

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
CUM LABOUR COURT/EPF APPELLATE TRIBUNAL,
JABALPUR

NO. CGIT/LC/EPFA-9/2018

PRESENT: P.K.SRIVASTAVA
H.J.S.(Retd.)

M/SJagdish Trading Company
Nemuch

APPELLANT

Versus

The Assistant Provident fund Commissioner
Ujjain & Others

RESPONDENT

Shri Uttammaheshwari : **Learned Counsel for Appellant.**

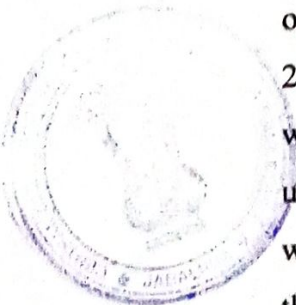
Shri J.K.Pillai : **Learned Counsel for Respondent.**

(J U D G M E N T)

(Passed on this 11th day of October-2022)

1. The present EPF Appeal is directed against the order dated 12-3-2018 passed by the Respondent Authority holding the Appellant Establishment liable to deposit the employees provident fund dues of the complainants for the period from January-2013 to February-2017, further holding that the amount received by the company workman under the orders of Hon'ble High Court in Writ Petitions under Section 17b of the Industrial Disputes Act,1947 is included within the [✓] term basic wages as defined under Section 2b of the of the Employees Provident Fund And Misc. Provisions Act,1952, herein after referred to the word Act".



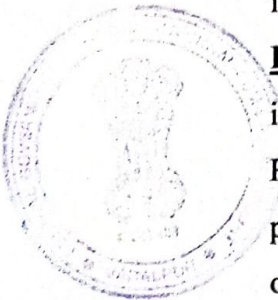


2. After having heard arguments of learned counsel for the Appellant Establishment Mr. Uttam Maheshwari and Shri J.K.Pillai, learned counsel for the Respondent Authority as well as on perusal of record in the light of rival arguments also , keeping in view the fact that the facts connected to the present appeal are not disputed , the following point comes out for determination:-

“Whether the finding of the Respondent Authority that amount received under Section 17B of the Industrial Disputes Act,1947 under orders of Hon’ble High Court in Writ Petitions filed by the Appellant Establishment against Award of Labour Court is basic wages as defined in the Act.

3. According to the impugned order, the Respondent Authority has taken the view that Section 6 of the Act does not say that the provident fund contribution is not payable from such an amount. Secondly as observed by the Respondent Authority, since the Act is a ~~judicial~~ Welfare Legislation, hence such an amount will be considered as basic wages as defined under Section 2b of the Act and the employer i.e. Appellant Establishment is under obligation in law to deposit the employees provident fund dues on this amount.

4. Learned Counsel for the Appellant has submitted that this finding of the Respondent Authority is against law. Learned Counsel has referred to the decision of Hon’ble Orissa High Court in the case of M/s Orissa Air Product Pvt. Ltd. Vs. Regional Provident Fund Commissioner, Writ Petition (c)No.15566/2010 in this respect. ON the other hand, learned counsel for the Respondent Authority has defended the impugned order with a prayer that since such a payment is not exempted from contribution of employees provident fund dues as mentioned in Section 6 of the Act and also since the Act is a judicial welfare legislation in which if two interpretations are reasonably possible, one favouring the workman will be preferred.



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5. Before entering into any discussion, it is necessary to reproduce here Section 2b and Section 6 of the Act as follows:-

2 (b) "Basic wages" means all emoluments which are earned by an employee while on duty or 3[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-

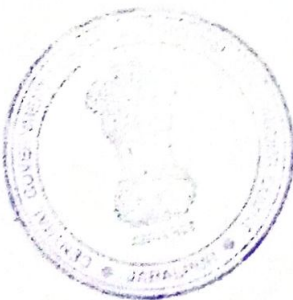
(i) The cash value of any food concession;

(ii) Any dearness allowance (that is to say, all cash payments by whatever name called paid to an employees 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;

(ii) any presents made by the employer;

[6.] Contributions and matters which may be provided for in Scheme. - The contribution which shall be paid by the employer to the fund shall be 4[ten per cent.] of the basic wages, 5[dearness allowance and retaining allowance (if any)] for the time being payable to each of the employees 6[(whether employed by him directly or by or through a contactor)], and the employee's contribution shall be equal to the contribution payable by the employer in respect of him and may, 7[if any employee so desires, be an amount exceeding 4[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 Provided further that where the amount of any contribution payable under this Act involves a fraction of a rupee, the Scheme may provide for rounding off of such



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fraction to the nearest rupee, half of a rupee, or quarter of a rupee.

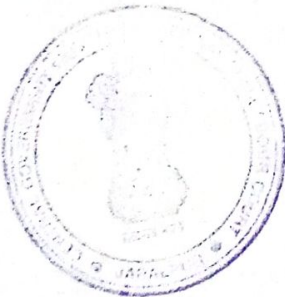
6. . The case of M/s Orissa Air Products Supra referred to by learned counsel for the Appellant is a direct authority on this preposition. Para 3, 4, 5 of this judgment is being reproduced as follows:-

3.Paragraph-29 of the Scheme provides that the contribution payable by the Employer under the Scheme shall be @ 10% of the basic wages, dearness allowance (including cash value of any food concession) and retaining allowance (if any) payable to each Employee to whom the Scheme applies. Provided that for aforesaid rate of contribution shall be 12% in respect of an establishment or I 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. Sub-section (2) provides for the contribution payable by the Employee, which is not relevant in this case. Sub-section (3) provides that contribution shall be calculated on the basis of basic wages, dearness allowance including cash value of any food concession) and retaining allowance actually drawn during whole month whether paid on daily, weekly, fortnightly or monthly basis.

Section 2(b) of the Act defines basic wages. It reads as follows:

'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;'

4. Thus, it is clear that basic wages on which contribution is to be calculated, is all emoluments, which is earned by an Employee while on duty, leave or on holidays. The emphasis is on the expression that all employments which are earned by an Employee. Any payment made under Section 17-B of the Act is not actually wages earned. Payment made under Section 17-B of the I.D. Act is in nature of subsistence allowance given to the Workman, who has been ordered to be reinstated in service by the Labour Court and the award passed by the Labour Court is assailed in any higher Court. Furthermore, it appears that this provision has been inserted to ensure that the Workman is not unnecessarily harassed by a protracted litigation and



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that his basic needs are taken care of. The quantity specified to be the last wages drawn is only to avoid confusion regarding the exact amount to be paid to such an Employee.

5. A similar type of question arose before the High Court of Gujarat in Swastik Textile Engineers Private Ltd. v. Vrijbhai Mavjibhai Rathod and another, 2008 (116) FLR 1002 (Guj). The Gujarat High Court held that when a Labour Court awards back wages for the period the Employee was kept away from duty, the Court is, in fact, awarding damages assessed in terms of whole or part of the wages, would have earned had he continued in service without interruption. Therefore, the Court Rules that the amount of damages or compensation awarded by the Court would not constitute the basic wages as envisaged in the Act.

7. As it has been held by Hon'ble High Court of Orissa that payment made by the employer under Section 17b of the Industrial Disputes Act, 1947 is in nature of subsistence allowance and it can in no way be said to be a amount which is earned by an employee while on duty, leave or on holidays. This judgment is fully applicable to the facts of the case in hand, hence holding the impugned finding against law, the Appeal deserves to be allowed.

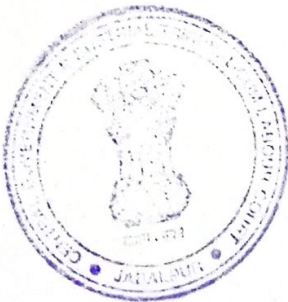
8. No other ground has been pressed

9. On the basis of the above discussion the appeal is allowed.

ORDER

Appeal is allowed. The impugned order dated 12-3-2018 passed by the Respondent Authority is set aside

No order as to costs.



P.K.S.
(P.K.SRIVASTAVA)

PRESIDING OFFICER

JUDGMENT SIGNED, DATED AND PRONOUNCED.

P.K.S.
(P.K.SRIVASTAVA)

PRESIDING OFFICER

Date: 11-10-2022