

**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL/EMPLOYEES PROVIDENT
FUND APPELLATE TRIBUNAL, JABALPUR**

EPF Appeal No.- 50/2017

Present – P.K. Srivastava

H.J.S. (Retd.)

**M/s Checkmate Services Pvt. Ltd.,
having its Registered Office at
GF-6 to 9, Amaan Towers, Suvas Colony,
Fatehgunj Main Road, Vadodra-390002
and its Zonal Office at E-2/78,
Opp. HDFC Bank, Arera Colony,
Bhopal-462015**

Appellant

V/s

**Regional Provident Fund Commissioner,
Employees Provident Fund Organization,
132, Zone-II, M.P. Nagar, Bhopal (MP)**

Respondents

Shri Uttam Maheswari : Learned Counsel for Appellant.

Shri Harshit Patel : Learned Counsel for Respondents.

JUDGMENT

(Passed on 17th day of April, 2026)

The present appeal is directed against the order dated 13.02.2012 & corrigendum dated 22.02.2012, passed by Respondent Authority under section 7-A of *The Employees Provident Fund & Miscellaneous Provisions Act, 1952*, hereinafter referred to as the 'Act', by which the Respondent Authority has recorded a finding that the Appellant Establishment has defaulted the deposit of EPFO dues of its employees within the period from May, 2007 to September, 2010 also a finding that the allowances paid by the Appellant Establishment to its employees are also a part of 'basic wages' and has assessed the total payable amount originally at Rs. 3,25,37,356/-, which has been reassessed at Rs. 1,70,81,191/-, by the corrigendum order dated 13.02.2012, the Appellant Establishment has been further directed to deposit the amount.

The skeletal facts connected to present appeal are mainly that, the Appellant Establishment is engaged in the business of supplying Security Guards and is covered under the Act, it pay wages to its employees with certain allowances connected to their work. The Respondent Authority issued a notice u/s 7-A of the Act and initiated an enquiry with respect to deposits. It also got report of the Enforcement Officer which stated that the Appellant Establishment was paying wages to its employees and also house rent allowance, conveyance allowance, washing allowance, medical allowance and overtime allowance uniformly across the Board, their this action was just a camouflage to reduce their liability to deposit PF dues on actual amount by showing less wages. The Respondent Authority held that the **house rent allowance, conveyance allowance, washing allowance, medical allowance, overtime allowance** were since uniformly, necessarily and ordinarily paid to all the employees hence, they do not fall under the excluded category of allowance u/s 2(b) of the Act. In the corrigendum, the Respondent Authority found that there was mistake in computing the total basic wages because house rent allowance and overtime allowance were also taken as wages. Hence, excluding the amount of house rent allowance and overtime allowance, the Respondent Authority held the conveyance/special allowance, washing allowance, medical allowance as part of basic wages, assessed the PF dues at Rs. 1,70,81,191/- and directed the Appellant Establishment to deposit the amount, hence this Appeal.

Grounds of Appeal, taken in the memo of appeal are mainly that the findings and assessments are bad in law because the Appellant Establishment was not given reasonable opportunity of hearing, the Respondent Authority worked as a Judge and Prosecutor both which is against principles of natural justice, the Respondent Authority did not follow the due process of law during the enquiry, report of Enforcement Officer on the basis of which the corrigendum order dated 13.02.2012 was passed was never supplied to the Appellant Establishment and the Appellant Establishment was not heard at the time of passing of corrigendum order, the Respondent Authority committed error in law in taking the amount of conveyance/special allowance, washing allowance and medical allowance as part of basic wages against law and CBFC circular dated 23.05.2011 which was relied upon by the Respondent Authority in recording the impugned findings had been stayed by Hon'ble High Court of Delhi in WP(c) No, 633/2011 vide order dated 30.08.2011, the impugned order is a non-speaking order, no reason has been assigned with respect to findings. The Respondent Authority further committed error in law in blindly relying on the reports of Enforcement Officer. The finding of the Respondent Authority that splitting of wages into allowances was a subterfuge

to avoid liability regarding deposit of PF dues as based on conjecture and surmises, hence bad in law.

In its counter to appeal, the Respondent Authority has taken a case that the Act is a piece of social legislation to protect the workers hence, it has to be interpreted and the interpretation which is in favour of the beneficiaries is to be accepted. The finding of the Respondent Authority that splitting of wages into different allowances is nothing but a subterfuge to avoid liability based on reasons is perfectly legal, there is no illegality or material irregularity causing prejudice to the Appellant Establishment in the inquiry proceedings. The inquiry proceedings have been conducted in light of following the principles of natural justice. The impugned order as well finding and assessments are perfectly legal and warrant no interference.

The Appellant Establishment has further filed a rejoinder wherein they have mainly reiterated their case.

In the rejoinder the Appellant Establishment has pleaded that the assessment of contribution has been made without examining the fact that if the allowances are taken as part of basic wages u/s 2(b) r/w section 6 of the Act, 1952 then as per para 2(f)(ii) of the Employees Provident Fund Scheme, 1952 the same employee for whom contribution has been assessed would fall under the ambit of excluded employees, drawing wages more than Rs. 6,500/- per month. The objections raised by the Appellant Establishment with respect to attendance, computation bifurcation of salary in basic pay and allowances for the excluded employees were never verified from the employees concerned, the allowances were not paid uniformly to all the employees rather they were paid according to the terms and conditions of the appointment letter and on the basis of reimbursement made by the Principal Employer travelling/ conveyance allowance was given only to the employees who did not have transport facility provided by the Principal Employer. Hence, they were in the nature of reimbursement likewise uniform allowance as well washing allowance was in compliance of *Private Security Agencies (Regulation) Act, 2005* which obligates security personnel to wear uniform.

I have heard argument of Mr. Uttam Maheshwari, Learned Counsel for the Appellant Establishment and Mr. Harshit Patel, Learned Counsel for the Respondent Authority. Both the sides have filed their written submissions also which are part of record. I have gone through the written submissions filed by the Learned Counsels and have gone through the record as well.

It has been submitted on behalf of Appellant Establishment that the Respondent Authority did not follow the principles of natural justice and reasonable opportunity of hearing was not provided to the Appellant

Establishment. The report of Enforcement Officer dated 08.02.2012 and 15.02.2012 which are the basis of the finding of Respondent Authority were not supplied to them. Further the finding of the Respondent Authority regarding inclusion of house rent allowance, conveyance allowance, washing allowance, medical allowance and overtime allowance in the ambit of basic wages is incorrect in law, it amounts to rewriting the legislation. The finding that these allowances have been universally and ordinarily paid to the employees across the Board is also incorrect. In fact, the amounts have also been assessed mechanically. The Respondent Authority recorded all these findings in ignorance of the settled principles of law and judgments in this respect. The beneficiaries were also not identified before the assessment, this was another illegality committed by the Respondent Authority. Following judgments have been relied upon by the Learned Counsel for Appellant Establishment;

- ***Managing Director, ECIL, Hyderabad, v/s B. Karunakar (1993) 4 SCC 727, Five-Judge Bench,***
- ***Manav Mandir Hotel v/s Regional Provident Fund Commissioner, Indore (1990) SCC Online MP 227,***
- ***Central Board of Trustees, Employees Provident Fund Organization v/s Hari Darshan Singh, BKO (Brick Kiln Owner) (2018) SCC Online P&H 8321,***
- ***M/s A.K. Ahamed & Co. v/s Employees Provident Fund Organization, W.P. 10027/2020 with other writs,***
- ***Food Corporation of India v/s Provident Fund Commissioner & Ors., (1990) 1 SCC 68.***

Learned Counsel for Respondent Authority has submitted that the Act is a piece of social legislation hence, if any provision is being capable of being interpreted in two ways, the interpretation which favours the beneficiaries, shall be accepted. He has further submitted that finding of the Respondent Authority with respect to inclusion of allowances in basic wages cannot be followed in law or fact, he has referred to ***judgment of Hon'ble Supreme Court in the case of Manipal Academy of Higher Education vs. Provident Fund Commissioner (2008) 5 SCC 391***, he has further relied on ***judgment of Hon'ble Supreme Court in the case of Airflat Limited vs. State of Karnataka (1999) 6 SCC 567 & Regional Provident Fund Commissioner (II) West Bengal v. Vivekananda Vidyamandir (2019) SC 1420***, in support of his arguments.

On perusal of the record in light of rival arguments following point comes up for determination.

"Whether the finding of the Respondent Authority that the conveyance/special allowances, washing allowances, medical allowances do not fall under the excluded category allowances u/s 2(b) of the Act as well the assessment has been recorded correctly in law and fact?"

Respective stand of parties and arguments have been referred to earlier. As regards the **first leg of argument** advanced by the Learned Counsel for Appellant Establishment with regards to non-observation of principles of natural justice by the Respondent Authority, his case is that copies of the two reports regarding inspections on 08.02.2012 and 15.02.2012 were never supplied to them and findings were recorded on the basis of these two instruction reports. The records of the proceedings of inquiry have been summoned during hearing and I have gone through the records on this point. It comes out from perusal of record of proceedings that on 09.02.2012 squad submitted its deposition report along with inspection report for a 7-A period which was taken on record. A copy was ordered to be supplied to the establishment and the case was fixed for final order which was 13.02.2012. There is nothing on record to show that copies of these reports were supplied to the Appellant Establishment. In the **judgment of Hon'ble Supreme Court by Five-Judge Bench in the case of Managing Director, ECIL, Hyderabad, v/s B. Karunakar (1993) 4 SCC 727**, though it is the judgment of another matter but the principles laid down is that when any document is to be relied upon by the adjudicator, the party likely to be affected requires to be given opportunity of hearing and that documents in the rest of the judgment of **Manav Mandir Hotel v/s Regional Provident Fund Commissioner, Indore (1990) SCC Online MP 227**, referred to above, it has been held that issuance of show cause notice, furnishing all inquiry reports constitute essential ingredients of natural justice in assessment proceedings.

On the basis of above discussion, it is held that the Respondent Authority has failed to observe the principles of natural justice in not supplying the copies of inspection reports regarding dates mentioned as above but the impugned order can not be set aside only on this ground because it is to be seen as to how it prejudiced the Appellant Establishment.

Section 2(b) of The Employees Provident Fund & Miscellaneous Provisions Act, 1952, (in short the 'Act') & section 2(f) and section 29 of The Employees' Provident Funds Scheme, 1952 (in short the 'Scheme') requires to be reproduced here and are being reproduced here as follows:-

(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;

2(f) "excluded employee" means— *(i) an employee who, having been a member of the Fund, withdrew the full amount of his accumulations in the Fund under clause (a) or (c) of sub-paragraph (1) of paragraph 69;*

(ii) an employee whose pay at the time he is otherwise entitled to become a member of the Fund, exceeds fifteen thousand rupees per month;

(iii) [omitted];

(iv) an apprentice..

29. Contributions *(1) The contributions payable by the employer under the Scheme shall be at the rate of ten per cent of the basic wages, dearness allowance including the cash value of any food concession and retaining allowance if any payable to each employee to whom the Scheme applies:*

Provided that the above rate of contribution shall be twelve per cent in respect of any establishment or class of establishments which the Central Government may specify in the Official Gazette from time to time under the first proviso to sub-section (1) of section 6 of the Act.

(2) The contribution payable by the employee under the Scheme, shall be equal to the contribution payable by the employer in respect of such employee:

Provided that in respect of any employee to whom the Scheme applies, the contribution payable by him may, if he so desires, be an amount exceeding ten per cent or twelve per cent, as the case may be, 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 Act;

(3) The contributions shall be calculated on the basis of basic wages, dearness allowance including the cash value of any food concession and retaining allowance if any actually drawn during the whole month whether paid on daily, weekly, fortnightly or monthly basis.

(4) Each contribution shall be calculated to the nearest rupee, 50 paise or more to be counted as the next higher rupee and fraction of a rupee less than 50 paise to be ignored.

On perusal of these provisions makes it clear that any dearness allowance, house rent allowance, bonus amount or other similar allowance with respect to employee **which is paid in respect of his employment or work done in such employment as well presents made by the employer are not part of basic wages.** In earlier order passed by the Respondent Authority, conveyance/special allowance, washing allowance, medical allowance, overtime allowance and house rent allowance, all were held to be part of basic wages. In the corrigendum order passed on the basis of inspection report dated 08.02.2012. The house rent allowance and overtime allowance were excluded from basic wages and the assessment was revised to Rs. 1,70,81,191/-. Hence, finally the Respondent Authority included only the conveyance/special allowance, washing allowance and medical allowance as part of basic wages.

As it has been submitted by the Learned Counsel for Appellant Establishment, they are security agency, they supplied manpower to different establishment who were as security guards. The security guards are required to wear particular dress, they have to keep themselves disciplined, properly and neatly dressed up. He has taken Reference of section 6 of the **Private Security Agencies (Regulation) Act, 2005** and **Private Security Agencies (Regulation) Rules, 2006** in this respect. Hence, as submitted by him, washing allowance or dress allowance paid to them, is the allowance which is payable to them in respect to their employment or all work done in such employment, it is simple type of reimbursement regarding expenses of particular dress and maintaining the clean dress which is consummate to their special duties. Similarly, as submitted by Learned Counsel, conveyance/special allowance has been paid to the workers who are security guards, deputed at distant sites of various establishments, they have to go to the sites at distant locations for which they spend money. Hence, conveyance/special allowance is also a type of reimbursement of amount incurred by the guards in travelling to different

locations where they are deputed. Similar is the case of medical allowance. Learned Counsel further submits that in fact, the different amounts have been paid to different workers hence, it cannot be said that the amounts/allowance have been uniformly paid to all across the board. Learned Counsel has further referred to judgment of **Hon'ble Madrass High Court in case of M/s A.K. Ahamed & Co. v/s Employees Provident Fund Organization, W.P. 10027/2020** in this respect, wherein it has been laid down that house rent allowance and conveyance allowance are excluded from purview of section 6 of the Act, also that the establishment is not obliged to pay PF on these amounts.

Learned Counsel for Respondent Authority has referred to judgment of Hon'ble Supreme Court in the case of **Manipal Academy of Higher Education vs. Provident Fund Commissioner (2008) 5 SCC 391**, and has submitted that it has been on the basis of principles laid down in this judgment, the payments made to employees such as special allowance which are not linked to production incentive and are paid to all employees must be part of Employees Provident Fund calculation. He has further referred to judgment in the case of **Bridge and Roof Company (India) Ltd. v/s Union of India, reported in AIR 1963 SC 1474**, the relevant paragraphs of the judgment is being reproduced as follows:-

"The short question raised in this writ petition under Art. 32 of the Constitution is whether production bonus is included within the term "basic wages" as defined in s. 2(b) of the Employees' Provident Funds Act, No. 19 of 1952, (hereinafter referred to as the Act) Writ Petition 64 of 1962 (The Jay Engineering, Works Limited V. The Union of India) was heard along with this petition. In that writ petition a further question arose as to the nature of the production bonus scheme in force in that company and parties have been given time to file additional affidavits in that connection. What we say therefore: in the present case as to production bonus generally may not be taken necessarily to apply to the particular scheme in the case of writ petition No. 64 of 1962

We therefore allow the petition and hold that production bonus of the typical kind in force in the Company is excepted from the term "basic wages" and therefore the decision of the Central Government communicated to the Company on March 7, 1962, that provident fund contributions must also be made on the production bonus earned by the employees in' his Company, must be set aside. As this petition was heard along with petition No.64 of 1962 and the main arguments were in that petition, we order parties to bear their own costs.

The judgment in the case of **Regional Provident Fund Commissioner (II) West Bengal v/s Vivekananda Vidyamandir reported in AIR 2019 SC 1240**, referred to by the Learned Counsel for Respondent Authority to buttress his submissions that since these allowances have been universally and generally paid to employees all across the board, they should be included in basic wages. He further submits that the basic salary fixed or shown to be paid by the Appellant Establishment is less than the minimum wages fixed this also shows that paying basic salary less than minimum wages fixed and allowance are simply subterfuge to escape liability under the Act. The relevant portion of the judgment is being reproduced as follows:-

“The appellants with the exception of Civil Appeal No. 6221 of 2011, are establishments covered under the Employees’ Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the “Act”). The appeals raise a common question of law, if the special allowances paid by an establishment to its employees would fall within the expression “basic wages” under Section 2(b)(ii) read with Section 6 of the Act for computation of deduction towards Provident Fund. The appeals have therefore been heard together and are being disposed by a common order.

2. It is considered appropriate to briefly set out the individual facts of each appeal for better appreciation. Civil Appeal No. 6221 of 2011: The respondent is an unaided school giving special allowance by way of incentive to teaching and nonteaching staff pursuant to an agreement between the staff and the management. The incentive was reviewed from time to time upon enhancement of the tuition fees of the students. The authority under the Act held that the special allowance was to be included in basic wage for deduction of provident fund. The Single Judge set aside the order. The Division Bench initially after examining the salary structure allowed the appeal on 13.01.2005 holding that the special allowance was a part of dearness allowance liable to deduction. The order was recalled on 16.01.2007 at the behest of the respondent as none had appeared on its behalf. The subsequent Division Bench dismissed the appeal holding that the special allowance was not linked to the consumer price index, and therefore did not fall within the definition of basic wage, thus not liable to deduction.

Civil Appeal Nos. 396566 of 2013: The appellant was paying basic wage + variable dearness allowance(VDA) + house rent allowance(HRA) + travel allowance + canteen allowance + lunch incentive. The special allowances not having been included in basic wage, deduction for provident fund was not made from the same. The authority under the Act held that only washing allowance was to be excluded from basic wage. The High Court partially allowed the writ petition by excluding lunch incentive from basic wage. A review petition against the same by the appellant was dismissed.

Civil Appeal Nos. 396970 of 2013: The appellant was not deducting Provident Fund contribution on house rent allowance, special allowance,

management allowance and conveyance allowance by excluding it from basic wage. The authority under the Act held that the allowances had to be taken into account as basic wage for deduction. The High Court dismissed the writ petition and the review petition filed by the appellant. Civil Appeal Nos. 396768 of 2013: The appellant company was not deducting Provident Fund contribution on house rent allowance, special allowance, management allowance and conveyance allowance by excluding it from basic wage. The authority under the Act held that the special allowances formed part of basic wage and was liable to deduction. The writ petition and review petition filed by the appellant were dismissed. Transfer Case (C) No.19 of 2019 (arising out of T.P. (C) No. 1273 of 2013): The petitioner filed W.P. No. 25443 of 2010 against the show cause notice issued by the authority under the Act calling for records to determine if conveyance allowance, education allowance, food concession, medical allowance, special holidays, night shift incentives and city compensatory allowance constituted part of basic wage. The writ petition was dismissed being against a show cause notice and the statutory remedy available under the Act, including an appeal. A Writ Appeal (Civil) No.1026 of 2011 was preferred against the same and which has been transferred to this Court at the request of the petitioner even before a final adjudication of liability.

9. Basic wage, under the Act, has been defined as all emoluments paid in cash to an employee in accordance with the terms of his contract of employment. But it carves out certain exceptions which would not fall within the definition of basic wage and which includes dearness allowance apart from other allowances mentioned therein. But this exclusion of dearness allowance finds inclusion in Section 6. The test adopted to determine if any payment was to be excluded from basic wage is that the payment under the scheme must have a direct access and linkage to the payment of such special allowance as not being common to all. The crucial test is one of universality. The employer, under the Act, has a statutory obligation to deduct the specified percentage of the contribution from the employee's salary and make matching contribution. The entire amount is then required to be deposited in the fund within 15 days from the date of such collection. The aforesaid provisions fell for detailed consideration by this Court in [Bridge & Roof](#) (supra) when it was observed as follows:

"7. The main question therefore that falls for decision is as to which of these two rival contentions is in consonance with s. 2(b). There is no doubt that "basic wages" as defined therein means all emoluments which are earned by an employee while on duty or on leave with wages in accordance with the terms of the contract of employment and which are paid or payable in cash. If there were no exceptions to this definition, there would have been no difficulty in holding that production bonus whatever be its nature would be included within these terms. The difficulty, however, arises because the definition also provides that certain things will not be included in the term "basic wages", and these are contained in three clauses. The first clause

mentions the cash value of any food concession while the third clause mentions that presents made by the employer. The fact that the exceptions contain even presents made by the employer shows that though the definition mentions all emoluments which are earned in accordance with the terms of the contract of employment, care was taken to exclude presents which would ordinarily not be earned in accordance with the terms of the contract of employment. Similarly, though the definition includes "all emoluments" which are paid or payable in cash, the exception excludes the cash value of any food concession, which in any case was not payable in cash. The exceptions therefore do not seem to follow any logical pattern which would be in consonance with the main definition.

8. Then we come to clause (ii). It excludes dearness allowance, 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.

This exception suggests that even though the main part of the definition includes all emoluments which are earned in accordance with the terms of the contract of employment, certain payments which are in fact the price of labour and earned in accordance with the terms of the contract of employment are excluded from the main part of the definition of "basic wages". It is undeniable that the exceptions contained in clause (ii) refer to payments which are earned by an employee in accordance with the terms of his contract of employment. It was admitted by counsel on both sides before us that it was difficult to find any one basis for the exceptions contained in the three clauses. It is clear however from clause (ii) that from the definition of the word "basic wages" certain earnings were excluded, though they must be earned by employees in accordance with the terms of the contract of employment. Having excluded "dearness allowance" from the definition of "basic wages", s. 6 then provides for inclusion of dearness allowance for purposes of contribution. But that is clearly the result of the specific provision in s. 6 which lays down that contribution shall be 61/4 per centum of the basic wages, dearness allowance and retaining allowance (if any). We must therefore try to discover some basis for the exclusion in clause (ii) as also the inclusion of dearness allowance and retaining allowance (for any) in s. 6. It seems that the basis of inclusion in s. 6 and exclusion in clause (ii) is that whatever is payable in all concerns and is earned by all permanent employees is included for the purpose, of contribution under s. 6, but whatever is not payable by all concerns or may not be earned by all employees of a concern is excluded for the purpose of contribution. Dearness allowance (for examples is payable in all concerns either as an addition to basic wages or as a part of consolidated wages where a concern does not have separate dearness allowance and basic wages. Similarly, retaining allowance is payable to all permanent employees in all seasonal factories like sugar factories and is therefore included in s. 6; but house-rent

allowance is not paid in many concerns and sometimes in the same concern it is paid to some employees but not to others, for the theory is that house-rent is included in the payment of basic wages plus dearness allowance or consolidated wages. Therefore, house-rent allowance which may not be payable to all employees of a concern and which is certainly not paid by all concern is taken out of the definition of "basic wages", even though the basis of payment of house-rent allowance where it is paid is the contract of employment.

Similarly, overtime allowance though it is generally in force in all concerns is not earned by all employees of a concern. It is also earned in accordance with the terms of the contract of employment; but because it may not be earned by all employees of a concern it is excluded from "basic wages". Similarly, commission or any other similar allowance is excluded from the definition of "basic wages" for commission and other allowances are not necessarily to be found in all concerns; nor are they necessarily earned by all employees of the same concern, though where they exist they are earned in accordance with the terms of the contract of employment. It seems therefore that the basis for the exclusion in clause (ii) of the exceptions in s. 2(b) is that all that is not earned in all concerns or by all employees of concern is excluded from basic wages. To this the exclusion of dearness allowance in clause (ii) is an exception. But that exception has been corrected by including dearness allowance in s. 6 for the purpose of contribution. Dearness allowance which is an exception in the definition of "basic wages", is included for the propose of contribution by s. 6 and the real exceptions therefore in clause (ii) are the other exceptions beside dearness allowance, which has been included through S. 6."

10. Any variable earning which may vary from individual to individual according to their efficiency and diligence will stand excluded from the term "basic wages" was considered in [Muir Mills Co. Ltd., Kanpur Vs. Its Workmen](#), AIR 1960 SC 985 observing:

"11. Thus understood "basic wage" never includes the additional emoluments which some workmen may earn, on the basis of a system of bonuses related to the production. The quantum of earning in such bonuses varies from individual to individual according to their efficiency and diligence; it will vary sometimes from season to season with the variations of working conditions in the factory or other place where the work is done; it will vary also with variations in the rate of supplies of raw material or in the assistance obtainable from machinery. This very element of variation, excludes this part of workmen's emoluments from the connotation of "basic wages"..."

11. In [Manipal Academy of Higher Education vs. Provident Fund Commissioner](#), (2008) 5 SCC 428, relying upon Bridge Roof's case it was observed:

“10. The basic principles as laid down in Bridge Roof's case (supra) on a combined reading of Sections 2(b) and 6 are as follows:

(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. By way of example it was held that overtime allowance, though it is generally in force in all concerns is not earned by all employees of a concern. It is also earned in accordance with the terms of the contract of employment but because it may not be earned by all employees of a concern, it is excluded from basic wages.

(c) Conversely, any payment by way of a special incentive or work is not basic wages.”

12. The term basic wage has not been defined under the Act. Adverting to the dictionary meaning of the same in Kichha Sugar Company Limited through General Manager vs. Tarai Chini Mill Majdoor Union, Uttarakhand, (2014) 4 SCC 37, it was observed as follows:

“9. According to <http://www.merriam-webster.com> (Merriam Webster Dictionary) the word 'basic wage' means as follows:

1. A wage or salary based on the cost of living and used as a standard for calculating rates of pay

2. A rate of pay for a standard work period exclusive of such additional payments as bonuses and overtime.

10. When an expression is not defined, one can take into account the definition given to such expression in a statute as also the dictionary meaning. In our opinion, those wages which are universally, necessarily and ordinarily paid to all the employees across the board are basic wage.

Where the payment is available to those who avail the opportunity more than others, the amount paid for that cannot be included in the basic wage. As for example, the overtime allowance, though it is generally enforced across the board but not earned by all employees equally. Overtime wages or for that matter, leave encashment may be available to each workman but it may vary from one workman to other. The extra bonus depends upon the extra hour of work done by the workman whereas leave encashment shall depend upon the number of days of leave available to workman. Both are variable. In view of what we have observed above, we are of the opinion that the amount received as leave encashment and overtime wages is not fit to be included for calculating 15% of the Hill Development Allowance.”

13. That the Act was a piece of beneficial social welfare legislation and must be interpreted as such was considered in [The Daily Partap vs. The Regional Provident Fund Commissioner, Punjab, Haryana, Himachal Pradesh and Union Territory, Chandigarh](#), (1998) 8 SCC 90.

14. Applying the aforesaid tests to the facts of the present appeals, no material has been placed by the establishments to demonstrate that. In order that the amount goes beyond the basic wages, it has to be shown that the workman concerned had the allowances in question being paid to its employees were either variable or were linked to any incentive for production resulting in greater output by an employee and that the allowances in question were not paid across the board to all employees in a particular category or were being paid especially to those who avail the opportunity become eligible to get this extra amount beyond the normal work which he was otherwise required to put in. There is no data available on record to show what were the norms of work prescribed for those workmen during the relevant period. It is therefore not possible to ascertain whether extra amounts paid to the workmen were in fact paid for the extra work which had exceeded the normal output prescribed for the workmen. 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 wage 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 for us to interfere with the concurrent conclusions of facts. The appeals by the establishments therefore merit no interference. Conversely, for the same reason the appeal preferred by the Regional Provident Fund Commissioner deserves to be allowed.”

Since there is nothing on record to show that what the minimum wages were fixed for the employees hence, finding of Respondent Authority that basic pay was less than the minimum cannot be held to have been recorded on the basis of facts rather it is a perverse finding. Furthermore, The Minimum Wages Act 1948 section 12, mandates payment and fixation of minimum wages to the employees in industries mentioned in the Schedule I to the Act and there is nothing on record to show that Security Agency is in the Schedule I to the Act. Reference of judgment of Hon’ble the Apex Court in the case of *Lingegowd Detective & Security Chamber v/s Mysore Kirloskar Limited & Ors* reported in 2006 (5) SCC 180 may be taken here. Relevant portion is being reproduced as under-

“The learned Single Judge was, therefore, justified in his view that the appellant Lingegowd had no liability to pay the minimum wages. The detective services do not form part of the scheduled employment as detailed in the Schedule. It was also justified in holding that there was no employee-employer relationship so far as the appellant Mysore Kirloskar and the concerned workmen are concerned. The Division Bench unfortunately did not address itself to the relevant aspects and referred to the decision in People's

Union for Democratic Rights & Ors. v. Union of India & Ors. (AIR 1982 SC 1473) which was rendered on a totally different context.

Though the Division Bench referred to the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 (in short 'the Contract Labour Act'), the same has no relevance so far as the present dispute is concerned.

Therefore, the order of the learned Single Judge is restored and that of the Division Bench is set aside. It is made clear that Mysore Kirloskar having not challenged learned Single Judge's order, is required to make the payment, as directed by learned Single Judge. Since the learned Single Judge had held that Lingegowd was not required to pay the minimum wages, as the nature of services rendered by it was not a schedule employment, the question of it having joint and several liability to pay a sum of Rs.1,00,000/- along with Mysore Kirloskar cannot arise. The payment shall be made, if not already made, by Mysore Kirloskar within a period of six weeks from today."

Perusal of payment details discloses that though the amount in head of the allowance medical allowance have not been paid uniformly rather different amounts have been paid to different persons. Similarly, conveyance allowance, which is also named as special allowance as the consolidated statement of wages produced by the Appellant Established during inquiry proceedings before Respondent Authority, has also been paid in different amounts to different persons figured out on the basis of days they have worked. Similar, different amounts have been paid in the head of washing allowance also. Hence, it cannot be said that these allowances have been uniformly paid all across the board. As have been observed earlier there is a dress code for security guards, which they are required to wear and maintain. Also, the security guards are posted/deputed at different sites. The consolidated statement which is part of the enquiry proceedings, has been filed by the Appellant Establishment during the enquiry, showing the sites where the guards were deputed during the period of assessment and the heads of allowances including the amounts paid to the security guards shows that the special allowance is in fact conveyance allowance. There is nothing on record to show that they have been provided conveyances hence, conveyance allowance and washing allowance can be safely held to be an allowance payable to the security guards with respect to their employment or with respect to the work done by them during their employment. In fact, they may be held to be a reimbursement for the expenses they incur in maintaining their dress and travelling to different sites. This is also established that these allowances as mentioned above, are linked to the special nature of duty which the employees were discharging. As regards, medical allowance, though different amounts have been paid to different persons but there is no explanation with respect to basis behind payment of this allowance to the

employees by the Appellant Establishment. Hence, they deserve to be included in basic wages.

Hence, on the basis of above discussion and finding of the Respondent Authority that the washing allowance, conveyance, which has at some places been mentioned as special allowance, as mentioned above, in his first order and corrigendum have been uniformly paid and hence are not excluded under the basic wages, is held to have been recorded against law and set aside holding that these allowances are not part of basic wages in the case in hand. The finding of the Respondent Authority with respect to inclusion of medical allowance to the security guards in basic wages is liable to be affirmed and is affirmed.

Point for determination stands answered accordingly.

No other point was pressed.

In the light of above discussion and finding, the Appeal succeeds partly.

ORDER

Appeal allowed partly. The impugned original order dated 13.02.2012 and corrigendum order dated 22.02.2012 are set aside, the Respondent Authority is directed to re assess the PF liability of the Appellant Establishment, in the light of findings recorded above after granting opportunity of hearing to the parties..

No order as to cost.

Date:- 17/04/2026

**P.K. SRIVASTAVA
(PRESIDING OFFICER)**

Judgment Signed, dated and pronounced.

Date:- 17/04/2026

**P.K. SRIVASTAVA
(PRESIDING OFFICER)**