fund Commissioner, Regional Office, N.E. Region for failing to remit monthly contribution and Administrative charges to the Fund for the period from 04/2019 to 03/2022 in accordance with the provision of the Employees Provident Funds and Miscellaneous Provisions Act, 1952, Employees Provident Fund Scheme,1952, Employees Pension Scheme,1955 and Employees Deposit linked Insurance Scheme,1976. In the said inquiry the appellant had appeared and submitted written statement contending interalia that the salary structure included HRA and Washing allowance, that the PF contributions were remitted only on basic pay (approximately 50% of gross) and contributions on other allowances should be excluded. It was further submitted that the number of employees was reduced from 79 in April,2019 to 19 by 31-03-2022 due to pandemic. The appellant did the bifurcation in the wages structure of his employees as (i) Basic Salary, (ii) House Rent Allowance, (iii) Other Allowance and (iv) Washing Allowance. In the enquiry the Enforcement Officer, Employees Provident Fund Organisation vide submission dated 17-08-2022 countered that the appellant/employer violated the provisions contained under section 2(b) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, by splitting wages paid to the employees and also submitted that the component of the wages such as 30% HRA on basic, 20% conveyance, fixed washing allowance of ₹ 1200/-and special allowance @ 23% of basic were arbitrary and in violation of the provision of the said Act. The Departmental Representative submitted in the said inquiry that 30% of basic wages as HRA in wages component is exorbitant rate of HRA and is indicative of the fact that the employer has been violating the statutory liabilities. It was also submitted that all allowances except HRA form part of basic wages and the cash value of food concession ("Free Food") provided to employees is chargeable.

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Considering the submission of the employer of the establishment South Coast Restaurant and report of the Employment officer as well as the relevant judgement of the Apex Court (Regional Provident Fund Commissioner (II) West Bengal -versus- Vivekananda Vidyamandir), the Assistant Provident Fund Commissioner vide order dated 15-06-2023 determined the dues of the appellant in 5 different statutory account to be ₹ 24,73,560/- (Rupees twenty four lakhs, seventy three thousand, five hundred and sixty) only. The authority held that the special allowance, being paid uniformly across the board without nexus to extra output or incentive, formed part of basic wages.

3. Being highly aggrieved by and dissatisfied with the order dated 15-06-2023, the employer establishment preferred the instant Appeal on the following grounds amongst others:

(a) That the order under section 7A of the Employees' Provident Fund and Miscellaneous Provisions Act,1952 passed by the respondent determining contribution payable under the Act by the appellant, the gross wages and the basic wages calculated by the respondent is without proper application of mind and liable to be set aside.

(b) The House Rent Allowance (HRA) and Washing Allowance is required to be excluded from the quantification of wages as per the provisions of the Act

(c) That the inquiry initiated against the appellant u/s 7A of the Act is in violation of EPFO Circular dated 28.08.2019 and as such liable to set aside.

(d) That the submission of the Departmental Representative dated 03.05.2023 that an exorbitant rate of HRA is indicative of the fact that the employer violated the statutory liability, which is bad in law as the percentage of HRA deduction by the appellant is legally permissible.

(e) That the respondent while passing the order under section 7A of the Act ignored the fact that the washing allowance paid by the appellant to the employees @ Rs.1200/- per month is the basic necessity of the trade of the appellant which is required to maintain cleanliness and hygiene and as such inclusion of the same as part of the basic wages is bad in law.

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Hence prayed to set aside the order dated 15-06-2023 passed by the Assistant provident Fund Commissioner.

4. The respondent side submitted reply to the memo of appeal stating that the appeal is not maintainable in Law being not filed as per Rule 8 of the Employees' Provident Fund Appellant Tribunal (Procedure) Rules 1997. It is further submitted that after hearing the parties as well as documents filed by them, the EPF authority vide impugned order dated 15-06-2023 came to a finding that the allowances shown as components in salary register were part of basic wages, though camouflaged as allowances to avoid deduction of PF contribution and therefore, the allowances paid to the employees as part of the total considerable basic salary would be subjected to PF contribution. The respondent submitted reply to the appeal amongst others as under:

(a) Section 2(b) read with section 6 of the EPF & MP Act 1952, clearly stipulates that EPF contribution should be deducted in basic wages plus dearness allowances and retaining allowances. But during the course of Enquiry conducted by the EPF authority, it was found by them that the appellant employer has been splitting-up wages in respect of employees into different head while calculating EPF contribution and allied dues under the Act and consequently contribution were being made on a very low wage.

(b) That the employer was paying HRA @30% of the basic salary, conveyance allowance @20% of basic salary, fixed washing allowance of Rs.1200/- and special allowance at an arbitrary rate ranging from 23% onwards. EPF contributions were not paid on any one of the aforesaid allowances, though except HRA, all other allowances mentioned above attract EPF contribution as per the provisions of the Act. That HRA in the manner in which, it is paid, ought to be included in the basic wage because of the high and irrational rate at which it was being paid. Though HRA is excluded from EPF contribution, but splitting 30% of gross wage of the lowly paid employees as HRA clearly indicates that the employer was trying to use the said nomenclature to misuse and circumvent the provisions of the Act and deprive the employees from

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their social security benefits. Most of the employees are unskilled or semi-skilled drawing very less salary. Simple use of the nomenclature in deciding allowances at an abnormally high rate and without any logic, cannot absolve the employer from his responsibility and liability from contribution as per the Act. The modus operandi adopted by the employer defeats the very purpose of the Act, which is a major social security legislation.

In this premise, the respondent prays to dismiss the appeal.

5. I have heard the learned advocates of both sides. During argument learned advocate appearing for the Appellant establishment submitted that House Rent Allowance and Washing Allowance are to be excluded in quantifying the Basic Wages under section 2 (b) of the Act. The learned Advocate further argued that the washing allowance paid at ₹ 1200/- per month was a necessity to ensure hygienic and cannot be treated as a part of basic wages. He further submitted 30% of HRA fixed by the establishment was based on local housing trends, not an attempt to avoid PF contribution. The appellant therefore prayed for setting aside the impugned order.

6. The learned advocate appearing for the respondent strenuously argued that House Rent Allowance and Washing Allowance are part of basic wages and the impugned order being reasonable one, need not be interfered. The learned advocate of the respondent placed reliance on the following judgements:

(i) (2014) 15 SCC 263 (MCLEOD Russel India Limited -versus- Regional Provident Fund Commissioner, Jalpaiguri and others.

(ii) 1963 SC 1474 (Bridge and Roofs Co. Ltd. -Versus- Union of India and others.

(iii) (2020) 17 SCC 643 (Regional Provident Fund Commissioner-II, West Bengal – versus- Vivekananda Vidyamandir and others.

7. Now to consider the questions in dispute, the relevant provisions of the Act are reproduced herein below:

Section 2 (b) of the Employees Provident Fund and Miscellaneous Provisions Act,1952 define "basic wages" as under:

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(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;

(8) Section 2 (h) of the Minimum wages Act,1948 defines 'wages' as all remuneration, capable of being expressed in terms of money, payable to an employed person if contract terms are fulfilled. It includes house rent allowance, but excludes specific amenities, contributions and special expenses.

(9) Section 6 of the Employees Provident Fund and Miscellaneous Provisions Act mandates contributions on basic wages, dearness allowances and retaining allowance (if any). The Hon'ble Supreme Court in the case of Bridge and Roofs Co. Ltd. -Versus- Union of India (AIR 1963 SC 1974) interpreted the definition 'Basic wages' and held that production bonus of a particular kind was excluded as it fell within "similar allowance" but the exclusion clause must be construed strictly and whatever is payable universally or ordinarily to all employees forms part of basic wages. This principle was reinforced in Manipal Academy of Higher Education vs Provident Fund Commissioner (2008) 5 SCC 428, clarifying the scope of exclusions and reiterated that any allowance not variable based on work performed is part of basic wages. The Hon'ble Apex Court in the case of the Regional Provident Fund Commissioner (II), west Bengal West Bengal – versus- Vivekananda Vidyamandir and others (2019) examining various allowances (Special Allowances, Conveyance, Canteen, Travel, management, etc.) held that if an allowance is paid

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universally, necessarily and ordinarily to all employees across the board, without being variable or linked to any incentive for extra output/performance and forms a disguised component of salary to avoid PF liability, it constitutes part of 'basic wages'. No material was produced in that case to show that the allowances were variable or incentive based, hence those were included. The Hon'ble Apex Court in the said case upheld the factual finding of P.F. authorities that such components were camouflaged basic wages.

(10) I have carefully perused the impugned order, written statements, salary records, Enforcement report and submission of both sides. The examples mentioned by the respondent in reply to the memo of appeal shows salary structure of four employees as below:

UAN	NAME OF EMPLOYEE	BASIC WAGE	GROSS WAGE	RATIO
10898393511	ACHYUT BHUYAN	3700	11200	33.04%
100898422988	AJOY KAIBRATA	2200	6000	36.7%
100913431435	AMULYA BHUYAN	2500	10000	25%
101357188735	BIKAS DAS	1050	4401	23.86%

The above salary structure reveals a clear pattern of wage splitting. Basic wages formed a low percentage of gross (23% to 37% in above cited examples), unlike standard practice where basic is fixed first and allowances derived. HRA @ 30% of the basic, conveyance @ 20%, fixed washing allowance of ₹ 1200/- per month and special allowance were paid uniformly. In the Appellant's establishment most employees were unskilled/semi-skilled drawing modest gross salaries (average around ₹ 8,354/-, with some as low as ₹ 4,401/-). For such employees, allocating a large fixed portion as "HRA" lacks rationale tied to actual rent and appears as a wage splitting device. The evidence on record (salary structures, Enforcement officer's report) shows the appellant divided

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wages into multiple heads while keeping the 'basic' low. While genuine HRA is excluded under Section 2 (b) (ii), payment of HRA at an inflated and uniform rate of 30% to low paid employers without rental evidence cannot be treated as bona fide but a wage splitting device. The Department rightly treated the inflated portion as part of basic wages.

(11) Further more, washing allowance described as a necessity for hygiene is a fixed monthly payment in the nature of an emolument for regular employment, not a reimbursement of special expenses or variable incentive. It is an emolument earned under the contract of employment. In a restaurant, while hygiene is important, a fixed allowance does not qualify as a 'similar allowance' like overtime or bonus. The appellant failed to demonstrate that the components were variable or incentive based. It forms part of basic wages. It does not squarely fall within the excluded categories under section 2 (b) and attracts contribution.

(12) In the present appeal no material has been placed by the appellant to demonstrate that the allowances in questions were production/incentive-linked, or not paid across the board. No uniform rationale was shown linking these allowances to special duties, performance, or genuine compensatory factors. Instead, these were universally paid to almost all employees. Considering the facts of the case, submission of the learned advocate of the parties and relying the judgement of the Apex Court mentioned above, I am of the view that 30% HRA and fixed washing allowance @ ₹ 1200/- paid uniformly constitute part of 'basic wages', for the purpose of P.F. contributions under section 2 (b) and 6 of the Act.

(13) Further, reduction in employee strength due to pandemic does not absolve liability for the period in question. Regarding the EPFO Circular dated 28.08.2019 (issued post-Vivekananda judgment), it guides against roving or unwarranted inquiries lacking prima facie evidence of evasion. However, in this case, the inquiry was initiated on the basis of default in remittances, and during proceedings, evidence of wage splitting emerged from salary registers and Enforcement findings. The inquiry was thus not in violation of the

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Circular; it was a legitimate exercise under Section 7-A to determine actual dues. The Department's observation on "exorbitant" HRA is not merely about percentage permissibility under other laws but its use as a tool to camouflage wages in a restaurant employing low-wage staff. The impugned order reflects proper application of mind and in conformity with the law.

(14) In view of the above, I find that the Assistant Provident Fund Commissioner rightly determined the dues after due inquiry. There is no illegality, in the impugned order dated 15-06-2023 is affirmed. The impugned order passed by the Assistant Provident Fund Commissioner, Guwahati, dated 15.06.2023, is affirmed.

(15) Resultantly, the Appeal being devoid of merit is dismissed. No order as to costs. The Appellant is directed to deposit the balance assessed amount of ₹ 24,73,560/-(after adjusting the 50% already deposited) within the time stipulated by the Respondent.

Given under the hand and seal of this Tribunal on this 15th day of May, 2026.

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(Indira Barman),
Presiding Officer,
CGIT-cum-Labour Court, Guwahati.