

**BEFORE THE PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR COURT-II, ROUSE AVENUE,
DISTRICT COURT COMPLEX, DELHI.**

Present:

Smt. Pranita Mohanty,
Presiding Officer, C.G.I.T.-Cum-Labour
Court-II, New Delhi.

ATA No. D-910(16)2012

M/s Iffco- Tokio General Co. Ltd.

Appellant

VS.

RPFC, Gurgaon

Respondent

ORDER DATED:-08.03.2021

Present:- Shri S.K. Gupta, Ld. Counsel for the Appellant.
Shri S.N. Mahanta, Ld. Counsel for the Respondent.

The appeal has been preferred u/s 7-I of the EPF and MP Act 1952 (herein after referred to as the Act), challenging the order dated 09.08.2012 passed by the RPFC (Gurgaon) directing the appellant to deposit the PF dues amounting to Rs. 5,75,280/- towards the deficit EPF dues paid for the period October 2008 to February 2010 in respect of 7 international workers.

The stand of the appellant according to the narrative in the appeal memo in short is that it is an insurance company having business in India and has been allotted a code no for compliance of the provisions of EPF & MP Act. The establishment since has its own PF Trust has been granted exemption w.e.f 1/2/2007. The RPFC by summon dated 23.08.2011 called upon the establishment to participate in the inquiry for assessment of the defaulted amount PF dues of its employees for the period 03/2008 to 02/2010. The inquiry was initiated on the basis of a report submitted by the inspecting squad made during the compliance audit of 2008-2009 and 2009-2010. The appellant has employee various categories of employees who re paid basic wage are paid and allowances like house rent allowance, conveyance allowance, canteen subsidy, grade allowance and other allowances. The said allowances are paid to the employees to defray the expenditure incurred by them and the employees do not contribute their share of the PF dues on the said allowances except the basic wage. In response to the summoned dated 23.08.2011 the appellant appeared before the respondent with all documents and filed its reply making detail statement in defence. The enforcement officer also submitted his deposition highlighting 3 observations made in the audit report like canteen allowance, driver reimbursement and

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international workers. The appellant/establishment pleaded and clarified before the RPFC that by order of the central government dated 31.03.2009 having retrospectively effect from 01st February 2007 the establishment has been exempted and it was also clarified that in respect of the international workers PF contributions are being made on their entire basic salary and the same is not limited to the salary of 6500/-per month as specified in Para 29 of the EPF Scheme. It was further pleaded before the RPFC that these employees were being given grade allowances and special allowances which do not fall in the category of basic wage and those being in the nature of the HRA and other similar allowances the appellant employer is not obliged to make EPF contribution on those allowances. During the inquiry the respondent asked the appellant to clarify the grade allowances. The appellant placed on record the employees' handbook of the organization containing the definition of grade allowances, which is meant to be spent and to defray the expenditure incurred by the employees under various heads. But the commissioner, without considering the submissions went on to pass the unreasoned order directing the appellant to deposit 575280/- towards EPF contribution of 7 nos. of international workers on the grade allowance paid to them during the period 10/2008 to Feb/2010. Being aggrieved the present appeal has been filed.

The respondent appeared through its counsel and filed written reply supporting the impugned order. The stand taken by the respondent in reply is that the RPFC after considering all the material on record and being fully aware of the different provision of EPF and MP Act and scheme has passed the impugned order. It has further been stated that the appellant has intentionally bifurcated the basic wage paid to the international employees to avoid the P F liabilities. It has also been pleaded that Grade allowance is not the exempted allowance defined u/s 2(b) of the EPF Act and the same cannot be excluded for computation of the basic wage since the same is not universally paid. The respondent thereby submitted that RPFC has rightly passed the impugned order directing the establishment to make contribution of PF dues on the Grade allowance paid to the international workers.

Ld. Counsel for both the parties advanced detail argument in support of their respective stand.

On behalf of the appellant the Ld. Counsel drew the attention of the tribunal to chapter V of the employees handbook which defines the monthly component of the salary paid to the employees. These monthly component includes.

- (i) Basic pay

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- (ii) House rent allowance
- (iii) Grade allowance
- (iv) Canteen allowance
- (v) Medical reimbursement
- (vi) Petrol expenses
- (vii) Transport allowance
- (viii) Telephone expenses etc.

Further the handbook defines that the Grade allowance consists of educational allowance, books and periodicals allowance, entertainment allowance and professional development allowance, which is a fixed allowance paid to every grade in the organization at the minimum of the pay scale which is paid to all the employees falling in the particular grade irrespective of the basic salary drawn by them. The Ld. Counsel for the appellant during course of argument submitted that the EO in his deposition before the commissioner submitted that EPF contribution is required to be paid on this Grade allowance, it was counter argued that the grade allowance like HRA, medical allowance, is meant to defray the expenditure, and thus the said allowance paid to the international workers cannot be taken into consideration for computing the basic wage or for making EPF contribution. The Ld. Counsel for the appellant drew the attention of the tribunal to a clarification obtained from the EPFO under RTI wherein the EPFO authorities have replied to the query made by the appellant explaining therein that for deposit of PF contribution on basic wage, retaining allowance and dearness allowance etc no change has been incorporated in respect of international workers. With that submission the learned counsel for the appellant argued that the commissioner without considering the stand taken by the appellant during inquiry and without giving any valid reason, passed the order deciding the liability of the appellant for contribution on the Grade Allowances paid to the international workers.

Perusal of the impugned order shows that the inquiry on the basis of the squad report was held in respect of three separate components of remuneration paid and the RPFCL after considering the submission of both the parties came to hold that the canteen subsidy and driver allowances can not be computed as cash value of food concession or dearness allowance and contribution is not payable on the same. Thus the only and short question left to be answered in this order is 'if the Grade allowance is required to be computed as dearness allowance' for the purpose of EPF contribution.

Section 6 of the EPF&MP Act prescribes the components of salary/wage on which EPF contribution is required to be made and the proportion of the deposit by the employer and the employee.

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According to this provision, contribution is required to be made on basic wage, dearness allowance and retention allowance. It has been explained that the dearness allowance shall be deemed to include the cash value of the food concession given to the employees. Further Para 29 of the EPF scheme in the exact line of the law laid u/s 6 of the Act provides for contribution to be made proportionately at the rate of 10% on the basic pay, dearness allowance which includes cash value of food subsidy paid and retention allowance.

the commissioner in his order under challenge have observed that in respect of international workers contribution is required to be made on their entire basic salary, dearness allowance and retaining allowance as the case may be. The Grade allowance is like dearness allowance and not like the house rent allowance meant to meet the expenditure. He thereby rejected the submission made before him by the establishment. Now it is to be examined if Grade allowance falls under the category of dearness allowance.

The learned counsel representing the respondent during course of his argument submitted that the establishment is required to make contribution on the entire basic pay, dearness allowance and retaining allowance of its international workers. No ceiling of Rs 6500/- like the Indian workers is applicable for them. To avoid the liability, the establishment has intentionally bifurcated the basic salary to a component describing the same as Grade allowance. In reply the learned counsel for the appellant drew the attention of the Tribunal to the Employees' Hand Book of the establishment .chapter 5 of the said Hand Book defines the salary and benefits payable to the employees by the establishment. The monthly components of salary payable includes Grade Allowance which includes Education Allowance, Entertainment Allowance and Professional Development Allowance etc. paid to persons of a particular grade irrespective of the basic pay drawn by them.

This stand was taken by the establishment before the commissioner and all documents in this regard were placed before him. But the commissioner, as seen from the impugned order did not accept the contention and rejected the same holding that the stand taken by the establishment lacks any force as there is hardly any analogy in the nomenclature and the ingredient of the allowance stated to be included in the Grade allowance. He thereby concluded that the Grade Allowance is not covered by the exclusion clause given in sub Para (i) (ii) or (iii) of sec 2(b) of the Act. This Grade Allowance being fixed for a particular Grade irrespective of their performance, is a part of basic wage only on which EPF contribution is payable.

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The appellant has argued that the Grade Allowance is meant to meet the expenses on particular heads and it is in the nature of House Rent Allowance, which is meant to be spent to defray the expenditure incurred. It is not the case of the respondent that the said allowance is paid universally to all the employees of the establishment.

On hearing the argument advanced by the parties it is found that the commissioner in his order has not assigned any reason for not accepting the description of Grade allowance given in the Employees' Hand Book of the establishment. But at the same time it can not be ignored that the Grade Allowance is being paid to a particular grade of employees for which they are ^{not} required to perform any particular kind of work or perform to a particular level. It is more like a special allowance given to that category of employees universally as an emolument earned by them while on duty or leave or on holidays with wage in accordance with the terms of contract. Merely by giving a different name to the allowance, the establishment can not exclude the same from basic wage to avoid deposit of EPF contribution. The finding of the commissioner in this regard can not be found with fault as the establishment has not placed any document during inquiry or in this appeal to prove that the Grade Allowance given to a particular grade employees is meant to defray the expenditure on those particular heads as mentioned in the Employees' Hand Book. Hence it is concluded that the Grade Allowance does not fall under the category of exempted Allowances and EPF contribution is payable on the same as apart of total basic salary of international workers. Hence ordered.

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ORDER

The appeal be and the same is dismissed on contest. The impugned order passed by the commissioner is hereby confirmed.

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8/3/2021*
Presiding Officer