

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.252 of 2017 (O&M)

Date of Decision: 12.1.2017

Employees Provident Fund Organization, Bathinda (Punjab)
and another

... Petitioners

Versus

M/s Arihant Spinning Mills and another

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Sanjay Tangri, Advocate for the petitioners

RAJIV NARAIN RAINA, J. (Oral)

1. I have heard learned counsel for the petitioners and have perused the material parts of the paper-book presented in the petition.

2. I have no reason to disagree with the findings of the Employees Provident Fund Appellate Tribunal, New Delhi against which this petition has been filed by the petitioners praying that it deserves to be set aside on the grounds taken up. The learned Tribunal has held in paragraph 14 of the impugned order dated 14th July, 2016 (Annex. P-5) as under:-

“14.On the ground of such finding of Hon’ble High Court, now this Tribunal has no hesitation but to hold, in case in hand also, that allowances in dispute cannot be included in the Basic Wages and PF authorities are having no right to issue any directions and order against employer asking to pay PF contributions according to Minimum Wages Act.

The stand of respondent that there is element of subterfuge being practised by appellant by splitting of wages into various component like HRA, Special Allowance, Attendance Allowance, Night Allowance and Other Allowance intent to reduce its statutory liability, minimise its gains and thereby deprived its own employees of their legitimate rights under the Act, is not sustainable because these allowances are excluded allowances within the definition of Basic Wages, especially when it is not a case of respondent that these kind of allowances are given to all the employees of appellant establishment.”

3. While reaching the conclusion, the learned Tribunal has relied on a judgment of the Division Bench of this Court in *Assistant PF Commissioner vs. G4S Securities Services (India) Limited 2011 LLR 316* to which Mr.Tangri, learned counsel appearing for the petitioners submits per contra that the ruling is distinguishable as it does not notice the notification dated 17th February, 2012 (Annex. P-1). The said notification has been issued by the Punjab Government by amending a previous notification dated 6th January, 2009 to the effect that the minimum rates of wages fixed by the Government of Punjab shall be the basic rates of wages under the Minimum Wages Act, 1948. The Punjab Government notification serves a special purpose which does not touch upon the field occupied by the Employees Provident Fund and Miscellaneous Provisions Act, 1952 and schemes framed thereunder. The Act defines basic wages in Section 2 (b) of 1952 Act the scope of which is wide and would redound to the allowances mentioned in paragraph 14 of the order of the Tribunal. Besides, I find no prejudice has been caused to the petitioning organization by the order impugned when it extends basic wages to those enumerated in the order as reflected from the records of the respondent-Company and the manner in which they pay money to their employees. Section 2(b) reads as follows:-

“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;”

4. Basic wages means emoluments which are earned by employees while on duty which is a rather large perspective of allowances which a Company might pay. It would follow that different companies may pay wages to their employees differently according to their business demands which has no set formula and thus when Section 2(b)(ii) spells out some of the exclusions other than those paid by cash, then the expression “similar allowance” would be those benefits which are not paid in cash. I would, therefore, hold that the Punjab Government Notification or the definition of basic wages under the 1952 Act would not render the impugned order suspect. Still further, the scope of interference in the orders passed by the Tribunals on judicial review under Article 226 of the Constitution of India is limited as has been explained by the Constitution Bench of the Supreme Court in *Syed Yakoob v. K.S. Radhakrishnan*, AIR 1964 SC 477. It is only when the order of the Tribunal is perverse or irrational and is based on no evidence or misinterpretation of the law would interference be called for. Otherwise, the High Court would be sitting

in appeal over the work of a Tribunal. Moreover, the employees of the respondent management have not come forward to complain, for the benefit of whom the petitioner organization has been set up.

5. In view of the above, I find no merit in this petition which is accordingly dismissed.

12.1.2017
MFK

(RAJIV NARAIN RAINA)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

No