



CWP-17716-2011 (O&M) -1-

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

293

CWP-17716-2011 (O&M)
Date of decision: 21.11.2024

G 4 S SECURITY SERVICES (INDIA) PVT. LTD.PETITIONER

Vs.

REGIONAL PROVIDENT FUND COMMISSIONER ...RESPONDENT

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

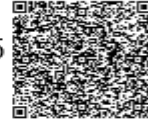
Present: Mr. Amitabh Chaturvedi, Advocate,
Mr. Pankaj Gupta, Advocate and
Mr. Paras Jain, Advocate
for the petitioner.

Mr. Sanjay Tangri, Advocate
for the respondent.

JAGMOHAN BANSAL, J (ORAL)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of order dated 04.07.2011 (Annexure P-1) passed by Employees' Provident Fund Appellate Tribunal, New Delhi to the extent petitioner's liability of Provident Fund Contribution *qua* conveyance and washing allowance has been confirmed.

2. The petitioner is a Private Limited Company which is engaged in providing security services to multiple customers. It has engaged number of workers who are deployed as 'Security Guards' at different premises. The Provident Fund Authorities in 1996 formed an opinion that petitioner is wrongly and illegally bifurcating wages payable to its workers in four components i.e. Basic, House Rent Allowance, Conveyance Allowance and Washing Allowance. The petitioner is paying minimum wages payable under Minimum Wages Act, 1948 (for short '1948 Act'), however, the said wages are bifurcated into four

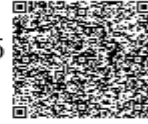


components. The petitioner is complying with provisions of 1948 Act, however, violating provisions of Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (for short '1952 Act') by not including HRA, Conveyance Allowance and Washing Allowance (collectively as 'Allowances' hereinafter) in the basic wage while calculating Employer/Employee Contribution. On the basis of said opinion, the respondent-authority for the period of March' 1996 to 1998 passed order dated 31.05.1999 holding that Provident Fund Contribution is required to be made on minimum wages without splitting emoluments into different heads i.e. Basic Wages, HRA, Conveyance and Washing Allowances.

3. The petitioner preferred an appeal before Appellate Authority which vide order dated 01.05.2000 upheld order dated 31.05.1999 passed by Assessing Authority. He preferred Writ Petition before Delhi High Court which came to be allowed vide order dated 20.09.2011. Delhi High Court set-aside orders passed by Assessing and Appellate Authority. The respondent preferred Intra Court Appeal which came to be dismissed vide order dated 10.10.2023.

4. The respondent like demand for the period from March' 1996 to 1998 initiated proceedings under Section 7A of 1952 Act for the period from November' 1998 to May' 1999. The Assessing Authority vide order dated 23.05.2002 dropped proceedings holding that petitioner is not liable to pay Provident Fund Contribution on allowances i.e. HRA, Conveyance Allowance and Washing Allowance. The said order was never assailed by respondent, thus, has attained finality.

5. The respondent for the period from December' 2001 to July' 2005 again initiated proceedings under Section 7A of 1952 Act and vide order dated 13.04.2006 held that petitioner is liable to include HRA and other allowances in the basic wage for the purpose of Provident Fund Contribution. The Authority

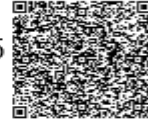


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formed an opinion that act of petitioner was a subterfuge to avoid statutory liability. The petitioner preferred an appeal before Appellate Tribunal which came to be allowed vide order dated 15.06.2009. The Appellate Authority held that allowances cannot be included in Basic Pay for the purpose of calculation of Provident Fund Contribution. The respondent preferred Civil Writ Petition before this Court which came to be dismissed vide order dated 01.02.2011. The respondent preferred Intra Court Appeal which came to be dismissed by a Division Bench vide order dated 20.07.2011. There was some typing mistake in the order dated 20.07.2011 which was corrected vide order dated 08.09.2011. The orders passed by this Court as well as Delhi High Court could not retain the respondent and it rushed to Supreme Court against the order passed by Division Bench of this Court. Supreme Court vide order dated 17.08.2023 upheld orders passed by Division Bench of this Court and dismissed appeal of the respondent.

6. The respondent for the period in question from August' 2005 to October' 2007 again initiated proceedings under Section 7A of 1952 Act which culminated in order dated 30.07.2008. The respondent again ordered to include allowances in the Basic Wage for the purpose of Provident Fund Contribution. The petitioner preferred an appeal before Appellate Authority which came to be partially allowed. The Tribunal ordered not to include HRA in the Basic Wage, however, ordered to include other allowances in the Basic Wage for the purpose of Provident Fund Contribution.

7. Mr. Amitabh Chaturvedi, Advocate submits that as per principles of uniformity, consistency and *res-judicata*, the impugned order is not sustainable. The matter has already been settled by different Courts including Hon'ble Supreme Court, thus, impugned order is not sustainable.



8. Per contra, Mr. Sanjay Tangri, Advocate submits that it is factually correct that different Courts, in the case of petitioner, have held that minimum wages can be bifurcated into different heads i.e. Basic, HRA, Conveyance Allowance and Washing Allowance, however, it has not been considered and adjudicated whether an allowance which is uniformly paid to all the employees should be included in Basic Pay or not. Hon'ble Supreme Court in '**Regional Provident Fund Commissioner (II) West Bengal Vs. Vivekananda Vidyamandir and others**' reported in **(2020) 17 SCC 643** has clearly held that if an allowance is paid to all the employees, it should form part of Basic Pay for the purpose of Provident Fund Contribution.

9. I have heard the arguments of both sides and with the able assistance of learned counsel perused the record.

10. The respondent vide order dated 13.04.2006 ordered to include Allowances in Basic Pay for the purpose of Provident Fund Contribution. The Authority was well aware of the fact that petitioner has bifurcated wages of workman into four heads i.e. Basic, HRA, Conveyance and Washing Allowances. This is evident from following paragraphs of the aforesaid order:-

"12. In their submission particularly on split-up of wages they have commented:-

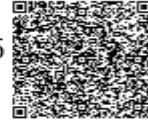
That the department earlier also initiated &A proceedings on the similar issue vide show cause notice dated 19.07.1999 which was decided in favour of Group 4 vide order No.EB/HR/9693/993 dated 23.05.2002 whereby it has been ordered by the APFC, Gurgaon that the employer is not liable to pay PF contribution on HRA, fixed conveyance and washing allowance under minimum wages.

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- *That the employer and the employee have admittedly contracted to split the total emoluments in to*



component parts and it has been agreed that HRA conveyance allowance and washing allowance shall be treated as separate from basic wages payable to the employees and these allowances are specifically excluded from the Basic Wages by the definition clause contained in EPF&MP Act and the eAPFc has no power to treat these allowances as part of basic wages.

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13. *After having considered the facts of the case, the Enforcement Officer's report dated 26.09.2005 and the written and oral submissions made by M/s Group 4 Securitas Pvt. Limited, I am of the considered opinion that the EPF&MP Act being special welfare legislation, requires liberal interpretation. In construing the provision of the Act, it is borne in mind that it is a beneficent piece of social legislation aimed, promoting and security the well-being of employees and that splitting of minimum wages in Basic Wage, HRA and other allowances was clearly a subterfuge in order to avoid statutory liability of P.F. on the same analogy as decided by the Hon'ble EPF Appellate Tribunal in the ATA in the matter of JMA Industries Vs. Assistant P.F. Commissioner, Faridabad (ATA No.599)(16)2000 dated 17th February, 2005.)*

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18. *Therefore, in the light of the judgment made by the Hon'ble EPF Appellate Tribunal in the matter of M/s JMA Industries Vs. Assistant P.F Commissioner, Faridabad and the judgment of Hon'ble High Court of Karnatka in the matter of RPFC, Karnatka Vs. M/s Group 4 Securitas Guarding Pvt. Limited, there is no scope to differ from the views of the Enforcement Officer as mentioned supra and I hold that splitting of minimum wages into basic, HR and other allowance was clearly a subterfuge in order to avoid statutory liability of*



Provident Fund. I further order that the Provident Fund is to be paid on the entire minimum wages disclosed by the establishment and the splitting of minimum wages should not be allowed.”

11. The Appellate Tribunal vide order dated 15.06.2009 held that allowances which are part of pay structure, are not part of Basic Wage as per the definition of Basic Wages under Section 2(b) of 1952 Act and appellant is not liable to make contribution on the same. The Tribunal as well as Authorities were well aware of colour and contour of bifurcation of wages made by respondent which is evident from below reproduced para no. 2 of the said order:

“2. The facts of the case are that the appellant company a covered establishment, was remitting the salary to its employees, as per the contract of employment. The salary package is state to include the basis wages + HRA and other allowances consisting of conveyance and washing allowance, as specified in the contract of employment. Shri Khushi Ram President of the All India Trade Union Congress, Gurgaon made a complaint that the appellant is bifurcating the minimum wages with a view to avoid PF liability on minimum wages. The respondent initiated an enquiry under Section 7A of the Act. The appellant contested the enquiry by contending that this issue had already been decided by the Tribunal and hence cannot be raised again for adjudication.”

12. The Tribunal specifically set-aside decision of respondent to include Allowances in the Basic Wage for the purpose of PF Contribution. The operative portion of order dated 15.06.2009 is reproduced as below:-

“6. On the basis of the above discussions, the wages payable by the appellant to its employees is in accordance with minimum wages and the pay structure of the appellant is as

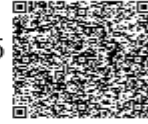


per law and the PF contribution shall be payable on the basic wages paid to the employees. In nutshell, the appellant is liable to pay its share of PF contribution on the basic wages payable + other allowances permissible under the Act and not on entire minimum wages which the employer is paying to its employees. The HRA and other allowances, which is part of Appellant's wage structure, are not a part of Basic Wage as per the definition of the basic wages defined under Section 2(b) of the Act and the Appellant is not liable to pay PF contribution on the same. In view of the above, the appeal is allowed and the impugned order dated 13.04.2006 passed by the Respondent is quashed being illegal. Appeal file be consigned to the record room. Copy of the order be sent to both the parties."

13. A Co-ordinate Bench of this Court vide order dated 01.02.2011 dismissed petition of the respondent. In the order dated 10.02.2011, it was specifically held that Allowances cannot be included in the Basic Wages for the purpose of PF Contribution. The relevant extracts of order dated 01.02.2011 are reproduced as below:-

"The petitioner's grievance is that the respondents were splitting the wage structure of the employees as a subterfuge so as to dilute its liability and that this was contrary to the wage structure which is to be taken into consideration for the contributions to be made to the Fund under the Act. The precise grievance is that rates of minimum wages which ought to have been taken into consideration are not being done so by the respondents and by splitting up the wage structure there is an evasion of its liability.

The Tribunal considered the matter and held that the respondents were right in taking into consideration the basic wage of the employee for determining the contribution to the



Fund. The plea of the petitioner was negated which has prompted him to file the instant writ petition.

*It has been contended by the learned counsel for the petitioner that it is the minimum wage, the definition of which is provided under the Minimum Wages Act which is to be taken into consideration for determining the contribution and that the Tribunal was wrong in interpreting the provisions of law and determining the liability of the respondents on the basis of the basic wage which was being given by the respondents to its employees for the purposes of determining the contribution to the fund. It is his case that the respondents have deliberately, by not including the allowances in the basic wage have sought to deflate the share of the employees contribution. Reliance has been placed on cases titled as **DCM Limited versus Regional Provident Fund Commissioner** 1998 (1) LLJ,979 High Court Rajasthan and **Airfreight Ltd. versus State of Karnataka and others** AIR 1999 SC 2459.*

On the other hand, learned counsel for the respondents has stated that the definition of basic wage as given in the Act clearly provide for an exclusion clause and they have gone strictly by definition of basic wage to determine the liability of the contribution to the fund. It has further been contended that definition of wages under the Minimum Wages Act is distinct from that of the basic wage under the Employees Provident Fund & Misc. Provisions Act and the provisions of one Act cannot be read into the other when the Legislative intent is clear since the Provident Fund Act was enacted subsequent to the enactment of the Minimum Wages Act and if the Legislature so intended , it would have certainly read the definition of wage as provided under the Minimum Wages Act into the provisions of the Employees Provident Fund Act



but instead it chose to provide a separate definition as it was conscious of the needs of the Legislation.

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Having regard to the aforesaid, there is little hesitation to hold that the contention of the learned counsel for the petitioner is mis-placed and that the respondents have rightly excluded certain allowances such as House Rent Allowance, washing allowance and conveyance allowance while determining their liability towards the fund.”

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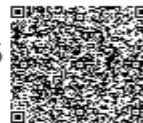
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14. The respondent herein preferred Intra Court Appeal which was dismissed vide order dated 20.07.2011.

15. The matter travelled to Supreme Court which vide order dated 17.08.2023 has dismissed Civil Appeal No. 9284 of 2013 filed by Authorities. The order dated 17.08.2023 passed by Supreme Court is reproduced as below:-

“2. Before the learned Single Judge, the appellant had impugned the order dated 15th June, 2009, passed by the Appellate Tribunal under the provisions of the Employees Provident Fund and Miscellaneous Provisions Act, 1952, while determining the issue raised by the respondents regarding the liability of the Management under the provisions of Section 7A of the EPF Act. The stand of the appellant is that for the purposes of determining its contribution towards provident fund, the respondent no.1 was wrongly splitting the wage structure of the employees and treating the reduced wage as the basic wage to the detriment of the employees, thereby evading its liability to contribute the correct amount towards provident fund. The aforesaid stand taken by the appellant has been turned down



by the Appellate Tribunal as also by the learned Single Judge and the Division Bench of the High Court.

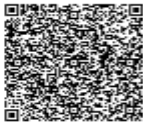
3. *Mr. Vikramjeet Banerjee, learned Additional Solicitor General submits that for the purposes of determining the basic wage under the EPF Act, reference must be made to the definition of the expression ‘minimum rate of wages’ under Section 4 of the Minimum Wages Act, 1948. This aspect has been considered in paragraph 6 of the impugned judgment and turned down holding that there was no compulsion to hold the definition of ‘basic wage’ to be equated with the definition of ‘minimum wage’ under the Minimum Wages Act, 1948.*

4. *In our opinion, once the EPF Act contains a specific provision defining the words ‘basic wage’ (under Section 2b), then there was no occasion for the appellant to expect the Court to have travelled to the Minimum Wages Act, 1948, to give it a different connotation or an expansive one, as sought to be urged. Clearly, that was not the intention of the legislature.*

5. *It is also pertinent to note that a similar issue had come up for consideration in the order dated 23rd May, 2002, passed by the APFC under Section 7A of the EPF Act, that was duly accepted by the appellant department as the said order was not taken in appeal.*

6. *In view of the aforesaid observations, the present appeal is dismissed as meritless. There shall be no orders as to costs.”*

16. The respondent on the basis of judgment of Supreme Court in ***Vivekanand Vidya Mandir*** (Supra) is claiming that entire issue should be re-examined. As per respondent, the question of payment of conveyance and



washing allowances to all the employees was not considered, thus, matter should be examined from the said angle.

The judgment in *Vivekanand Vidya Mandir* (Supra) was delivered on 28.02.2019 whereas Supreme Court in the case of petitioner itself has dismissed appeal of the Authorities on 17.08.2023. The Supreme Court has also considered that similar issue for the previous period has already been settled.

17. In view of finality of demand raised for last more than 10 years by way of multiple orders and judgment of Supreme Court in the case of petitioner itself, this Court in view of principles of uniformity, consistency and *res-judicata* cannot form any opinion other than opinion formed by Co-ordinate Bench, Division Bench of this Court as well as Supreme Court.

18. In this backdrop, the instant petition deserves to be allowed and accordingly allowed. Impugned order dated 04.07.2011 (Annexure P-1) is hereby set-aside.

19. Pending miscellaneous application(s), if any, shall also stand disposed of.

21.11.2024
manoj

[JAGMOHAN BANSAL]
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No