**KERALA HIGH COURT**
**Hon'ble Mr. N. Nagaresh, J.**
WP(C) No. 5972/2022, Dt/– 10-1-2025

***Sree Sakthi Paper Mills Limited (Cella Space Limited)***
***v.***
***The Regional Provident Fund Commissioner***

**EMPLOYEES' PROVIDENT FUNDS AND MISCELLANEOUS PROVISIONS ACT, 1952 – Section 7A – EPF Appellate Authority proceedings under section 7A of the Act on the report of Enforcement Officer that PF contributions were being deducted on wages less than the wages fixed under the Minimum Wages Act by issuing notice – Establishment replied to the notice that company was wound up in July, 2016 by giving statutory benefits as per a tripartite conciliation settlement including wages fixed in that settlement – EPF Authority have not considered the stand taken by the petitioner and passed order – Appeal filed by petitioner, has been dismissed by the Tribunal holding that petitioner was paying EPF contributions only on basic plus DA. Conveyance allowance, special allowance, washing allowance, incentive, High BF incentive, etc. paid uniformly to all employees, will attract EPF deduction – Salary arrears would also attract EPF deduction – Petitioner has challenged orders of the lower Authorities in writ petition – Held, wages were paid to employees based on settlements – Allowances as per settlements are excluded from the definition of Basic Wages – As per settled law where the wages is universally, necessarily and ordinarily paid to all across the board, such emoluments are Basic Wages – Where the payment is available to be specially paid to those who avail of the opportunity is not Basic Wages – EPF Authority noted that Conveyance Allowance, Special Allowance, Washing Allowance, Incentive, High BF, *Adhoc* Allowance, etc. were being paid uniformly and generally to all the employees – If that be so, those allowances would indeed be exigible to deduction EPF – Salary arrears would indeed attract EPF deduction – Accordingly, no illegality is there in the impugned order – Writ petition is dismissed. Paras 15 and 16**

***For Petitioner:*** Mr. P. Ramakrishnan, Ms. Preethi Ramakrishnan, Ms. Asha K. Shenoy, Mr. T.C. Krishna, Mr. Pratap Abraham Varghese and Mr. C. Anil Kumar, Advocates.

***For Respondent (EPFO):*** Mr. Sajeev Kumar K. Gopal, SC.

## IMPORTANT POINTS

- **As per settled law where the wages are universally, necessarily and ordinarily paid to all across the board, such emoluments are Basic Wages.**

- **Where the payment is available to be specially paid to those who avail of the opportunity is not Basic Wages.**

- **Conveyance Allowance, Special Allowance, Washing Allowance, Incentive, High BF, *Adhoc* Allowance, etc. being paid uniformly and generally to all the employees, will attract EPF contributions.**

- **Salary arrears will attract provident fund deduction.**

## JUDGEMENT

**N. Nagaresh, J.–1.** The petitioner, an incorporated Company, which was engaged in manufacture of craft paper and duplex board, has filed this writ petition seeking to quash Ext.P10 order dated 02-09-2021 of the Central Government Industrial Tribunal-cum-Labour Court, Ernakulam in Appeal No. 623/2019.

**2.** The petitioner states that the business of the Company was wound up in July, 2016. The workmen were given statutory terminal benefits after negotiations with the Trade Unions and as per a tripartite conciliation settlement.

**3.** The Employees Provident Fund Organisation initiated proceedings under section 7A for the period from 03/2009 to 04/2012, on the basis of Ext.P3 enquiry report dated 27-02-2012 submitted by the Enforcement Officer. In Ext.P3 report, the Enforcement Officer alleged that PF contributions were being deducted on wages less than the wages fixed under the Minimum Wages Act. Ext.P4 notice under section 7A was also issued to the petitioner.

**4.** The petitioner states that the respondent had conducted enquiry on six different dates and the questions raised by the respondent were clarified by the officers of the petitioner. The respondent was informed that contributions were remitted on the basis of wages fixed as per Exts.P1 and P2 settlements.

**5.** Without considering the explanation given by the petitioner, the respondent passed Ext.P7 order dated 12-07-2013 directing the petitioner to pay ` 54,99,268/- as dues for the period from 03/2009 to 04/2012. The petitioner filed Ext.P8 Appeal against Ext.P7 interim assessment. The Appeal was transferred to the Central Government Industrial Tribunal, Ernakulam and re-numbered as Appeal No. 623/2019.

**6.** The Tribunal held that the petitioner was paying contributions only on basic plus DA. The conveyance allowance, special allowance, washing allowance, incentive, High BF incentive, etc. paid uniformly to all employees, will attract Provident Fund deduction. The Tribunal further held that salary arrears would also attract Provident Fund deduction. On these premises, the Tribunal dismissed the Appeal as per Ext.P10 order dated 02-09-2021.

**7.** The petitioner states that as per Paragraph 29 of the EPF Scheme, contribution is to be paid with reference to Basic Wages, Dearness Allowance and Retaining Allowance, if any payable to employees. Basic Wages would exclude cash value of food concession, DA, HRA, Overtime Allowance, Bonus Concession, etc. Ext.P7 was issued reckoning all allowances, which is illegal.

**8.** Wages were paid to the employees based on Exts.P1 and P2 settlements. Allowances payable by the petitioner as per Exts.P1 and P2 settlements are excluded from the definition of Basic Wages. The respondent committed an error in reckoning the said allowances for payment of contribution and the Tribunal omitted to see the illegality. Ext.P10 is therefore liable to be quashed, contended the petitioner.

**9.** The respondent filed counter affidavit. The respondent stated that after an inspection, the Enforcement Officer reported that, out of ` 5,80,72,000/- expended by the establishment as wages for the year 2010-2011, only ` 1,25,18,602/- was reckoned for computing EPF dues. Therefore, in order to examine the matter in detail, section 7A proceedings were initiated. On scrutiny of wage statement filed by the petitioner, it was noted that emoluments are being paid under different heads. However, EPF contribution is remitted only for Basic and FDA.

**10.** The inquiry concluded that various allowances earned by the employees in terms of the contract of employment are to be treated as Basic Wages. Consequently, Ext.P7 assessment order was issued. Ext.P7 and Ext.P10 are not liable to be interfered on any of the grounds urged by the petitioner, contended the respondents.

**11.** I have heard the learned counsel for the petitioner and the learned Standing Counsel appearing for the respondent.

**12.** The short question arising for consideration in this writ petition is whether various allowances paid by the petitioner to their employees are exigible to PF deduction. Apart from Basic Wages and variable DA, the petitioner has been paying conveyance allowance, special allowance, washing allowance, incentive, High BF incentive, etc. uniformly and generally to all the employees. The petitioner has been paying educational allowance to a few employees.

**13.** As per section 2(b) of the Employees' Provident Funds and Miscellaneous Provisions Act, "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 with 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 Allowances 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 present made by the employer.

**14.** Section 6 of the EPF Act states that contribution shall be paid by the employer. The contribution shall be 10% of the Basic Wages, Dearness Allowance and Retaining Allowance, if any, payable to employees. Section 6 takes in Dearness Allowance and Retaining Allowance also.

**15.** The Hon'ble Apex Court considered the conflicting provisions in detail and finally evolved the tests to decide which are the components of wages which will form part of basic wages, in the judgment in *Bridge and Roof Company Limited* v. *Union of India,* (1963) 3 SCR 978. The Apex Court held that where the wages is universally, necessarily and ordinarily paid to all across the board, such emoluments are Basic Wages. Where the payment is available to be specially paid to those who avail of the opportunity is not Basic Wages. In the judgment in *T.I. Cycles of India* v. *Gurumani* , (2001) 7 SCC 204, the Hon'ble Apex Court followed the judgment in *Bridge and Roof Company (India) Limited* (Supra).

**16.** In the case of the petitioner, the establishment was paying contribution on Basic Wages and DA. The Provident Fund authorities have excluded HRA and Overtime allowances. The Provident Fund authority noted that Conveyance Allowance, Special Allowance, Washing Allowance, Incentive, High BF, *Adhoc* Allowance, etc. were being paid uniformly and generally to all the employees. If that be so, those allowances would indeed be eligible to deduction of Provident Fund. As regards salary arrears, such arrears would indeed attract Provident Fund deduction.

In the afore circumstances, I do not find any illegality in Ext.P10 order of the Industrial Tribunal. The writ petition is dismissed.

**Ref: LLR**

**If you have any questions, feel free to reach out to us on WhatsApp at Jay Shah - +91 9167121333**