CALCUTTA HIGH COURT

Hon'ble Ms. Shampa Dutt (Paul), J.

WPA 20947/2021, Dt/– 10-2-2025

Sunquest Information Systems (India) Pvt. Ltd.

v.

The Regional Provident Fund Commissioner, West Bengal & Anr.

EMPLOYEES' PROVIDENT FUNDS AND MISCELLANEOUS PROVISIONS ACT, 1952 – Employees Provident Fund Scheme, 1952 – Paras 2(f), 26, 26A and 26B – Monthly salary above Rs. 15,000/- – Entitlement of PF benefits – A writ application was preferred praying for direction upon the respondents to recall the order of enquiry under paragraph 26B of the EPF Scheme of 1952 by the respondent No. 2 – It was the case of the petitioner that five employees were being paid Basic Pay, HRA and Special Allowances as components of their salaries – It was contended that the monthly salaries of the five concerned persons was more than the salary ceiling limit for coverage under the said Act of 1952 and they were "excluded employees" – It was alleged that the said employees had fully withdrawn their accumulated amount from the respective account numbers – The respondent authorities initiated inspection process and recorded that the establishment should extend the PF membership to the aforesaid five employees as per paragraph 2(f) and paragraph 26 of the EPF Scheme – A subsequent inspection was also carried out – The respondent-authorities initiated proceeding towards resolution of doubt in terms of paragraph 26B of the EPF Scheme, 1952 to find out as to whether the five employees could be said to be members for whom the petitioner/company would have to discharge liability for paying contributions under the said Act of 1952 – Yet another inspection report was prepared – An order was passed under paragraph 26B of the EPF Scheme of 1952, whereby the employees were held to be eligible to become the members of the Fund from the dates of their respective entry into the service of the petitioner's establishment, and the establishment has been directed to deposit the PF dues in respect of these five employees – Held, the five employees whose claim has been allowed were covered under scheme of the Act of 1952 – All these employees joined the present establishment drawing salary higher than the permissible limit to be covered under the scheme of the Act of 1952 – Para 26A of the Scheme provides that even if the monthly pay of the employee/member exceeds fifteen thousand rupees, the contribution payable by him, and in respect of him by the employer, shall be limited to the amounts payable on a monthly pay of fifteen thousand rupees including dearness allowance, retaining allowance (if any) and cash value of food concession – The order under challenge passed by the authority under Para 26B of the scheme thus appears to have been passed after duly considering the materials on record and on hearing the parties as required – Thus the order is not perverse in any manner being in accordance with law and accordingly requires no interference – The employees herein are to the benefit as provided under the proviso to Para 26A of the scheme – Writ petition is dismissed. Paras 7 to 13

For Petitioner: Mr. Soumya Majumder, ID. Sr. Advocate, Mr. Dwaipayan Sengupta and Ms. Sanjukta Dutta, Advocates.

For Respondent (PF Authorities): Mr. Anil Kr. Gupta, Advocate.

IMPORTANT POINTS

- **Even if the monthly pay of the employee/member exceeds Rs. 15,000/-, the contribution payable by him, and in respect of him by the employer, shall be limited to the amounts payable on a monthly pay of Rs. 15,000/- including dearness allowance, retaining allowance (if any) and cash value of food concession.**
- **Question as to whether an employee is entitled to, or required to become, or continue as, a member, or as to the date from which he is so entitled or required to become a member can be referred to the Regional Provident Fund Commissioner who has to decide the same.**

- **An order passed by the RPFC regarding the entitlement of PF benefits of the employees after duly considering the materials on record and on hearing the parties cannot be set aside.**

JUDGMENT

Shampa Dutt (Paul), J.–1. The present writ application has been preferred praying for direction upon the respondents to recall the order of enquiry dated 30th November, 2021 passed under paragraph 26B of the EPF Scheme of 1952 by the respondent No. 2.

2. The petitioner's case as made out in the writ application is that:—

(i) The present dispute involves the question of membership of five such employees, namely, Anirban Roy, Puspendu Mukherjee, Sanjeev Kumar, Prasun Das and P. Vitesh Balaji, who were induced in the petitioner/company on and from the respective dates of their appointment. All these five employees had been issued appointment letters delineating their terms and conditions of service, which get revised from time-to-time. Basic Pay, HRA and Special Allowances had been the components of salaries of these five employees on and from the respective dates of their joining in the establishment. All the employees are presently posted in the Kolkata establishment.

(ii) The monthly salaries of the five concerned persons being more than the salary ceiling limit for coverage under the said Act of 1952, they were deemed to be “excluded employees” as understood within the meaning of the Employees' Provident Funds Scheme, 1952.

(iii) The petitioner further states that the salaries have been fixed by the company in respect of the five employees aforementioned, and the employment contracts have been duly acted upon by the employer and the employees. It is learnt that such employees had also been drawing salaries in excess of the ceiling limit of coverage for the purpose of the said Act of 1952, while they were employed with their respective previous employers.

(iv) All the aforesaid five employees had fully withdrawn their accumulated amount from the respective account numbers in the Fund and the office of the Regional Provident Fund Commissioner had duly credited the respective bank accounts of the aforesaid members with the full amount standing to their credit in the fund along with interest.

(v) The respondent-authorities initiated an inspection process for the purpose of finding out as to whether the establishment in relation to the petitioner/company was depositing contributions under the said Act of 1952 for the aforesaid five employees. In this regard the petitioner/company was asked to submit Forms-11 in respect of the aforesaid five employees since they had been appointed in the company from other establishments. The aforesaid five employees have also submitted their details as regards the dates of joining in the previous organizations and the respective dates of joining in the present establishment, through email communication.

(vi) In course of the inspection carried out on 25-01-2019, the Inspector recorded that the establishment should extend the PF membership to the aforesaid five employees as per paragraph 2(f) and paragraph 26 of the EPF Scheme, 1952.

(vii) The petitioner through a written representation dated February 19, 2019 objected to the said inspection report.

(viii) A subsequent inspection was carried out by the Inspector of the Provident Fund Department on 22-02-2019 on the aforesaid issue.

(ix) The respondent-authorities initiated proceeding towards resolution of doubt in terms of paragraph 26B of the EPF Scheme, 1952 to find out as to whether the aforesaid five employees could be said to be members for whom the petitioner/company would have to discharge liability for paying contributions under the said Act of 1952.

(x) Another inspection report dated 06-09-2021 was prepared by the Inspector of the Provident Fund Department in relation to the proceedings.

(xi) The petitioner/company objected to such inspection report by its written representation dated October 5, 2021, inter alia, asking the Provident Fund Department to produce such records which would have a direct bearing on the petitioner establishment's liability to cover the five employees under the provisions of the said Act of 1952.

(xii) On December 3, 2021, the petitioner/company received an order under paragraph 26B of the EPF Scheme of 1952, whereby the employees have been held to be eligible to become the members of the Fund from the dates of their respective entry into the service of the petitioner's establishment, and the establishment has been directed to deposit the PF dues in respect of these five employees as per the Enforcement Officer's report within 15 days failing which legal action has been threatened to be taken. Such order was signed on 30th November, 2021 by the respondent No. 2.

3. The relevant finding in the order under challenge is as follows:—

" .....*OBSERVATIONS:*

The Area Enforcement Officer/Departmental Representative's report dated 22-02-2019 and 06-09-2021 clearly establishes that PF benefits have not been extended to 05(five) eligible employees who were PF member(s) prior to joining the establishment for the period under inquiry under Para 26-B of the Schemes framed in accordance with the Act.

Finally in the hearing dated 06-09-2021, Shri Sushil Kumar Karmakar appeared on behalf of the establishment and reiterated that five (05) persons concerned joined this establishment at salaries exceeding the statutory wage ceiling and that the persons concerned had already withdrawn their PF accumulations in the previous establishment. It was made clear that these five (05) persons had not withdrawn their PF accumulations at the date when these persons joined the establishment or when this establishment became coverable under the purview of the Act.

Considering the argument of both the parties I find the following facts as true:

I. There were 05(five) employees namely Shri Anirban Roy, Shri Puspendu Mukherjee, Shri Sanjeev Kumar, Shir Prasun Das and Shri Vitesh Balaji in this establishment who were earlier enrolled as PF members in their previous establishments.

II. As per the records these 05(five) persons joined the present establishment at a salary which was higher than the threshold of PF Wage ceiling.

III. As per the records these 05(five) persons have not fully withdrawn the accumulation from their PF accounts before joining this establishment or at the time the establishment came under the purview of the EPF & MP Act, 1952.

IV. As per the provisions of Para 69(1)(e) of EPF Scheme a member can only fully withdraw his accumulations after completing a continuous period of not less than two months from his date of exit immediately preceding the date on which a member makes the application for withdrawal.

V. Further, the definition of Excluded employees as per section 2(f) of the Scheme is under:

(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) ***

(iv) an apprentice.

VI. The provisions regarding Retention of Membership as given in Para 26A of the EPF Scheme is:

(1) A member of the Fund shall continue to be member until he withdraws under paragraph 69 the amount standing to his credit in the Fund or is covered by a notification of exemption under section 17 of the Act or an order of exemption under paragraph 27 or paragraph 27A.

Explanation: In the case of claim for refund by a member under sub-paragraph (2) of paragraph 69, the membership of the fund shall be deemed to have been terminated from the date the payment is authorized to him by the authority specified in this behalf by Commissioner irrespective of the date of claim.

(2) Every member employed as an employee other than an excluded employee, in a factory or other establishment to which this Scheme applies, shall contribute to the Fund, and the contribution shall be payable to the Fund in respect of him by the employer. Such contribution shall be in accordance with the rate specified in paragraph 29:

Provided that subject to the provisions contained in sub-paragraph (6) of paragraph 26 and in paragraph 27, or sub-paragraph (1) of paragraph 27-A, where the monthly pay of such a member exceeds fifteen thousand rupees the contribution payable by him, and in respect of him by the employer, shall be limited to the amounts payable on a monthly pay of fifteen thousand rupees including dearness allowance, retaining allowance (if any) and case value of food concession.

VII. Reference is also made to the communication made with Shri Anirban Roy through e-mail dated 10-02-2021 regarding withdrawal of his previous PF Account accumulation wherein he couldn't confirm the exact date of withdrawal.

Considering the submissions of the establishment and the department I, ABHIJEET, Regional Provident Fund Commissioner, in exercise of power conferred upon me under para 26-B of the EPF Scheme read with the section 1A of the Act, hereby order that the following (05) five persons were employees of this establishment and are eligible to become members of the EPF from the dates mentioned in the columns:–

Sr. No.	**Name**	**Date of Leaving in Previous Service**	**Date of Joining in the present establishment**	**Date of eligibility of PF Membership in the present establishment**
1.	Shri Anirban Roy	31-12-2007	01-04-2008	01-09-2008
2.	Shri Puspendu Mukherjee	31-08-2008	01-09-2008	01-09-2008
3.	Shri Sanjeev Kumar	24-12-2009	01-02-2010	01-02-2010
4.	Shri Prasun Das	04-01-2011	01-02-2011	01-02-2011
5.	Shri Vitesh Balaji	08-12-2012	09-12-2012	09-12-2012

4. The authority then directed the petitioner to deposit the PF dues as assessed in respect of the said employees. Hence, the writ application.

5. Affidavits have been used by the parties.

6. The Respondents have relied upon the following judgments:—

(a) In *Lux Hosiery Industries Limited & Anr.* v. *Union of India & Ors.* , in APO No. 213 of 2007 GA No. 833 of 2007 WP No. 2287 of 2005, decided on 31st January, 2013, the Calcutta High Court held:—

"..... With regard to the number of employees, the Enforcement Officer after consideration of all relevant facts submitted a report that the appellant No. 1 employed more than 20 persons and, on that basis, the Assistant Commissioner came to a finding that the appellant No. 1 was covered as an establishment under the Act of 1952. The Learned Single Judge has rightly not substituted his opinion in place of that of the statutory authority in the course of judicial review. It is settled law that if it is based on facts, it cannot be reopened in the course of judicial review unless the same is perverse. Such is not the case here. Nothing has been placed before us to show that the decision of the statutory authority, namely, Assistant Provident Fund Commissioner in this case, is perverse in any manner whatsoever. On the other hand, the Assistant Commissioner while arriving at the finding has dealt with all the issues raised by the appellants and after considering the materials on record has come to the conclusion, as aforesaid.

With regard to the other issue as to the applicability of the Act of 1952 to hosiery business, we find no reason to differ from the reasoning of the Learned Single Judge. The legislation is a welfare legislation and in view thereof the applicability of the said legislation has to be principally interpreted so as to include hosiery business as a part of the textile business.

For the aforesaid reasons, we do not find any merit in the appeal. The appeal is, accordingly, dismissed....."

(b) In *Asstt. P.F. Commissioners, Employees' Provident Fund Organization* v. *Pawan Kumar Agarwala & Ors.* , AST No. 1825 of 2007 with AST No. 1000 of 2007, decided on December 3, 2007, the Calcutta High Court held:—

"12. In view of the law laid down by the Supreme Court in the aforesaid judgments, it becomes evident that the writ petition was not maintainable on the pleaded case of the petitioners to the effect that the orders issued under section 7A were in the nature of show-cause notices.

13. There is yet another alternative remedy available to the petitioners under section 7B of the Act. This would be an additional ground to hold that the writ petition is not maintainable.

14. We are satisfied that the present writ petition is not maintainable and the parties have to be relegated to their normal remedy of appeal before the Appellate Tribunal. The learned Single Judge while granting the interim relief has reached at certain prima facie conclusions. However, in view of the conclusion reached in this order, the observations made by the learned Single Judge made on merits of the case would not survive. The observations of the learned Single Judge, therefore, will not be taken into consideration by the appellate authority in deciding the appeal on merits in case such an appeal is filed by the writ petitioners. This view of ours will find support from the observation of the Supreme Court in the case (1999) 81 FLR 888, wherein it was held as follows:

"5. So far as the judgment and order of the High Court under appeal in C.A. No. 5540 of 1983 are concerned, once we relegate the appellant to the remedy of statutory appeal under section 7D pursuant to the present order, the observations made by the High Court on the merits of the impugned section 7A order would not survive any further and will be treated to be of no legal consequence. Meaning thereby, the entire controversy centring round section 7A order will have to be decided on its own merits by the Tribunal unfettered by any earlier observations made by the High Court in this connection and which observations are treated to be of no consequence by our present order.

10. Now it must be observed that by subsequent amendment to the Act, section 7D was brought on the statute book by the legislature and a statutory remedy of appeal before the Appellate Tribunal was made available for challenging the order under section 7A of the Act. Such a Tribunal is also established vide a notification dated 30-6-1997. We have already made necessary observations in this connection in our judgment and order passed today in Civil Appeals Nos. 5540-41 of 1983. Consequently, in the light of our observations in the aforesaid decision, it must be held that the present, appellant also is required to be relegated to the statutory remedy of appeal before the Appellate Tribunal, Delhi functioning under

section 7D of the Act. For that purpose, we grant two months' time to the appellant to file appropriate statutory appeal against the impugned section 7A. Once this appeal is filed, it will be open to the appellant to put forward all legally permissible contentions against the section 7A order including the contention, if any, pertaining to the jurisdiction of the authority passing such orders. All these contentions will be examined by the Tribunal on their own merits after hearing the parties concerned."

15. In view of the above, the appeal is allowed. The order of the learned Single Judge is set aside. The petitioner is relegated to the remedy of appeal before the Employees' Provident Funds Appellate Tribunal. The appeal shall be decided by the Tribunal in accordance with law without making any reference to the observations made by the learned Single Judge in the order dated 18th September, 2007. The writ petition is dismissed.

16. The petitioner is at liberty to make an application for condonation of delay before the Appellate Tribunal in accordance with law.

17. Urgent Xerox certified copy of this order, if applied for, be given to the learned Counsel for the parties."

7. From the materials on record, it appears:—

(i) That the five employees whose claim has been allowed were covered under scheme of the Act of 1952.

(ii) All these employees joined the present establishment drawing salary higher than the permissible limit to be covered under the scheme of the Act of 1952.

(iii) Para 26-A of EPF scheme is as follows:—

" *26A. Retention of membership.* —(1) A member of the Fund shall continue to be member until he withdraws under paragraph 69 the amount standing to his credit in the Fund or is covered by a notification of exemption under section 17 of the Act or an order of exemption under paragraph 27 or paragraph 27-A.

Explanation .—In the case of claim for refund by a member under sub-paragraph (2) of paragraph 69, the membership of the Fund shall be deemed to have been terminated from the date the payment is authorised to him by the authority specified in this behalf by Commissioner irrespective of the date of claim.

(2) Every member employed as an employee other than an excluded employee, in a factory or other establishment to which this Scheme applies shall contribute to the fund, and the contribution shall also be payable to the fund in respect of him by the employer. Such contribution shall be in accordance with the rate specified in paragraph 29:

Provided that subject to the provisions contained in sub-paragraph (6) of paragraph 26 and in paragraph 27, or sub-paragraph (1) of paragraph 27-A, where the monthly pay of such a member exceeds fifteen thousand rupees, the contribution payable by him, and in respect of him by the employer, shall be limited to the amounts payable on a monthly pay of fifteen thousand rupees including dearness allowance, retaining allowance (if any) and cash value of food concession."

(iv) As such even if the monthly pay of the employee/member exceeds fifteen thousand rupees, the contribution payable by him, and in respect of him by the employer, shall be limited to the amounts payable on a monthly pay of fifteen thousand rupees including dearness allowance, retaining allowance (if any) and cash value of food concession.

(v) "Basic wages" under the Act has been clearly laid down by the Supreme Court in *The Regional Provident Fund* v. *Vivekananda Vidyamandir* , AIR 2019 SC 1240, decided on 28 February, 2019, wherein the Court held:—

"8. We have considered the submissions on behalf of the parties. To consider the common question of law, it will be necessary to set out the relevant provisions of the Act for purposes of the present controversy.

" *Section 2(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;

Section 6: Contributions and matters which may be provided for in Schemes.— The contribution which shall be paid by the employer to the Fund shall be ten percent. Of the basic wages, dearness allowance and retaining allowance, if any, for the time being payable to each of the employees whether employed by him directly or by or through a contractor, and the employees' contribution shall be equal to the contribution payable by the employer in respect of him and may, if any employee so desires, be an amount exceeding ten percent 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 that for the word's "ten percent", at both the places where they occur, the words "12 percent" shall be substituted:

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 fraction to the nearest rupee, half of a rupee, or quarter of a rupee. Explanation I – For the purposes of this section dearness allowance shall be deemed to include also the cash value of any food concession allowed to the employee.

Explanation II.— For the purposes of this section, "retaining allowance" means allowance payable for the time being to an employee of any factory or other establishment during any period in which the establishment is not working, for retaining his services."

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 section 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 thing 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”, section 6 then provides for inclusion of dearness allowance for purposes of contribution. But that is clearly the result of the specific provision in section 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 section 6. It seems that the basis of inclusion in section 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 section 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 section 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 section 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 section 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 section 6 and the real

exceptions therefore in clause (ii) are the other exceptions beside dearness allowance, which has been included through section 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* v. *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 v. *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* v. *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* v. *The Regional Provident Fund Commissioner, Punjab, Haryana, Himachal Pradesh and Union Territory, Chandigarh* , (1998) 8 SCC 90."

vi. Para 26-B of EPF scheme, lays down:–

" *26B. Resolution of doubts.*— If any question arises as to whether an employee is entitled to, or required to become, or continue as, a member, or as to the date from which he is so entitled or required to become a member, the same shall be referred to the Regional Provident Fund Commissioner who shall decide the same:

Provided that both the employer and the employee shall be heard before passing any order in the matter."

8. In the present case the order under challenge passed by the authority under Para 26B of the scheme thus appears to have been passed after duly considering the materials on record and on hearing the parties as required. Thus the order is not perverse in any manner being in accordance with law and accordingly requires no interference.

9. The employees herein are thus entitled to the benefit as provided under the proviso to Para 26-A of the scheme.

10. The Writ Petition being WPA 20947 of 2021 stands dismissed.

11. All connected application, if any, stands disposed of.

12. Interim order, if any, stands vacated.

13. Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties, expeditiously after complying with all necessary legal formalities.

Ref: LLR