

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

EPFAppeal No.- 41/2017

Present – P.K. Srivastava

H.J.S. (Retd.)

**M/s Master Guard Security
Services Pvt. Ltd.**

Appellant

Vs.

**Regional Provident Fund Commissioner,
Indore**

Respondent

Shri Uttam Maheswari : Learned Counsel for Appellant.

Shri J.K. Pillai : Learned Counsel for Respondent.

JUDGMENT

The present appeal is directed against order dated 06.09.2011 passed on 09.09.2011 (as mentioned in the impugned order). Whereby the Respondent Authority has recorded a finding that, the Appellant Establishment is under legal obligation to deposit the PF dues from the differential amount for the period 2005-06 which was found on perusal of Account Book and Balance Sheet of the Establishment of the Appellant Establishment and has assessed amount at Rs. 18,45,536/- .

Facts connected, in brief, are mainly that, the Appellant Establishment is covered under the Act, it was found that they had shown an amount of Rs. 1,96,00,853/- to have been paid as wages inclusive of overtime allowance whereas, a sum of Rs. 2,18,60,163/- was deducted as emoluments of staff under the Head operating expenses of Balance sheet for the said period. Thus, there was difference of Rs. 22,59,305/- under the head of emoluments staff in different books of the Appellant Establishment for which they could not put forward any

justification hence, the Respondent Authority took this amount as evaded wages and directed to pay PF dues on this escaped amount assessed on Rs. 18,45,536/-

The grounds of appeal, taken by the Appellant Establishment in the memo of appeal, are mainly that, the amount of PF contribution required to be paid by the employer is 12% of the basic wages and the same amount is to be contributed by the Employee who is at liberty to contribute more than 12% as basic wages also. According to the Appellant establishment, the basic wages for the purposes of the Act will be basic wages as well Dearness Allowance if any or retaining allowances as mentioned in Section 2(b) of the Act. The Respondent Authority committed error in law in considering minimum wages as prescribed in Payment of Wages Act as basic wages, thus the impugned order is unjust, illegal and arbitrary.

The Respondent Authority has defended the impugned order and finding in their Counter to the appeal with the case that the Act is a beneficial legislation hence if a provision of the Act is capable of two interpretations, the one serving the welfare and interest of the employees will be followed. According to the Respondent Authority after finding discrepancy in different books maintained by the Appellant Establishment with regards to payment of emoluments to its employees in the year 2005 - 06, notices were issued to them. But they did not participate in the enquiry, thereafter report of the Enforcement Officer was called who filed his report after perusal of document which stated that during the period from March 2005 to February 2006, Rs.1,96,00,858/- were shown to be paid inclusive of overtime allowances in records whereas sum of Rs. 2,18,60,163/- was found to have been booked as emoluments to the staff under the head operating expenses of balance sheet for the said period. Therefore, was a difference of Rs. 22,59,305/- under the head of emoluments to the staff for which the Appellant Establishment fail to submit any justification. Hence, treating the amount as escaped amount/ coverage wages PF dues were assessed in the impugned order.

I have heard argument of Learned Counsel for Appellant Establishment Mr. Uttam Maheswari and Mr. J.K. Pillai for the Respondent Authority. I have gone through the records as well. Both the sides have filed written arguments. I have gone through the written arguments submitted by the parties.

On perusal of record in the light of rival arguments reveals following **points for determination**.

- 1. Whether the finding of the Respondent Authority that the Appellant Establishment was under legal obligation to deposit EPF dues on the differential amount Rs. 22,59,305/- and the assessment has been correctly recorded in fact and law?*

In his submission, the Learned Counsel for Appellant Establishment has challenged the impugned order on following three points. **Firstly**, principles of Natural Justice were not followed. **Secondly**, the impugned finding and payment was based only on the report of the Enforcement Officer and **Thirdly**, the Respondent Authority failed to appreciate that death of the Managing Director of the Appellant Establishment took place on 13.07.2011 and Enforcement Officer forfeited the record on 14.07.2011 and order was passed on the basis of such verification.

On the other hand, Learned Counsel for the Respondent Authority has submitted that, the Appellant Establishment never appeared in the enquiry they never shown any jurisdiction with regard to the deferential amount as emoluments hence, the Respondent Authority did not empowered to in show compliance of Minimum Wages Act or how the wages are determined but well it finds a subterfuge to evade PF deposit, is within its right to direct deposit of PF Dues on the basis of at least minimum wages treating them to be basic wagers.

It is clearly established from the perusal of record that, there was a difference of Rs.22,59,305/- in two different records maintained

differences by the Appellant Establishment itself, in the column of wages paid to the employees.

The Appellant Establishment did not explain this difference either before the Respondent Authority or before this Tribunal. It was on the part of Appellant Establishment as to what amount was with respect to the Basic Salary and D.A. and what amount was with respect to the allowances. In absence of this clarification which only the Appellant Establishment could make, the only option left to the Respondent Authority to assume that the Appellant Establishment would be paying on the basis of minimum wages fixed by the Government. Respondent Authority did not have any other information which could be furnished only by the Appellant Establishment before them or before this Tribunal because this Tribunal is a Court of appeal on facts and law both. Hence, in the light of above discussion the impugned finding of the Respondent Authority and the Assessment cannot be follow in law and fact and they are affirmed.

No other points were raised.

On the basis of above discussion and findings, the appeal is held to be without merits and is liable to be dismissed.

ORDER

Appeal dismissed.

No order as to cost.

Date:-02/04/2025

**P.K. Srivastava
(Presiding Officer)**

Judgment Signed, dated and pronounced.

Date:-02/04/2025

**P.K. Srivastava
(Presiding Officer)**